

“BAD BARRELS”: AN ORGANIZATIONAL-BASED ANALYSIS OF THE HUMAN RIGHTS
ABUSES AT ABU GHRAIB PRISON*

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November of the year 2013 marked ten years since the ignoble practices at the American military prison in Abu Ghraib came to light. The significance of this date garnered little mention. And yet, in the decade since reports of human rights abuses at Abu Ghraib horrified the world, there has been no organizational reform of the American carceral complex. This Article provides an organizational analysis of the human rights abuses that occurred at Abu Ghraib and offers suggestions to prevent future abuses within the American carceral system as a whole. Specifically, this Article employs the case study of prisoner abuse at Abu Ghraib as a heuristic device to demonstrate how criminal misconduct in the form of human rights abuses is tied to organizational design—meaning the organizational standards, structure, and other factors under which an organization operates—and how organizational theory should inform the enactment of future prison policy and laws to curb the occurrence of prisoner abuse.

This Article focuses on the case of Abu Ghraib for two reasons. First, the incidents at Abu Ghraib offer a strongly shared knowledge base about prisoner abuses given the widespread attention they received in the media. Second, the established similarities between behavior of prison guards in American military prisons and correctional officers in American civilian prisons provide fertile ground for applying organizational lessons gleaned from Abu Ghraib to the larger U.S. carceral system.

I. BACKGROUND

In 2004, American¹ society and the larger international community were outraged as news outlets publicized photographs detailing what appeared to be the physical and sexual abuse of Iraqi prisoners at the American military prison in Abu Ghraib (known also as the Baghdad Correctional Facility).² The photographs show American soldiers conducting themselves in ways that violated international law by taking pictures of or posing with Iraqi prisoners who were

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¹ I use the term “American” here, and in the remainder of the Article, in the widespread, albeit technically incorrect, manner to denote “relating to or of the” country, “United States of America.” Throughout the Article, I also use “the U.S.” or the “United States” interchangeably with “America” to refer to the same country.

² See, e.g., Tony Karon, *How the Prison Scandal Sabotages the U.S. in Iraq*, TIME WORLD (May 4, 2004), <http://www.time.com/time/world/article/0,8599,632967,00.html> (“There’s no question U.S. officials are deeply aware of the damage done by the Abu Ghraib torture photographs. From President Bush on down, they’ve expressed outrage and revulsion at the images of U.S. soldiers abusing Iraqi detainees in one of Saddam Hussein’s old torture chambers. . . . [T]he fallout from the revelations has been devastating, not only in the Arab and Muslim world, but globally, even among some allies in the Coalition.”).

arranged in sexually demeaning or painful positions.³ One infamous photograph shows an Iraqi prisoner with a hood over his head standing on a crate with what appears to be electric wires attached to him.⁴

The soldiers whose images appear in the Abu Ghraib photographs were represented in the media as having acted unilaterally and without approval from military officers.⁵ The American military confirmed the vilification of these individual soldiers by subsequently meting out court-martial and prison sentences and administratively reprimanding officer Brigadier General Karpinski.⁶ Such censure reassured the public that the actions captured in the photographs were aberrations and not actions endemic to the military as an organization. The final message was that the soldiers were a few “bad apples” and had been successfully excised—not that blame could also be found within the “bad barrel,” the prison as an organization, and the manner in which the prison was organized and operated.

Abu Ghraib, however, is just one incident in a larger pattern of human rights abuses present in American prisons, both military and non-military, domestic and international. Much evidence indicates that human rights abuses on par with the incidents at Abu Ghraib also occur in American civilian prisons.⁷ For example, in 2011 the ACLU released a report exposing a startling pattern of physical and sexual abuses in Los Angeles County jails and prisons, the largest carceral system in the world.⁸ One incident in the ACLU report involves the beating of an inmate who was

³ See *Introduction: The Abu Ghraib Files*, SALON.COM (Mar. 14, 2006), http://www.salon.com/2006/03/14/introduction_2/ (presenting an annotated and chronological version of 279 photos and nineteen videos from the Abu Ghraib facility).

⁴ *Id.*; see also Michael Scherer & Mark Benjamin, *Electrical Wires*, SALON.COM (Mar. 14, 2006), http://www.salon.com/2006/03/14/chapter_4/.

⁵ See, e.g., Seymour M. Hersh, *Torture at Abu Ghraib: American Soldiers Brutalized Iraqis. How Far Up Does the Responsibility Go?*, THE NEW YORKER, May 10, 2004, at 42 (“As the international furor grew, senior military officers, and President Bush, insisted that the actions of a few did not reflect the conduct of the military as a whole.”). But see Stone Phillips, *Behind the Abu Ghraib Photos*, DATELINE NBC (television broadcast Oct. 2, 2005), available at <http://www.nbcnews.com/id/9532670/> (interview with U.S. Private Lynndie England, who was in Abu Ghraib photographs and claimed that she and the other convicted soldiers were mere “scapegoats for abuse encouraged by higher ups” and that their actions were “just humiliation tactics and things that [the soldiers] were told to do”).

⁶ Josh White, *Top Army Officers Are Cleared in Abuse Cases; One General Will Likely Get Reprimand Over Abu Ghraib*, WASH. POST, Apr. 23, 2005, at A1. General Karpinski was the only top level officer who received an administrative reprimand for dereliction of duty. *Id.* “Top-level investigations into the abuses have largely stopped short of calling them systemic, but some found major problems with the way detention operations in Iraq were conducted after President Bush declared major combat in Iraq over in April 2003.” *Id.* Further, “[a] lack of planning and resources, the reports generally agreed, led to the U.S. detention system getting overwhelmed and fostered frustration with a lack of actionable intelligence with which to fight the insurgency.” *Id.*

The Army’s inspector general did conduct investigation as to the cause of the abuses, and “[s]ome of the probes identified senior leadership as being indirectly responsible for the climate that led to abuses but made no findings on culpability. . . . A comprehensive report about Abu Ghraib by Maj. Gen. George R. Fay concluded that there were failures at the highest levels, mainly in oversight lapses. He found that [Lt. Gen. Ricardo S.] Sanchez and his deputy ‘failed to ensure proper staff oversight of detention and interrogation operations’ and ‘reacted inadequately’ to warnings that abuse was occurring.” *Id.*

⁷ See Jake Trapper & Marie Nelson, *Texas Prison Abuse Case Linked to Abu Ghraib*, ABC NEWS (Aug. 26, 2004), <http://abcnews.go.com/Nightline/story?id=128973&page=1&singlePage=true>.

⁸ See generally SARAH LIEBOWITZ ET AL., ACLU NAT’L PRISON PROJECT & ACLU OF SO. CAL., CRUEL AND USUAL PUNISHMENT: HOW A SAVAGE GANG OF DEPUTIES CONTROLS LA COUNTY JAILS (2011). After examining the conditions in LA County jails through civilian complaints, jail tours, interviews with inmates, and expert analyses, the

stripped naked and forced to parade down the halls of a cellblock while the prison guards taunted him with a homosexual slur.⁹ After the inmate returned to his cell, he was beaten and sexually assaulted by other inmates while the guards ignored his pleas for help.¹⁰ Another example from the ACLU report concerns a brutal attack on a prisoner who was beaten until he became motionless on the floor and was surrounded by a large pool of blood; the five guards responsible stopped only because they noticed a chaplain was observing them through a glass door to the room.¹¹ In addition to the ACLU’s report, information released by the Bureau of Justice Statistics in 2012 reveals that one in ten adult prisoners have been victimized by staff or other prisoners¹² and that 86% of prisoners who reported sexual abuse by staff members had been victimized multiple times.¹³ Similar reports of witnessed abuse have also been presented by guards and prisoners at other American international prisons, such as the one at Guantanamo Bay, with prisoners being left hog-tied for hours, force-fed, and beaten bloody and unconscious for a verbal infraction.¹⁴

Although the abuses in the military prison at Abu Ghraib, the international prison in Guantanamo Bay, and in the U.S. civilian prisons documented by the ACLU and Bureau of Justice Statistics took place under different contexts and circumstances, many important parallels exist between these three segments of the American carceral system. First, an overlap is often present between those who are employed in the military prison system and those who are employed in the U.S. civilian carceral system.¹⁵ Indeed, Alan Elsner—author of *Gates of Injustice: The Crisis in America’s Prisons*, which details the human rights situation in the U.S. penal system—indicated that “he ‘was not that surprised’ when he first heard allegations that U.S. soldiers had abused Iraqi detainees, ‘especially when it became clear that two of the correctional officers who were involved in Abu Ghraib actually had been prison guards in the United States.’”¹⁶ Other key players in the American military prison system in Iraq were also formerly involved in the U.S. penal system. For instance, in 2003 the Bush administration selected six former state prison commissioners to help set up prisons throughout Iraq; of those six individuals, four “had left their previous posts after allegations of neglect, brutality, and prisoner deaths” had surfaced.¹⁷

report makes clear that the beatings and other abuses are not overreactions in response to prisoner provocation. *Id.* at 1. Rather, in many cases, these are acts of arbitrary brutality. *Id.* at 8. One expert opinion reveals that at the jail there is “inattentive and inadequate supervision, a virtually autonomous staff of deputies managing the inmate population by their own arbitrary and often violent whims . . .” *Id.* at 8.

⁹ *Id.* at 13.

¹⁰ *Id.*

¹¹ *Id.* at 10–11.

¹² ALLEN J. BECK & CANDACE JOHNSON, BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, SEXUAL VICTIMIZATION REPORTED BY FORMER STATE PRISONERS, 2008 8 (2012).

¹³ *Id.* at 14.

¹⁴ See, e.g., Jennifer Fenton, *Ex-Guantanamo Guard Tells of Violence Against Detainees*, CNN.com (October 28, 2011), <http://www.cnn.com/2011/10/28/world/meast/guantanamo-guard/>.

¹⁵ See Trapper & Nelson, *supra* note 7.

¹⁶ *Id.* The two officers whom Elsner references are Staff Sergeant Ivan “Chip” Frederick who “worked at the Buckingham Correctional Center in Dillwyn, Va., for more than five years before going to Iraq” and Specialist Charles Garner who had begun “work[ing] at the State Correctional Institute at Greene, Pa., in 1996.” *Id.*

¹⁷ *Id.* (“One of the four, Terry Stewart, was sued by the Justice Department in 1997, when he ran Arizona’s Corrections Department. The lawsuit charged that at least 14 female inmates were repeatedly raped, sexually assaulted and

Second, and perhaps most importantly, significant parallels exist between the organizational structures of the U.S. military prison system and the U.S. civilian prison system. For example, both systems are “total institutions,” as defined by sociologist Erving Goffman.¹⁸ Both operate under a licit cloak of secrecy that shields them from the public eye,¹⁹ and both evince rigid hierarchical structures.²⁰ Given these similarities between American civilian prisons and American military prisons, organizational lessons gleaned from Abu Ghraib may also be applied to the larger U.S. carceral system.

This Article is the first to provide a detailed explanation of how human rights abuses that society tends to link only to individual behavior are also tied to organizational factors. Generally, U.S. criminal law focuses on the *actus reus*²¹ and the *mens rea*²² of the *individual*—that is, did the *individual* commit the act and did the *individual* have the intent to commit the act? Discussions in the aftermath of Abu Ghraib illustrates this very type of analysis of prison abuse cases as both media and judicial attention portrayed the soldiers as individual actors. For instance, interviews and magazine reports delved into the individual soldiers’ familial backgrounds, educational histories, personalities, and other socio-psychological characteristics.²³ The sole focus on individual culpability is also in keeping with past academic analysis of prison and military abuses.²⁴

This Article, however, moves away from criminal law’s singular emphasis on individual culpability in the case of prison abuse. Rather, this Article adopts a more holistic investigation of

watched by corrections workers as they dressed, showered and used the bathroom. . . . Another former state prison commissioner was ‘Lane’ McCotter, who resigned as head of the Utah Department of Corrections after a mentally ill inmate died after spending 16 hours strapped to a restraining chair.”); *see also*, Brian Ross, *Iraq Prison Chiefs Had Troubling Pasts*, ABC NEWS, (May 20, 2004), <http://abcnews.go.com/WNT/Investigation/story?id=131657&page=1&singlePage=true> (“The widening scandal over the abuse of Iraqi prisoners by U.S. soldiers has raised eyebrows about whether the influence of the former prison commissioners might be partly to blame.”).

¹⁸ *See* ERVING GOFFMAN, *ASYLUMS: ESSAYS ON THE SOCIAL SITUATION OF MENTAL PATIENTS AND OTHER INMATES* xiii (1961); *see also infra* Part II.A.

¹⁹ *See generally State: Prison Secrecy*, THE PRESS ENTERPRISE, (Jan. 23, 2012), <http://www.pe.com/opinion/editorials-headlines/20120123-state-prison-secrecy.ece> (editorializing on the need to give reporters greater access to the California prison system to expose conditions and abuses).

²⁰ *See* PHILLIP GOUREVITCH & ERROL MORRIS, *STANDARD OPERATING PROCEDURE 131* (2008). The military chain of command creates the hierarchy followed in a military prison; in a domestic prison, an administrative hierarchy is present, with the wardens at the top and correctional officers at the bottom.

²¹ *See generally* JOSHUA DRESSLER, *UNDERSTANDING CRIMINAL LAW* § 9.01–11 (6th ed. 2012) (discussing the formal elements of *actus reus*); GEORGE P. FLETCHER, *RETHINKING CRIMINAL LAW* § 6.4 (2000) (advocating for alternative understandings of culpability).

²² *See generally* DRESSLER, *supra* note 21, at § 10.01–07 (discussing the formal elements of *mens rea*); FLETCHER, *supra* note 21, at § 6.5 (examining the “[c]oncept of [i]ntention” in criminal offenses).

²³ *See, e.g.*, Philip Gourevitch & Errol Morris, *Annals of War: Exposure – The Woman Behind the Camera at Abu Ghraib*, THE NEW YORKER, March 24, 2008, at 13 (examining the life and experiences of Specialist Sabrina Harman in the wake of the Abu Ghraib abuses becoming public).

²⁴ *See generally, e.g.*, Jordan J. Paust, *My Lai and Vietnam: Norms, Myths and Leader Responsibility*, 57 MIL. L. REV. 99 (1972) (focusing on the conduct of specific U.S. military leaders and refuting arguments that their conduct in Vietnam violated American law); Jeffrey F. Addicott & William A. Hudson, Jr., *The Twenty-Fifth Anniversary of My Lai: A Time to Inculcate the Lessons* 139 MIL. L. REV. 153, 153 (1993) (describing the acts of individual officers and task forces in Vietnam and arguing that the “nightmarish event[s]” of the My Lai Massacre offer lessons for preventing similar human rights violations in the future).

the causation of prison abuse that illuminates how organizational structure and the role of various organizational factors—such as the destabilizing effects of isolated prisons and shifting organizational standards—might allow and facilitate individual perpetrators’ criminal actions. In so doing, this Article poses questions different than those centered on *mens rea* and *actus reus*, asking instead: What organizational factors enabled the charged individual to commit her wrongful act? How did organizational factors encourage the charged individual to form the intent to commit the wrongful act?

Although this Article examines the impact of organizational structure on individual conduct, its primary purpose is not to introduce organizational structure as a mitigating factor for individual culpability. Rather, the goal is to argue for a broader view of the role of law. This Article ultimately contends that the law, rather than merely acting *ex post facto* to assign culpability or liability after the fact, must also act *ex ante* by enacting regulations that address the very root causes of criminal misconduct before they occur.

The Article proceeds as follows in making its arguments. Part I of this Article provides background information regarding the abuses and misconduct at Abu Ghraib and within domestic American prisons. Part II of the Article describes the sociological and organizational theories that provide the foundation for its analysis. Part III then uses Abu Ghraib as a case study to demonstrate how organizational factors may contribute to the commission of human rights abuses in prisons. Finally, in Part IV this Article concludes by discussing legal preventative steps that can be taken to eliminate the types of abuses that occurred at Abu Ghraib and that may regularly occur in civilian prisons.

II. “BAD BARREL”: THEORIES FOR THE ORGANIZATION AS INCUBATOR OF DEVIANT BEHAVIOR

The extant characteristics of an organization can function as “opportunity structures” for misconduct.²⁵ That is, organizational structure—the hierarchy, division of labor, geographic dispersion, specialized units, and other factors of an organization—may create locations where misconduct can occur.²⁶ “Structural secrecy,” an organizational effect resulting from specialization, may also provide opportunities for individuals to violate rules and norms on an organization’s behalf.²⁷

Past research on prison abuses and military atrocities that shock the public has focused on either assigning and/or mitigating individual blame for such atrocities or on the dangers of and ethical problems related to torture itself. For example, in their research of the My Lai massacre of Vietnamese civilians by American soldiers who claimed to be following military orders, social scientists Lee Hamilton and Herbert Kelman followed a social-psychological approach that centers on the individual soldiers and their blame for the massacre, without attempting to analyze the underlying organization to which all the individuals belonged.²⁸ Similarly, while a multiplicity of law review articles address the abuses at Abu Ghraib, most of the analyses do not look at the

²⁵ See Diane Vaughan, *Theorizing the Dark Side of Organizations* 14–16 (2010) (unpublished manuscript) (on file with the University of Pennsylvania Law School Journal of Law and Social Change) [hereinafter Vaughan, *Theorizing*].

²⁶ See *id.* at 17.

²⁷ *Id.*

²⁸ See generally V. LEE HAMILTON & HERBERT C. KELMAN, *CRIMES OF OBEDIENCE: TOWARD A SOCIAL PSYCHOLOGY OF AUTHORITY AND RESPONSIBILITY* (1989).

impact of the organizations involved or their organizational structures. Instead, they focus on narrowly constructed legal issues, such as the balance between executive power and judicial review during times of war;²⁹ the tension between domestic and international law;³⁰ the legal and ethical quandary surrounding the use of torture to combat terrorism;³¹ and the professional responsibility of the lawyers involved in the drafting of the so-called “torture memos.”³²

Only a few scholarly works have looked beyond the notion of torture itself and the individual culpability for prison abuse to examine the organizations in which these abuses have occurred. Stanford University psychology professor Philip Zimbardo, for instance, conducted the highly publicized “Stanford Prison Experiment,” the first academic study to focus on the social-psychological effects of imprisonment on both the prisoners and the guards.³³ Within a mere six days of imposed prison-like conditions, Zimbardo documented brutal and sadistic behavior on the

²⁹ See, e.g., Diane Marie Amann, *Abu Ghraib*, 153 U. PA. L. REV. 2085 (2005) (analyzing the executive directives that relied upon the Commander-in-Chief Clauses of the Constitution and that gave rise to lawless zones of detention such as Abu Ghraib and Guantanamo). Amann argues that, although a splintered Supreme Court decision claimed judicial review of executive actions did exist, much of the damage to human rights had been done and the lawless spaces were already in place. *Id.* at 2097, 2139–40.

³⁰ See, e.g., Ingrid Wuerth, *Authorizations For the Use of Force, International Law, and the Charming Betsy Canon*, 46 B.C. L. REV. 293 (2005) (analyzing whether domestic or international law governs Congressional authorization for the use of force, as well as the President’s war powers and whether there is a need to accurately map out this legal structure for the United States). Wuerth reviews international law that has figured prominently in several on-going disputes around actions of the U.S. military in Afghanistan, Iraq, Guantanamo, and here in the United States. *Id.*

³¹ See, e.g., Marcy Strauss, *The Lessons of Abu Ghraib*, 66 OHIO ST. L.J. 1269 (2005) (discussing a variety of reasons, including ineffectiveness, that the U.S. should not engage in torture and arguing that collective condemnation of torture, rather than moral vacillation, will diminish the likelihood of future instances of abuse). Strauss offers: “Abu Ghraib was not caused by a handful of sadistic, overworked, untrained soldiers. It was the inevitable result of an Administration that, in pursuit of the admirable goal of national security, lost sight of the need to maintain the soul of the nation.” *Id.* at 1310.

See also Jennifer Van Bergen & Douglas Valentine, *The Dangerous World of Indefinite Detentions: Vietnam to Abu Ghraib*, 37 CASE W. RES. J. INT’L L. 449 (2005) (analyzing why administrative detention may result in, or even encourage, torture). Bergen and Valentine argue: “[W]here you find administrative detentions, you are likely to find torture. . . . Th[e] reason is simple and can be traced to the elements of administrative detention itself: the absence of human rights safeguards and normal legal guarantees such as due process, *habeas corpus*, fair trial, confidential legal counsel, and judicial review; vague and confusing definitions, standards, and procedures; inadequate adversarial procedural oversight; excessive Executive Branch power stemming from prolonged emergencies; and the involvement of the Central Intelligence Agency (‘CIA’) or other secret, thus unaccountable, Executive Branch agencies.” *Id.* at 449–50.

³² See, e.g., Richard B. Bilder & Detlev F. Vagts, *Speaking Law to Power: Lawyers and Torture*, 98 AM. J. INT’L L. 689 (2004) (exploring the ethical concerns and responsibilities of the lawyers that drafted the torture memoranda). Bilder and Vagts argue: “First, the[] memoranda cannot in themselves insulate or immunize persons engaging or complicit in torture or war crimes from international or domestic criminal responsibility for their conduct. . . . Second, an attorney who gives advice intended to assist or provide a ‘road map’ for the client in violating or circumventing the law may be held complicit in the client’s criminal conduct. . . . Third, even if the[] memoranda somehow have the effect of protecting persons involved in torture or war crimes from prosecution under U.S. law, they may not provide protection from prosecution or liability in international tribunals or the courts of other countries. . . . Finally, it is questionable whether the policy that the memoranda sought to justify—avoiding U.S. obligations under international humanitarian treaties—has in fact furthered U.S. objectives in the ‘war on terror.’” *Id.* at 694–95.

³³ See generally Phillip Zimbardo, *Stanford Prison Experiment: A Simulation Study of the Psychology of Imprisonment Conducted at Stanford University*, STANFORD UNIVERSITY, <http://www.prisonexp.org> (last visited February 20, 2013).

part of the guards.³⁴ Zimbardo also testified on behalf of an Abu Ghraib guard, Sergeant Ivan “Chip” Frederick, during his court-martial, arguing that Frederick should receive a lesser sentence due to the mitigating circumstances of the situational pressures of a prison.³⁵

Zimbardo later went on to write *The Lucifer Effect: Understanding How Good People Turn Evil*, a book in which he discusses the connections between Abu Ghraib and the prison experiments.³⁶ Zimbardo also distinguishes between individual evil and “administrative evil,” recognizing differences between individual moral defect and institutional or organizational influence.³⁷ However, Zimbardo’s analysis is limited to socio-psychological issues; he does not examine which organizational factors facilitated and encouraged misconduct and he does not detail how a better organizational design might prevent future abuse.

Criminologist Michelle Brown is one of few scholars to have offered an organizational perspective to the misconduct at Abu Ghraib. In her article “*Setting the Conditions*” for *Abu Ghraib: The Prison Nation Abroad*, Brown argues that the American prison system, with its goals of retribution and isolation rather than rehabilitation, has evolved to permit harsher disciplinary and information-gathering tactics, especially in light of the events of 9/11.³⁸ In addition to highlighting the selection of “bad apples” that were charged with full responsibility for the crimes at Abu Ghraib,³⁹ Brown also draws parallels between the harshness of “supermax” domestic prisons and the conditions at Abu Ghraib.⁴⁰ Building on Brown’s established parallel between abuses at American domestic prisons and abuses at Abu Ghraib, this Article provides a full and systematic organizational analysis of Abu Ghraib that serves to address troubling trends within the American carceral system as a whole. The analysis offered is particularly important because Abu Ghraib was not an aberration.⁴¹

This Article employs organizational theory from sociologists such as Erving Goffman and Diane Vaughan to enhance understandings of how, why, and under what circumstances abuses like those at Abu Ghraib are likely to occur and flourish. Although prior literature analyzes the prison as an organization,⁴² such literature is not particularly relevant or useful in addressing

³⁴ *Id.*

³⁵ PHILLIP ZIMBARDO, *THE LUCIFER EFFECT: UNDERSTANDING HOW GOOD PEOPLE TURN EVIL* 372–73 (2007).

³⁶ *See id.* at 329–37.

³⁷ *Id.* at 381 (“[A]dministrative evil . . . constitutes the foundation of complicity of the chain of political and military command in [the Abu Ghraib] abuses and tortures.”).

³⁸ *See* Michelle Brown, “*Setting the Conditions*” for *Abu Ghraib: The Prison Nation Abroad*, 57 AM. QUARTERLY 973, 978–82 (2005).

³⁹ *Id.* at 976–77.

⁴⁰ *Id.* at 986–87.

⁴¹ The conditions underlying the incidents at Abu Ghraib are not dissimilar to the conditions that led to the Attica Prison Uprising in New York State in 1971. *See generally, e.g.*, N.Y. STATE SPECIAL COMM’N ON ATTICA, ATTICA: THE OFFICIAL REPORT OF THE NEW YORK STATE SPECIAL COMMISSION ON ATTICA (1972) (describing the conditions that resulted in the uprising and the events that occurred); *A Year Ago at Attica*, TIME, Sept. 25, 1972, at 42 (reporting on the events of violence and the aftermath of the uprising); *War at Attica: Was There No Other Way?*, TIME, September 27, 1971, at 18 (explaining the factors that contributed to the uprising).

⁴² *See generally, e.g.*, LAWRENCE E. HAZELRIGG, PRISON WITHIN SOCIETY: A READER IN PENOLOGY (1968) (examining the conflicting organizational goals of a prison); DAVID J. ROTHMAN, THE DISCOVERY OF THE ASYLUM: SOCIAL ORDER AND DISORDER IN THE NEW REPUBLIC (rev. ed. 1990) (tracing the historical development of different organizational models for places of confinement).

the type of heinous organizational misconduct that occurred at Abu Ghraib as most are concerned with the sociological effects of imprisonment on the inmate. Rather, the most relevant analyses here are the organizational theories of sociologist Erving Goffman—which address the destabilizing effects of a mental institution on both inmates and staff alike⁴³—and those of sociologist and organizational theorist Diane Vaughan—which analyze how organizational structure itself and the environment in which the organization operates might provide opportunities and incentives for misconduct.⁴⁴

A. “*Stir Crazy*”: Erving Goffman’s Theories on the Effects of a Total Institution

Erving Goffman’s ethnographic research on asylums offers critical insights into how institutions and structures such as places of incarceration may facilitate and encourage human rights abuses.⁴⁵ Defining a total institution as “a place of residence and work where a large number of like-situated individuals, cut off from the wider society for an appreciable period of time, together lead an enclosed, formally administered round of life,” Goffman explains that “[p]risons serve as a clear example” of a total institution.⁴⁶

Goffman’s descriptions of a total institution perfectly match prison conditions. For example, Goffman highlights that “[t]he central feature of total institutions . . . [is] a breakdown of the barriers ordinarily separating the[] three spheres of life [sleep, play, and work].”⁴⁷ In both military and civilian prisons, prisoners, and in some cases the guards, all sleep, play, and work within the walls of the institution.⁴⁸ Additionally, Goffman contends, “all aspects of life are conducted in the same place and under the same single authority” in total institutions.⁴⁹ In many ways, the entrapment of criminal perpetrators in the same space under one authority is the very essence of prisons. Finally, Goffman notes, “daily activity is carried on in the immediate company of a large batch of others, . . . the day’s activities are tightly scheduled, . . . [and] the various enforced activities are brought together into a single rational plan purportedly designed to fulfill the official aims of the institution.”⁵⁰

Through his analysis, Goffman finds that isolation can exacerbate the total institution’s

⁴³ See generally GOFFMAN, *supra* note 18.

⁴⁴ See generally DIANE VAUGHAN, *THE CHALLENGER LAUNCH DECISION: RISKY TECHNOLOGY, CULTURE, AND DEVIANCE AT NASA* (1996) (arguing the organizational features of NASA acted as contributing causes to the explosion of the *Challenger* shuttle) [hereinafter VAUGHAN, *CHALLENGER*]; DIANE VAUGHAN, *CONTROLLING UNLAWFUL ORGANIZATIONAL BEHAVIOR: SOCIAL STRUCTURE AND CORPORATE MISCONDUCT* (1983) (presenting a case study of a 1977 fraudulent double-billing scheme at Revco Drug Stores, Inc. to examine and illustrate hypotheses about societal influences on organizational behavior, including enabling or facilitating unwanted activities); Diane Vaughan, *History as Cause: Columbia and Challenger*, in COLUMBIA ACCIDENT INVESTIGATION BOARD REPORT VOLUME I, NASA 195-204 (2003) (“This chapter shows how previous political, budgetary, and policy decisions by leaders at the White House, Congress, and NASA . . . impacted the Space Shuttle Program’s structure, culture, and safety system . . . , and how these in turn resulted in flawed decision-making”) [hereinafter Vaughan, *History*]; Vaughan, *Theorizing*, *supra* note 25 (explaining a “theory of organizational deviance” and the method of analogical theorizing that produced it).

⁴⁵ See GOFFMAN, *supra* note 18, at 6-35, 43-48, 74-92.

⁴⁶ *Id.* at xiii.

⁴⁷ *Id.* at 5-6.

⁴⁸ See *id.* at 6.

⁴⁹ *Id.*

⁵⁰ *Id.*

destabilizing effect on the individual.⁵¹ Usually, even in total institutions, there is “a basic split between a large managed group” (the inmates) and “a small supervisory staff.”⁵² While inmates “typically live in the institution and have restricted contact with the world outside the walls[,] staff often operate on an eight-hour day and are socially integrated into the outside world.”⁵³ Where, however, the staff or employees of an institution are required to reside within the institution, the staff can feel that “they are suffering special hardships” and experience “a status dependency on life on the inside which they did not expect.”⁵⁴ As a result, the identity and behavioral motivations of the staff become inextricably linked to their assigned role in the organization.

The structure of Abu Ghraib is a good example of the above-described organizational set-up and one which creates an environment ripe for abuse. One searing illustration of the effects of such a structure is former Private Lynndie England’s lack of remorse for her part in the Abu Ghraib abuses more than eight years later. When interviewed in March 2012, England still believed that the abused Abu Ghraib prisoners got what they deserved and she refused to apologize to them. She said: “Their lives are better. They got the better end of the deal . . . They weren’t innocent. They’re trying to kill us, and you want me to apologize to them? It’s like saying sorry to the enemy.”⁵⁵ England’s comments indicate continued over-identification with her occupational role as prison guard, so much so that she is unable to feel any empathy towards the Iraqi prisoners as fellow human beings. She saw them, and continued to see them, only as the enemy.

B. “*The Dark Side*” of Organizations: A Causal Model of Organizational Deviance

Diane Vaughan’s research also provides important guidance on how the organizational structure of prisons may aid in the commission of wrongdoing by employees of the prison system. Specifically, Vaughan’s work regarding “organizational deviance”—defined as “an event, activity, or circumstance, occurring in and/or produced by a formal organization, that deviates from both formal design goals and normative standards or expectations, either in the fact of its occurrence or in its consequences, and produces a suboptimal outcome”—is instructive.⁵⁶ Her definition of organizational deviance encompasses three different categories of deviance: organizational misconduct, organizational mistake, and organizational disaster.⁵⁷ Within this model, organizational misconduct encompasses “acts of omission or commission by individuals or groups of individuals acting in their organization roles who violate internal organizational rules, external laws, or administrative regulations *on behalf of organization goals*.”⁵⁸ Under this

⁵¹ See *id.* at 6-35, 43-48, 74-92.

⁵² *Id.* at 7.

⁵³ *Id.*

⁵⁴ *Id.* at 7, n. 3.

⁵⁵ Nina Mandell, *Lynndie England Says Abu Ghraib Prisoners Got “Better End of the Deal”*, N.Y. DAILY NEWS (March 20, 2012) (internal quotations omitted), <http://nydailynews.com/news/national/lynndie-england-abu-gharib-prisoners-better-deal-article-1.1047505#ixzz2LBv8EJGZ>.

⁵⁶ Diane Vaughan, *The Dark Side of Organizations: Mistake, Misconduct, and Disaster*, 25 ANN. REV. SOC. 271, 273 (1999) (italics omitted) [hereinafter Vaughan, *The Dark Side*].

⁵⁷ *Id.*

⁵⁸ Vaughan, *Theorizing*, *supra* note 25, at 9 (emphasis added) (citing Vaughan, *The Dark Side*, *supra* note 56, at 288).

definition, events such as the abuses that took place at Abu Ghraib may be considered episodes of misconduct, as the military soldiers committed violations of military rules and international laws against torture and the treatment of prisoners, yet believed they were supporting organizational goals and meeting the demands of superiors.⁵⁹ For instance, in early interviews, then Private Lynndie England expressed the view that her actions were merely in line with military objectives in Iraq.⁶⁰ Specifically, in response to a question about whether approval from higher-ups was enough to validate her actions, she stated: “Well, at the time I didn’t really think about it. Cause like I said, it was a job. You knew it was wrong deep down inside, but if they’re saying it’s okay, then, hey, well. . . .”⁶¹

Abuses that occur in civilian prisons under circumstances similar to Abu Ghraib could also fit within Vaughan’s definition of misconduct. Vaughan’s causal model for organizational deviance offers critical insights for understanding the impact of organizational design on misconduct under three main elements: (1) “the environment of organizations,” which includes both competitive and regulatory aspects; (2) “organization characteristics,” meaning structure, processes, and tasks; and (3) “the cognitive practices of individuals within,” meaning how individuals internalize norms and use them to normalize or neutralize their acts of deviance.⁶²

III. “PLACE OF THE BANISHED”⁶³: ABU GHRAIB AS CASE STUDY

In Part III, this Article uses a specific organization, the Abu Ghraib prison, as a heuristic frame that employs both the sociological and organizational theories of Erving Goffman and Diane Vaughan to demonstrate how criminal misconduct is tied to organizational structure. Although Abu Ghraib is a military prison, it represents an appropriate case study for understanding the cause of human rights abuses in civilian prisons for two reasons. First, Abu Ghraib offers a strong, shared base of knowledge about prisoner abuses because of the widespread attention that it received in the media. Second, the similarities in the behavior of prison guards in American military prisons and correctional officers in American civilian prisons provide fertile ground for applying organizational lessons gleaned from a case study of Abu Ghraib to the larger U.S. carceral system. Part III applies Goffman’s theories regarding the effects of a total institution to the events at Abu Ghraib. Specifically, this Part applies Goffman’s theories on the destabilizing effect of a total institution on prison guards, particularly when the guards, as was the case in Abu Ghraib, are required to reside within the prison itself. Finally, Part III concludes by applying Vaughan’s causal mode of organizational deviance, drawing in material from other theorists to flesh out the model.

In employing Abu Ghraib as a case study for understanding how the carceral system as a

⁵⁹ The incidents at Abu Ghraib may also meet the elements of an organizational disaster, which Vaughan defines as a type of routine nonconformity that “is a physical, cultural, and emotional event incurring extensive social loss in the locale of the disaster but far beyond, becoming a part of the collective memory.” Vaughan, *Theorizing*, *supra* note 25, at 9 (citation omitted). Because of the enduring emotional impact of the abusive acts, this Article would argue that Abu Ghraib has reached the scale of disaster.

⁶⁰ Phillips, *supra* note 5.

⁶¹ *Id.*

⁶² Vaughan, *The Dark Side*, *supra* note 56, at 274.

⁶³ Although the English translation of the place name “Abu Ghraib” is disputed due to non-agreements between the different dialects of Arabic, one possible translation is “place of the banished.” See, J.M. COWAN. *Arabic-English Dictionary: The Hans Wehr Dictionary of Modern Written Arabic (English and Arabic Edition)*. 1977.

total institution facilitates misconduct, Part III seeks to answer the following questions about Abu Ghraib: (1) What were Abu Ghraib’s specific organizational characteristics that facilitated the incidents? (2) How did the environments (both competitive and regulatory) at Abu Ghraib foster or enable the events that occurred? (3) What were the individual cognitive processes and choices through which the deviance was neutralized and normalized?

A. “*Out in The Suck*”: *The Destabilizing Effects of an Isolated Total Institution*

An emblematic characteristic of Abu Ghraib is its organization as a total institution. Thus, it is no surprise that the events at Abu Ghraib conform to sociologist Erving Goffman’s theories as to the disordering effects of isolation and life within a total institution.⁶⁴ Due to the remote location of the Abu Ghraib prison, the American prison officers existed in a state of isolation and had to endure the “special hardship” of co-existing with their prisoners with no breaks and no social integration with the outside world.⁶⁵ This, in turn, created status anxiety and resulted in over-identification with their role within the organization that was unmitigated by exposure to outside norms.⁶⁶

One explanation for the demeaning acts meted out on the prisoners is that the soldiers, who were outnumbered, felt that this was necessary to make the prison population “manageable.”⁶⁷ The overcrowding in the prison, coupled with the complete social isolation of the soldiers,⁶⁸ created a dangerous feeling of powerlessness. The prison was in the middle of a desert and reaching it meant traversing some of the most dangerous parts of Iraq; it was bounded on all sides by “hot spots” (towns with active military fighting).⁶⁹ The Military Police (“MPs”), i.e., prison guards, felt as locked in and “forsaken” as the prisoners,⁷⁰ and the boredom of not having contact with the outside world stoked aggressive tendencies. For example, one soldier commented on witnessing group brutality by MPs at Abu Ghraib after the killing of some American soldiers:

I don’t know why a lot of people did things that night. I wish I did. Anger, fatigue, boredom, stress, I think, just a lot of everything combined . . . [I]t’s like a cabinet—you can fill it, you can shove stuff in there for so long, but it’s going to hit a certain point [and] you ain’t going to be able to put anything else in it. It’s just going to explode open.⁷¹

In reference to riots by the prisoners, another MP stated: “I wished I could riot down at Camp Victory, go jump on some commander’s desk who’s eating steak and shrimp every night in

⁶⁴ See GOFFMAN, *supra* note 18, at 6-35, 43-48, 74-92; see also *supra* Part II.A.

⁶⁵ See GOFFMAN, *supra* note 18, at 7, n. 3; see also *supra* Part II.A.

⁶⁶ See *supra* Part II.A.

⁶⁷ See GOFFMAN, *supra* note 18, at 89.

⁶⁸ Several studies have demonstrated the disordering effects of social isolation. See generally, e.g., David S. Davis, *Good People Doing Dirty Work: A Study of Social Isolation*, 7 SYMBOLIC INTERACTION 233 (1984) (examining the causes and effects of social isolation among bailbondsmen); Peggy Thoits, *Multiple Identities and Psychological Well-Being: A Reformulation and Test of the Social Isolation Hypothesis*, 48 AM. SOC. REV. 174 (1983) (framing social isolation as “the possession of few social identities” that “give meaning and guidance to behavior”).

⁶⁹ See GOUREVITCH & MORRIS, *supra* note 20, at 78.

⁷⁰ *Id.* at 79.

⁷¹ *Id.* at 188.

air-conditioning while I'm out in the suck, humping it out with the detainees that outnumber me like two hundred to one."⁷² But the isolation and ever-present danger created from over-crowding weren't the only factors that instigated human rights abuses. The organizational design of the prison also had an impact. The next section employs Vaughan's theories on organizational deviance to reveal the organizational flaws that led to and fostered misconduct by the prison guards.

B. *The Dark Side of Abu Ghraib: Applying Diane Vaughan's Causal Model*

Going beyond merely the features specific to a total institution, Diane Vaughan's theories on organizational deviance allow for the construction of a causal model of organizational misconduct that draws insights from the characteristics of a specific organization, the environment within which that organization finds itself (both competitive and regulatory), and the individual cognitive processes that allow for the deviance to occur and continue to occur. As this is a causal model, other theorists of sociology and organizational studies are also relied upon to further explicate the model. In this subsection, the characteristics of an organization are disassembled into its structure and culture. Under organizational structure, this Article finds four main sites of deviance within Abu Ghraib: 1) ineffectual leadership, 2) the overcrowding and ambiguous status of prisoners, 3) the rigidity of the chain of command, and 4) structural secrecy. Under organizational culture, this Article finds five main areas that enabled misconduct at Abu Ghraib: 1) shifting organizational standards, 2) a duty to follow orders, 3) an over-identification with the organization, 4) the out-grouping of prisoners, and 5) shielding and solidarity. This Article then examines the environment (both competitive and regulatory) within which Abu Ghraib found itself. Finally, this Article discusses the individual cognitive processes that motivated, allowed, and facilitated the deviant acts at Abu Ghraib.

1. Constructing a "Bad Barrel": Organizational Structure at Abu Ghraib

This section analyzes how the design of Abu Ghraib's organizational structure fostered deviance. The four main characteristics of Abu Ghraib's structure that lent themselves to deviance are: 1) ineffectual leadership, 2) the overcrowding and ambiguous status of the prisoners, 3) the rigidity of the chain of command and the primacy accorded to hierarchy, and 4) the structural secrecy that was created by the above listed factors.

a. *Ineffectual Leadership*

General Karpinski, the commander in charge of the prison had never run a prison before and had no training to do so.⁷³ As a result of her lack of training and experience, she also lacked the appropriate perceptual filters to understand the seriousness of the initial reports of deviance and react appropriately to them.⁷⁴ In *The Executive Effect*, William Starbuck and Frances Milliken discuss the idea of "perceptual filters" and "perceptual accuracy," particularly as these concepts pertain to decision-makers.⁷⁵ Their most notable concept is that the source of information tends to

⁷² *Id.* at 189.

⁷³ See GOUREVITCH & MORRIS, *supra* note 20, at 32; Hersh, *supra* note 5.

⁷⁴ *See id.*

⁷⁵ *See generally* William H. Starbuck & Frances J. Milliken, *Executives' Perceptual Filters: What They*

determine how the information is perceived.⁷⁶ Information flows more easily—that is, it is perceived as more credible and of greater import—from the top down.⁷⁷ Executives tend to disregard information from subordinates while subordinates tend to reify, even against their own practical experience, information they receive from their higher-ups.⁷⁸

This is a highly troubling phenomenon for organizational decision-making because subordinates are much more likely than executives to be immersed in the functioning of the organization and, thus, are also more likely to have direct, first-hand knowledge of the organization's shortcomings. Subordinates are also in a better position to determine effective and practical solutions to those problems. Abu Ghraib was no exception to this organizational trend as initial reports of deviance from lower-ranking soldiers that managed to filter back to commanding officers were ignored or not properly addressed.⁷⁹

b. Overcrowding and the Ambiguous Status of the Prisoners

The ambiguous status of the prisoners also provided opportunities for deviance. Due to overcrowding, much of the proper prison protocol for identifying and cataloguing prisoners in accordance to the seriousness of their accused crimes, or of their alleged ties to terrorism, was disregarded.⁸⁰ In fact, due to the indiscriminate nature of the arrest sweeps carried out by the American military in Iraq, many of the prisoners also included common criminals and unfortunate passersby or bystanders that had been caught in the dragnet.⁸¹ Many of the soldiers who served as MPs did not know the prisoners by their real names and did not know of what exactly they were accused.⁸² The nicknames given to the prisoners kept them "unreal" and further served to rob them of individuality and humanity.⁸³ Some of the prisoners were intentionally kept anonymous and referred to as "ghost prisoners."⁸⁴ The officer in charge of interrogation, Captain Wood, admitted to the pressures created by overcrowding and the lack of discrimination in detaining Iraqis: "Pressures were increasing from overpopulation, the mission creep from bonafide security detainees to others who probably really didn't need to be detained for a long period, and the realization that Iraq was evolving into a long-standing mission."⁸⁵

Notice and How They Make Sense, in *THE EXECUTIVE EFFECT: CONCEPTS AND METHODS FOR STUDYING TOP MANAGERS* 40-58 (Donald Hambrick ed., 1988).

⁷⁶ *Id.* at 42.

⁷⁷ *See id.*

⁷⁸ *See id.* I refer to this reification of orders from above as the "primacy of hierarchy." *See infra* Part III.B.a.3. This effect is also seen from soldiers' accounts of the neutralization or normalization of deviance. *See infra* Part III.B.d.2.

⁷⁹ *See e.g.*, GOUREVITCH & MORRIS, *supra* note 20, 157, 164-65, 170-71; *see also* MARK DANNER, *TORTURE AND TRUTH: AMERICA, ABU GHRAIB, AND THE WAR ON TERROR* (2004) 10-25.

⁸⁰ *See* GOUREVITCH & MORRIS, *supra* note 20, at 22-24, 42-44.

⁸¹ *Id.*; *see also* DANNER, *supra* note 78, at 2-3.

⁸² GOUREVITCH & MORRIS, *supra* note 20, at 23, 42-43, 95, 99.

⁸³ *Id.* at 99-101.

⁸⁴ *Id.* at 95.

⁸⁵ *Id.* at 38-39.

c. The Rigidity of the Chain of Command and the Primacy Accorded to Hierarchy

Another aspect of the organizational structure that enabled deviance was the adherence to a chain of command⁸⁶ and the primacy given to hierarchy, two related and very important structural features of the military. First-hand accounts from the MPs reveal that they felt they were dependent on the chain of command and allowed it to dictate their behavior.⁸⁷ They also trusted the hierarchy; thus, any feelings of unease they might have felt were assuaged by verbal reassurances by their superiors.⁸⁸ In regards to some of her actions at Abu Ghraib, one MP asserted: “At the time, everyone in our chain of command said that was OK. The questions were asked and answered. So after that, what do you do?”⁸⁹

The impression at Abu Ghraib was that Military Intelligence (“MI”) was “running the show” and dictating what actions were to be carried out on the prisoners.⁹⁰ As one MP stated: “If MI didn’t exist at Abu Ghraib, . . . the detainees would have been in their cells, and we would have been in the office watching a movie or drinking coffee.”⁹¹ Another soldier, who was not an MI, was explicitly reminded of the hierarchical division of labor when he attempted to follow the chain of command and report an incident of abuse to his superior.⁹² The soldier recalls: “I said, ‘Sir, Military Intelligence over at the hard site—they are doing some pretty weird things with naked detainees.’ He told me I had no business being over there, and he also told me, ‘Stay out of MI’s way and let them do their job.’”⁹³

d. Structural Secrecy

At Abu Ghraib, social isolation, coupled with the rigid hierarchy and chain of command, created “structural secrecy.”⁹⁴ Structural secrecy exists where an organization’s structure—the hierarchy, division of labor, geographic dispersion, specialized units—provides opportunities for individuals to violate on the organizations behalf “by 1) creating many locations where misconduct could occur and 2) creat[ing] invisibility, [by] blocking oversight by insiders and outsiders alike.”⁹⁵ MI, as a highly specialized unit, had a shadowy and dispersed presence in Abu Ghraib and their position, as higher-up in the chain of command, lent a cloak of legitimacy to their actions and shielded their deviant acts from criticism.

2. Good People Doing Dirty Work: Organizational Culture at Abu Ghraib

The culture and norms within an organization also play significant roles in both

⁸⁶ Following a chain of command is a structural feature of the military that is also related to following orders; this second concept will be discussed under the organizational culture and norms *infra* Part III.B.b.2.

⁸⁷ See, e.g., GOUREVITCH & MORRIS, *supra* note 20, 157, 164-65; see also Phillips, *supra* note 5.

⁸⁸ *Id.*

⁸⁹ GOUREVITCH & MORRIS, *supra* note 20, at 165.

⁹⁰ *Id.* at 157.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ See Vaughan, *Theorizing*, *supra* note 25, at 17; see also *supra* Part II.

⁹⁵ *Id.*

providing incentives for deviance and perpetuating deviance. Sociologically, “culture” is defined as the ways of thinking, the ways of acting, and the material objects that together shape a people’s (i.e. group’s or organization’s) way of life.⁹⁶ Thus, an organizational culture is the model through which the organization makes sense of its competitive and regulatory environments and constructs the “intendedly rational” means to the achievement of its goals.⁹⁷ As Charles Perrow finds, “humans are only ‘intendedly rational.’ They attempt to be rational but their limited capacities and those of the organization prevent anything near complete rationality.”⁹⁸ Barry Turner and Nick Pidgeon’s work on disaster provides further valuable insights.⁹⁹ Of note is the idea that “[d]isasters always represent failures of intention.”¹⁰⁰ Following this line of thought, Turner and Pidgeon suggest that the occurrence of a disaster indicates that there has been a failure of the “rational mode of thought and action” which is being relied upon “to control the world.”¹⁰¹

A contemporary illustration of such a “failure of intention” would be the trend towards mass incarceration. Although the ostensible intention behind mass incarceration policies was to reduce crime, a closer look reveals that mass incarceration deprives individuals of access to education and that those individuals depart prison with the disqualifying mark of incarceration, a combination of factors which limit or altogether stymie their employment prospects leaving them with no other recourse but to resort to crime to earn an income.¹⁰² Therefore, an analysis of organizational deviance must also seek to understand the “native” culture of the organization, or in other words, the universe of information within which an organization is deriving its goals and norms.¹⁰³

In the organizational analysis of the failed NASA rocket launch, *The Challenger Launch Decision*, Vaughan shifts from a “bad apple” model of deviance, wherein the deviance is blamed on the individual’s inherent characteristics, to a “bad barrel” approach, wherein structural incentives for deviance are uncovered.¹⁰⁴ That study revealed that “[n]orms—cultural beliefs and conventions originating in the environment—create unreflective, routine, taken-for-granted scripts that become part of individual worldview. Invisible and unacknowledged rules for behavior, they penetrate the organization as categories of structure, thought, and action that shape choice in some directions rather than others.”¹⁰⁵ The question for this study is: What were the norms at Abu

⁹⁶ JOHN J. MACIONIS & LINDA M. GERBER, *SOCIOLOGY* 60 (7th ed. 2010).

⁹⁷ *See generally* CHARLES PERROW, *COMPLEX ORGANIZATIONS: A CRITICAL ESSAY* 121 (1986).

⁹⁸ *Id.*

⁹⁹ *See generally* BARRY A. TURNER & NICK F. PIDGEON, *MAN-MADE DISASTERS* (1997).

¹⁰⁰ *Id.* at 4.

¹⁰¹ *Id.* at 4-5.

¹⁰² *Id.*

¹⁰³ *See generally* VAUGHAN, *CHALLENGER*, *supra* note 44, at 77-79, 114 (introducing the concept of a “native view” through which people in a particular organization interpret their experiences, and arguing that “individual behavior cannot be understood without taking into account the organizational and environmental context of that behavior”).

¹⁰⁴ *See generally id.* at 196-237 (arguing that work group culture led to organizational deviance and, ultimately, the failed *Challenger* launch decision); *see also* Vaughan, *Theorizing*, *supra* note 25, at 17 (“[C]ompetition and scarce resources systematically generate pressure on all organizations to engage in deviance to achieve organizational goals.”).

¹⁰⁵ VAUGHAN, *CHALLENGER*, *supra* note 44, at 37; *see also* PERROW, *supra* note 96, at 121 (suggesting that members of an organization “are provided with the information needed to make correct organizational decisions” and “adapt their decisions to the organization’s objectives”).

Ghraib that fostered or enabled deviance? I identify five important cultural elements of Abu Ghraib that are implicated in the deviant events: 1) shifting organization standards, 2) duty to follow orders, 3) identification with the organization, 4) out-grouping of prisoners, and 5) shielding and solidarity.

a. Shifting Organizational Standards

The lack and non-specificity of organizational standards contributed to “practical drift”¹⁰⁶—a “slow steady uncoupling of practice from written procedure”¹⁰⁷—that resulted in extreme deviance. After the events of September 11, 2001, then Vice-President Dick Cheney expressed to reporters that the “war on terror would not only be fought on the battlefield, but also by working ‘the dark side.’”¹⁰⁸ When pressed as to whether the U.S. government would lift restrictions on methods of intelligence gathering, his response was: “Oh, I think so.”¹⁰⁹ The work of lifting those restrictions started in January 2002 when the president declared that “the Geneva Conventions did not apply to any prisoners taken in the war against Al Qaeda and the Taliban in Afghanistan.”¹¹⁰ Rather than prisoners of war, those individuals would instead be classified as “unlawful combatants.”¹¹¹

When this pronouncement was contested, White House Counsel Alberto Gonzales drafted a memo exploring arguments for denying POW status to an “enemy force as a whole.”¹¹² Of his many arguments, he found that such a denial of POW status allowed for “flexibility in . . . a new kind of war that renders obsolete Geneva’s strict limitations on questioning of enemy prisoners, and renders quaint some of its provisions.”¹¹³ Further, from a perceived loophole in the Geneva Convention, the administration derived a new classification for the prisoners at Abu Ghraib: “security detainee.”¹¹⁴ Article Five of the Fourth Convention, which normally “extends Geneva’s regime of rights and protections to civilians in wartime,” provides an exception for individuals “detained as a spy or saboteur, or as a person under definite suspicion of activity hostile to the security of the Occupying Power.”¹¹⁵ Thus, when General Karpinski first came to Abu Ghraib, she was corrected on her use of the word “prisoner” and was told that “security detainee” was the right word.¹¹⁶ She later explained that “calling someone a security detainee was

¹⁰⁶ See generally SCOTT A. SNOOK, FRIENDLY FIRE: THE ACCIDENTAL SHOOTDOWN OF U.S. BLACKHAWKS OVER NORTHERN IRAQ 24, 79-201 (2000) (defining “practical drift”).

¹⁰⁷ See SNOOK, *supra* note 106, at 194.

¹⁰⁸ GOUREVITCH & MORRIS, *supra* note 20, at 28-29.

¹⁰⁹ *Id.* at 29.

¹¹⁰ *Id.* at 30.

¹¹¹ *Id.*

¹¹² Memorandum from Alberto R. Gonzales, White House Counsel, to President George W. Bush, Decision Re: Application of the Geneva Convention on Prisoners of War to the Conflict with Al Qaeda and the Taliban (Jan. 25, 2002), available at <http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB127/02.01.25.pdf>; see also GOUREVITCH & MORRIS, *supra* note 20, at 30.

¹¹³ GOUREVITCH & MORRIS, *supra* note 20, at 30 (internal quotations omitted).

¹¹⁴ See *id.* at 32-33.

¹¹⁵ *Id.* at 33; see also Geneva Convention Relative to the Protection of Civilian Persons in Time of War, art. 5, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287, available at <http://www.icrc.org/eng/assets/files/publications/icrc-002-0173.pdf> [hereinafter Geneva Convention].

¹¹⁶ GOUREVITCH & MORRIS, *supra* note 20, at 32.

far more than just word-smithing. . . . It was meant as a convenience to sidestep the law, to sidestep the requirements of the Geneva Conventions.”¹¹⁷ It is important to note, however, that the same article of the Geneva Convention goes on to state: “In each case, such persons shall nevertheless be treated with humanity”¹¹⁸

The Bybee Memo, written by legal counsel John Yoo and signed by then Assistant Attorney General Jay Bybee, went further in terms of establishing the lack of restrictions regarding treatment of prisoners.¹¹⁹ The memo sought to answer the question of how far interrogation of prisoners could go without violating the U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and advised that “only the most extreme acts” would qualify as torture.¹²⁰ The memo also referenced international law decisions such as *Ireland v. United Kingdom*,¹²¹ which found that “hooding prisoners, subjecting them to loud noise, and depriving them of sleep, food, and drink pending or during interrogation” did not amount to torture.¹²² Further, “the Bybee memo stressed: neither the Convention Against Torture nor U.S. law against extraterritorial torture imposed criminal penalties for cruel, inhuman, or degrading acts.”¹²³

The first rules of operation for interrogation at Abu Ghraib were more permissive than those in place at the Guantanamo Bay Prison and, within one month, five different versions of the rules had circulated.¹²⁴ In addition, there was no opportunity to provide training and, even if there had been time, no trained personnel were made available to provide it.¹²⁵ As they were, the rules did not provide specific guidance as to the permitted interrogation methods.¹²⁶ Some felt that this lack of specificity of rules was intentional; Colonel Warren stated: “I believe that MI doctrine suggests that use of approved approaches should be left to the imagination of the interrogator.”¹²⁷ An MP further noted: “They couldn’t say that we broke the rules because there were no rules. . . . Our mission was to help MI, and nobody ever said, ‘this is your SOP [standard operating procedure].’”¹²⁸

This lack of specificity fostered a “practical drift,”¹²⁹ and created a situation in which soldiers reached into the dark recesses of their imagination to invent the most degrading and inhumane treatments for prisoners. As Scott Snook theorized, “practical drift” is the phenomenon

¹¹⁷ *Id.* (internal quotations omitted).

¹¹⁸ Geneva Convention, *supra* note 115.

¹¹⁹ See generally Memorandum from Jay S. Bybee, Assistant Attorney General, to Alberto R. Gonzales, White House Counsel, Standards of Conduct for Interrogation Under 18 U.S.C. §§ 2340-2340A (Aug. 1, 2002), available at <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB127/02.08.01.pdf> [hereinafter Bybee Memorandum].

¹²⁰ *Id.*

¹²¹ *Ireland v. United Kingdom*, 23 Eur. Ct. H.R. (ser. B) (1976).

¹²² GOUREVITCH & MORRIS, *supra* note 20, at 48-49; see also *id.*; Bybee Memorandum, *supra* note 119.

¹²³ GOUREVITCH & MORRIS, *supra* note 20, at 49 (internal quotations omitted); see also Bybee Memorandum, *supra* note 119.

¹²⁴ GOUREVITCH & MORRIS, *supra* note 20, at 51-53.

¹²⁵ *Id.* at 54.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.* at 92.

¹²⁹ See generally SNOOK, *supra* note 106, at 24, 79-201.

of deviance wherein local efficiency becomes paramount over globally accepted behavior.¹³⁰ In the case of Abu Ghraib, the MPs had too much room to search for “local efficiencies” for interrogation since the soldiers were not restricted by clear boundaries.¹³¹

b. Duty to Follow Orders

It is ironic that in addition to a lack of rules for soldiers, the duty to follow orders—traditionally the one clear organizational norm that has always existed for soldiers—became a vehicle for the perpetuation of deviance. One soldier recalled feeling uneasy about an incident when the prisoners were put in a naked dog-pile, but he also reported feeling that he could not do anything about it: “Yes, you know a difference between right and wrong, but you are also taught to follow orders when they’re handed down, and [a superior officer] told me that they were doing what they were told. So, I figured, OK. That’s why you do it. You follow orders in the military. That’s all you can do.”¹³²

c. Identification with the Organization

For soldiers, the implacable commitment to follow orders was also a form of identifying with an organization.¹³³ This type of identification is particularly salient for organizational settings such as the armed forces where individuals spend a significant amount of their life involved in organizational activities, including professional and/or occupational activities. Howard Becker and James Carper have found that there are “four major elements of work identification: (1) occupational title, and associated ideology; (2) commitment to task; (3) commitment to particular organizations or institutional positions; and (4) significance for one’s position in the larger society.”¹³⁴ The experiences of Charles Graner, an MP who had come with civilian training as a prison guard, illustrate how identification can change drastically with environment. He stated: “I had come in with a correctional officer’s mind-set of care, custody and control, and I’m going to do the least amount of work possible and get paid for it because that’s what corrections officers do.”¹³⁵ He later admitted that this mindset “lasted for about a day.”¹³⁶ Although at first Graner questioned some of the techniques that MI asked him to employ to break prisoners, he soon became very active in “fear up harsh” approaches that led up to an interrogation, including spraying prisoners in the eyes with pepper and meting out other horrific

¹³⁰ See generally *id.*

¹³¹ *Id.* at 194 (“Constant demands for local efficiency dictate the path of the drift. Over time, incremental actions in accordance with the drift meet no resistance, are implicitly reinforced, and hence become institutionally accepted within each subunit.”)

¹³² GOUREVITCH & MORRIS, *supra* note 20, at 195.

¹³³ Prior studies have found that individuals identify themselves in terms of the names and categories of the groups in which they participate. See, e.g., Nelson N. Foote, *Identification as the Basis for a Theory of Motivation*, 16 AM. SOC. REV. 14, 17-18 (1951). For an extended treatise on an extreme case of a soldier identifying with a military organization, See generally, HANNAH ARENDT, *EICHMANN IN JERUSALEM: A REPORT ON THE BANALITY OF EVIL* (1963).

¹³⁴ Howard S. Becker & James W. Carper, *The Elements of Identification with an Occupation*, 21 AM. SOC. REV. 341, 341 (1956).

¹³⁵ GOUREVITCH & MORRIS, *supra* note 20, at 121.

¹³⁶ *Id.*

physical abuse.¹³⁷ Graner even went so far as to brag about having the power to “make a grown man piss himself.”¹³⁸

d. *Out-grouping of Prisoners*

The out-grouping of prisoners as outsiders facilitated the occurrence of the abuses at Abu Ghraib. There were several outbursts of rage reported after the killings of American soldiers by improvised explosive devices (IEDs).¹³⁹ Such outbursts resulted in the prisoners being subjected to physical abuse, and the soldiers were usually not reprimanded in these instances.¹⁴⁰ Rather, the violent outbursts were viewed as an understandable outpouring of rage and despair;¹⁴¹ it was normalized for the soldiers to vent their frustrations on prisoners, an acceptable “out-group.”¹⁴² Everett Hughes notes that out-grouping requires a dissociation of a group of people from the norm and a recreation of that group as inherently deviant.¹⁴³ He points to the prison population as a commonly perceived out-group in any country.¹⁴⁴ This type of out-grouping can also be seen in transcripts from Abu Ghraib, for instance, when a sympathetic soldier refers to one of the Iraqi victims of brutality as “it.”¹⁴⁵ An important concept is that out-grouping does not require explicit agreement or overt acts; rather an individual’s participation in out-grouping can be tacit.¹⁴⁶ As Hughes notes, the “good people” who do “dirty work” may be viewed as agents of society who have been charged with handling out-groups: a dirty job that others wish to have done but do not want to do.¹⁴⁷ He argues that there is some complicity of society at large, even if it is merely in passively constructing those victims as out-groups.¹⁴⁸

e. *Shielding and Solidarity*

Another explanation that Hughes gives for a reluctance to act is the notion that silence serves to preserve the solidarity of the group.¹⁴⁹ Silence also shields against any experience of collective guilt.¹⁵⁰ One soldier, upon seeing the photographs and realizing that it amounted to

¹³⁷ *Id.* at 121–27, 165–66, 221. This same type of work identification was seen in the Stanford Prison Experiment. *See* ZIMBARDO, *supra* note 35, at xii, 196-97, 207.

¹³⁸ GOUREVITCH & MORRIS, *supra* note 20, at 127.

¹³⁹ *See* GOUREVITCH & MORRIS, *supra* note 20, at 188–91.

¹⁴⁰ *See id.* at 188-91, 220-21.

¹⁴¹ *Id.*

¹⁴² *See* Everett C. Hughes, *Good People and Dirty Work*, 10 SOC. PROBS. 3, 7 (1962).

¹⁴³ *Id.* at 7-9.

¹⁴⁴ *Id.* at 7.

¹⁴⁵ *See, e.g.*, Hersh, *supra* note 5.

¹⁴⁶ Hughes, *supra* note 142, at 4, 9-11.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* An interesting concept that Hughes brings up is that many of the S.S. officers in the Nazi regime belonged to a class of people that could be perceived as Gescheiterte Existenzen, i.e., societal failures. *Id.* at 9. Thus, for them, the Nazi party presented an opportunity where they could be actively involved in “out-grouping” and thus, by extension, also in “in-grouping” themselves. *Id.*

¹⁴⁹ *Id.* at 6.

¹⁵⁰ *Id.*

sexual abuse, expressed his hesitation to report it: “I’d been in the military and around a lot of these guys long enough to know we take care of our own That I [would be] turning in my friends, that I [would be] a traitor, that I [would be] a stool pigeon.”¹⁵¹ Another soldier, who chose to leave a scene after witnessing sexual abuse of prisoners, recalled: “I was told, ‘Hey, you didn’t see shit.’ And me being the person that I am—I try to be friends with everybody—I said, ‘See what? I didn’t see nothing.’”¹⁵² The higher-ups were also complicit in the shielding that occurred at Abu Ghraib. For example, after one soldier reported some of the abuse, Colonel Pappas instituted an “Amnesty Period,” instructing soldiers to get rid of “contraband” and providing written notice that soldiers were prohibited from possessing photos of detainees, pursuant to the Geneva conventions.¹⁵³ The soldiers perceived this as a tacit instruction to get rid of evidence.¹⁵⁴

By keeping silent about the misbehavior of her subordinates, the commanding officer at Abu Ghraib perhaps felt she was maintaining the cohesiveness of the group of prison guards. Perhaps she felt disciplinary action would have forced them to turn against each other and thus would have created a chaotic situation at the prison. Jack Katz takes up this concept of “tacit” collusion and also of “shielding.”¹⁵⁵ Katz finds that superiors have an interest in shielding their subordinates from external perception of deviance because they depend on their subordinates for internal support.¹⁵⁶ The commanding officer, who, as a woman, perhaps already felt her authority to be precarious, might have feared that taking any kind of disciplinary action against the first incidents at Abu Ghraib would have served to undermine her authority and her ability to successfully command performance from her subordinates.

Studies have also shown that, with military groups for example, concerted protection of a deviant member builds solidarity within the group and joint participation in deviance serves to create an internal social bond.¹⁵⁷ The creation of an internal cohesiveness within an organization can, however, be problematic for regulation. Katz quotes the sociologist George Simmel as noting that “internal conflict strengthens external authority,” whereas collective integrity may serve to preserve the secrecy of wrongdoing.¹⁵⁸ In an organization where there is internal cohesiveness or even an internally developed code of conduct, the dictates of the internal moral authority will prevail when tensions develop between internal moral authority and external moral authority.¹⁵⁹ Thus, internal organizational solidarity, while it has positive effects, also has the negative effect of causing organizational members to cover up acts that the larger society would perceive as deviant.¹⁶⁰ This theory has been borne out in various scandals involving organizations where internal solidarity is perceived as a key requirement for proper functioning, such as the military, the police, and also the higher echelons of the government.¹⁶¹ Conversely, the deviant acts of an

¹⁵¹ GOUREVITCH & MORRIS, *supra* note 20, at 233.

¹⁵² *Id.* at 197–98.

¹⁵³ *Id.* at 247–48.

¹⁵⁴ *Id.* at 249.

¹⁵⁵ See generally Jack Katz, *Cover-Up and Collective Integrity: On the Natural Antagonisms of Authority Internal and External to Organizations*, 25 SOC. PROBLEMS 3 (1979) (“[T]rac[ing] the roots of organizational cover-up to the sources of collective authority.”)

¹⁵⁶ *Id.* at 5–6.

¹⁵⁷ *Id.* at 5.

¹⁵⁸ *Id.* at 4.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* at 4–6.

¹⁶¹ Police corruption scandals in many cities in America, as well as accusations of corruption in Congress,

organization are exposed to regulation when there is a rift in cohesiveness;¹⁶² it is the disgruntled worker who takes on the role of whistleblower and who calls in outside regulation.

3. Constant Pressure and a Toothless Regulator: The Role of the Environment

Following Vaughan’s causal model, this Article analyzes how the environment within which Abu Ghraib found itself incentivized deviant acts and limited opportunities to curtail those acts. In this section, the Article details both 1) the competitive environment that surrounded Abu Ghraib, specifically, the pressure to obtain military intelligence; and 2) the regulatory environment that proved too lax to forestall misconduct.

a. Competitive Environment: Constant Pressure Leads to Desperate Acts

As Vaughan notes, a competitive environment is an essential part of a causal model of organizational deviance because “what [is] true for individuals [is] also true for organizations. Regardless of position in the organizational stratification system, competition and scarce resources systematically generate pressure . . . to engage in deviance to achieve organizational goals.”¹⁶³ A well-established organizational principle is that organizational actors are usually “intendedly rational,” meaning that they generally act in furtherance of the goals of the organization.¹⁶⁴ Thus, an analysis of organizational deviance must start with organizational goals and how their pursuit might lead to deviance. In the organizational analysis of Abu Ghraib, we find that the scarce resource for which there was deviance-inducing competition was military intelligence.

The military prison at Abu Ghraib was born out of the “War on Terror,” an undeclared and shadowy war, which, in turn, was a direct response to the Al-Qaeda terrorist attacks of September 11, 2001.¹⁶⁵ The horrific events of that day—which immediately claimed almost three thousand lives and then hundreds more as first responders died from illnesses and injuries related to their heroic rescue efforts—represented the first large scale foreign terrorist attack on American soil.¹⁶⁶ Both what was perceived as an urgent need to acquire military intelligence (to forestall future terrorist attacks) and a fervent quest to find “weapons of mass destruction” (WMDs) spurred the invasion of Iraq in March 2003 by a multinational military campaign led by the United States.¹⁶⁷

The paramount justifications given for the invasion were that then-Iraqi President Saddam Hussein was providing support to known terrorists (although there was no explicit connection established between him and Al-Qaeda) and that military intelligence suggested the

are examples of this in practice.

¹⁶² See Katz, *supra* note 155, at 4-6.

¹⁶³ Vaughan, *Theorizing*, *supra* note 25, at 17.

¹⁶⁴ See PERROW, *supra* note 96, at 121; *see also supra* Part II.B.b.

¹⁶⁵ See GOUREVITCH & MORRIS, *supra* note 20, at 26-34, 39.

¹⁶⁶ See, e.g., *9 Years Later, Nearly 900 9/11 Responders Have Died, Survivors Fight for Compensation*, FOXNEWS.COM, Sept. 11, 2010, <http://www.foxnews.com/politics/2010/09/09/report-responders-died-ground-zero-illnesses/>.

¹⁶⁷ See *White House Spells Out Case Against Iraq*, CNN.COM, September 12, 2002, <http://edition.cnn.com/2002/US/09/12/iraq.report/>.

Iraqi government had amassed or was attempting to create WMDs.¹⁶⁸ When proof to support either of these claims failed to quickly materialize after the advent of the war, the U.S. government found itself under great public pressure to justify its military presence in Iraq and provide credible reasons for the invasion.¹⁶⁹ The government was also under scrutiny to provide proof of the success of the War on Terror.¹⁷⁰ These public pressures were then passed on to the military personnel present in Iraq and, specifically, to the soldiers in the military prisons that housed alleged terrorists with potentially useful information.¹⁷¹

b. The Regulatory Environment: Toothless Regulators and Lack of Oversight

The regulatory environment is an important element that determines deviance because an organization that faces stringent regulatory oversight will be discouraged from deviance, whereas lax regulations might encourage it. For Abu Ghraib, there existed three entities which could exert some regulatory power over its operations: 1) U.S. military; 2) U.S. government; and 3) international law and community. While the U.S. military ostensibly had great regulatory power over Abu Ghraib, in practice their regulation proved to be very lax due to a conflict of interest. Specifically, if the U.S. military acknowledged the deviance at Abu Ghraib, it would also be forced to expose the military's shortcomings to the world and open itself up to scrutiny and embarrassment. This is why the military's initial response to reports of deviance was containment or concealment, as evidenced by the "Amnesty Period"—during which soldiers burned photographs¹⁷²—and the commissioning of the Taguba report—which explicitly excluded the role of MI from its investigation and which many perceived as a delay tactic since the scope was so broad it took several months to complete.¹⁷³

The U.S. government was also a lax regulator because it had an interdependent relationship with the Abu Ghraib prison; it needed the military intelligence that might be procured. Jeffrey Pfeffer and Gerald Salancik have observed that deviance can stem from the interdependence of organizations.¹⁷⁴ In essence, deviant acts within an organization that manage to reach the attention of an outside regulatory body are not addressed and continue to be unregulated if the organization and regulatory body are interdependent.

The international community, as represented by the International Committee of the Red Cross (ICRC), also proved to be a lax regulator. Although it is true that the ICRC was initially denied full access to inspect Abu Ghraib by military police, the ICRC was "toothless" and could not command any real reform even after it was given full oversight and directly witnessed

¹⁶⁸ *Id.*

¹⁶⁹ *See id.*; *see also* Seymour M. Hersh, *Selective Intelligence*, *NEW YORKER*, May 12, 2003, at 44 (questioning the reasons for the war in Iraq given that WMDs had not been found).

¹⁷⁰ *Id.*

¹⁷¹ *See* DANNER, *supra* note 78, at 3 (describing how American soldiers at Abu Ghraib became "desperate for 'actionable intelligence'" as the War on Terror "heated up"); White, *supra* note 6 ("A lack of planning and resources . . . led to the U.S. detention system getting overwhelmed and *fostered frustration with a lack of actionable intelligence* with which to fight the insurgency.") (emphasis added).

¹⁷² GOUREVITCH & MORRIS, *supra* note 20, at 247-48; *see also supra* Part II.B.b.5.

¹⁷³ *Id.* at 250-51.

¹⁷⁴ *See generally* JEFFREY PFEFFER & GERALD R. SALANCIK, *THE EXTERNAL CONTROL OF ORGANIZATIONS: A RESOURCE DEPENDENCE PERSPECTIVE* 40-43 (2003) (discussing the effects of interdependence on organizational outcomes).

brutalities there.¹⁷⁵ The ICRC's powerlessness stemmed from its "closed-circuit system of monitoring and accountability," which kept reports secret and allowed for the sharing of concerns only with the offending party.¹⁷⁶

4. Individual Cognitive Processes

As noted by Vaughan, individual cognitive processes also contribute to organizational misconduct.¹⁷⁷ The individual observes the organizational structure, culture, and competitive and regulatory environment; and judges whether it is permissive or facilitative, or would even reward his intended conduct.¹⁷⁸ The individual then psychologically prepares herself to commit the act and handle the repercussions of the act through cognitive processes.¹⁷⁹ Two main cognitive processes are seen at play at Abu Ghraib: (1) perception of the risk attached to committing the deviant act, and (2) a "neutralization" and "normalization" of the deviant act.

a. Perception of Risk

The individual choices that resulted in the incidents at Abu Ghraib revolve around an important element of deviance: the construction of risk. For example, in her study of the *Challenger* disaster, Vaughan finds that a culture of risk pervaded the NASA space program and led to the individual choices made by leaders there.¹⁸⁰ In her "native view" of the organization,¹⁸¹ she found NASA engineers had become accustomed to an environment of "residual risk" where decisions had to be made, even with uncertainty, and "work groups were calculating risk under circumstances that made risk fundamentally incalculable."¹⁸² In essence, she finds that the concept of "acceptable risk" had become normalized in NASA culture.¹⁸³ To drive home this point, Vaughan examines NASA's adoption of an "acceptable risk" framework regarding a crucial component of the space shuttle, the O-ring seal, even after it showed negative deviations in performance.¹⁸⁴

The idea of an organizational culture in which a certain amount of "residual risk" is deemed part of the job is congruent with the analysis of Abu Ghraib as a total institution. It is undeniable that the job of a prison guard entails high risk. The guard is always outnumbered and must constantly be on guard against physical assault. This is a "residual" and continuous risk that any guard accepts when she takes the job. In the case of Abu Ghraib, the questions that remain are: 1) How was this risk "normalized"? 2) Could the deviant actions of the guards be viewed as a way of "neutralizing" some perception of this risk?

Sociologist Charles Lindblom notes that no decision is made in a vacuum, but is made in

¹⁷⁵ GOUREVITCH & MORRIS, *supra* note 20, at 88, 170.

¹⁷⁶ *Id.* at 170.

¹⁷⁷ Vaughan, *The Dark Side*, *supra* note 56, at 274, 289-91.

¹⁷⁸ *Id.* at 290-91.

¹⁷⁹ *Id.*

¹⁸⁰ *See generally* VAUGHAN, *CHALLENGER*, *supra* note 44, at 77-118

¹⁸¹ *See id.* at 77-79.

¹⁸² *Id.* at 79.

¹⁸³ *See id.* at 110.

¹⁸⁴ *Id.*

comparison to other decisions that preceded it.¹⁸⁵ Further, there are few decisions made with any real belief that it will be the panacea that the organization requires for all its ills.¹⁸⁶ Rather, as Lindblom rightfully notes, most executives are “muddling through,” making incremental changes, with each new change being influenced or derived from the one that preceded it.¹⁸⁷ However, in addition to causing “narrowing”—wherein a decision leads down one path and eliminates other possible paths¹⁸⁸—such an approach also presents a problem with “practical drift,” wherein local efficiency becomes paramount over globally accepted behavior.¹⁸⁹ To illustrate, as a result of practical drift, workers might develop ways of getting the job done that deviate from established protocols and procedures, particularly when such standard operating procedures are treated as boilerplate. Paul Schulman addresses another problematic aspect of this type of decision-making when he talks about “decisional tunneling.”¹⁹⁰ This is the idea that because decisions are influenced by past decisions, one bad decision can spiral into disutilities and culminate in a disastrous one.¹⁹¹ He uses the Watergate incident as a particularly good illustration to drive home this point.¹⁹²

Applying these theories to Abu Ghraib, the commanding officer at Abu Ghraib might have perceived the risks of keeping silent to be insignificant; after all, in her mind, she had nothing to do with the abuse. Meanwhile, the risks of publicizing the incidents may have been monumental; they included embarrassment of the organization, aspersions cast on her leadership abilities, and perhaps even the loss of her job. The institution of an “Amnesty Period” at Abu Ghraib also shows “decisional tunneling;” rather than address the deviance immediately, the military’s first response was that of containment.

b. Neutralization and Normalization

Sociologist Mark Granovetter introduced the “principle of neutralization” as a method to understand how exchanges are constructed as non-corrupt.¹⁹³ He demonstrates how “neutralization” happens as a way to normalize an exchange such that it is no longer deviant but morally acceptable within the cultural and social framework in which it took place.¹⁹⁴ Further, neutralization can happen in the context of distributive practices wherein, for example, employees are paid “lower wages” but are allowed perks or fringe benefits are offered in exchange for

¹⁸⁵ See generally Charles Lindblom, *The Science of Muddling Through*, 19 PUB. ADMIN. REV. 79 (1959); see also VAUGHAN, CHALLENGER, *supra* note 44, at 114 (“[I]ndividual behavior cannot be understood without taking into account the organizational and environmental context of that behavior.”).

¹⁸⁶ See Lindblom, *supra* note 185, at 86.

¹⁸⁷ *Id.* at 86-88.

¹⁸⁸ *Id.*

¹⁸⁹ See SNOOK, *supra* note 106, at 24, 79-201; see also *supra* Part II.B.b.1 pp. 25-26.

¹⁹⁰ See generally Paul R. Schulman, *The Logic of Organizational Irrationality*, 21, 32 ADMIN. & SOC’Y 31, 31 (1989) (Examining the “process of decisional ‘tunneling’ in which members of a set of decisions progressively undermine the rationality of one another, degrading organizational means-ends calculations”).

¹⁹¹ *Id.* at 32.

¹⁹² *Id.* at 33, 36.

¹⁹³ See generally Mark Granovetter, *The Social Construction of Corruption*, in ON CAPITALISM 152, 154 (Victor Nee & Richard Swedberg eds., 2007).

¹⁹⁴ *Id.* at 154-56.

worker “contributions” that go beyond the pale of what is required by duty.¹⁹⁵ These concepts are of interest in analyzing the events at Abu Ghraib and instances of corruption at any high risk, low-paying, and often isolated job.¹⁹⁶

As has been detailed above, the commanding officers were aware of some of the abuses occurring at Abu Ghraib long before this information was leaked to the press. One conclusion is that higher ups were willing to look the other way and “neutralize” the incidents of abuse as letting off steam, or as normal and unavoidable results given the stressful and isolated nature of the job. The low risk of being discovered, given the isolation of Abu Ghraib, combined with the concept of prisoners as an “outgroup,” impacted the individual choices made by deviant members of the organization and how the deviance was initially handled by leaders in the organization.

IV. PREVENTING HISTORY FROM REPEATING ITSELF: RECOMMENDATIONS FOR REFORM

The question then remains: What can be done to ensure that the type of human rights abuses that occurred at Abu Ghraib do not continue to occur within the larger American carceral system? As Vaughan notes in the *Columbia* report, while some superficial changes (such as firings and demotions) were effected after the *Challenger* launch failure, none of the changes addressed NASA’s organizational characteristics, such as its structure and competitive environment.¹⁹⁷ These same characteristics, coupled with a history of normalization of deviance, were what resulted in a second launch failure years later.¹⁹⁸ With only cosmetic changes and no real organizational reform, history repeated itself.

There is a palpable danger of history repeating itself in the case of Abu Ghraib, particularly given the wrist-slaps and the selection of “bad apples” following Abu Ghraib. For one, the commander of the prison who claimed ignorance of the events received only a demotion and suffered no criminal or civil liability for the events.¹⁹⁹ Further, the evidence shows that there are strong organizational explanations for the deviance that occurred at Abu Ghraib. Both the competitive environment of Abu Ghraib as an organization and the regulatory environment (or the lack thereof) within which it was situated provided key incentives for the perpetration and perpetuation of human rights abuses. Although public outcry did lead to some results—several soldiers were court-martialed following the incidents and the prison has been closed as an American military prison—to date, there still has been little effort toward systemic reform or full-scale organizational corrective measures.²⁰⁰ As a decade passes since the events at Abu Ghraib, it

¹⁹⁵ *Id.* at 155-56.

¹⁹⁶ This description would apply to all prison wardens and/or officers, and would also apply to other risky (and perceived as low-paying) professions such as police officers—where corruption and brutality are understandable temptations given the exposure to violence, counterfeit drugs, and money gained from illicit activities—and for firefighters—where the wait-times inherent to the job would facilitate time-theft.

¹⁹⁷ Vaughan, *History*, *supra* note 44, at 101, 196-99.

¹⁹⁸ *Id.*

¹⁹⁹ GOUREVITCH & MORRIS, *supra* note 20, at 263; *see also generally* James W. Smith III, *A Few Good Scapegoats: The Abu Ghraib Courts-Martial and the Failure of the Military Justice System*, 27 WHITTIER L. REV. 671 (2005) (analyzing methods through which the military justice system can address the failures at Abu Ghraib to hold commanders accountable for disciplinary breaches).

²⁰⁰ *See, e.g.,* Victor Hansen, *What’s Good for the Goose is Good for the Gander Lessons from Abu Ghraib: Time for the United States to Adopt a Standard of Command Responsibility Towards its Own*, 42 GONZ. L. REV. 335, 338-41 (2006) (offering a wide-ranging discussion of all military disciplinary action taken regarding the events at Abu Ghraib,

remains important to note that there has been no attempt to fix the organizational problems within the American military prison system that could result in another Abu Ghraib or an attempt to address the organizational problems that contribute to the enactment of Abu Ghraib-like incidents of human rights abuses within the American domestic carceral system as a whole.

This organizational analysis of Abu Ghraib is policy-oriented. A study of Abu Ghraib informs future governmental policy regarding the running of current military prisons and the organizational lessons to be gleaned from studying how and why the events at Abu Ghraib occurred also holds implications for the rising privatization of civilian prisons and their regulation. In 2000, 264 privately operated facilities were under contract with state or federal authorities to hold prisoners, an increase of 140% from 1995.²⁰¹ The number of inmates held in these facilities rose 459%, from 16,663 inmates in 1995 to 93,077 in 2000.²⁰² This trend towards private prison systems is projected to continue given that privatization is erroneously perceived as a budget-cutting measure by many states.²⁰³

Further, an organizational analysis of Abu Ghraib holds implications for future strategies to be employed in the continued War on Terror. The War on Terror has been fraught with controversies and has introduced new ethical and foreign policy quandaries for the American government and its allies.²⁰⁴ The little-discussed fact is that some of the intelligence-gathering techniques applied in Abu Ghraib were first implemented in Afghanistan, the first target of the War on Terror.²⁰⁵ More than ten years later, the War on Terror has yet to end. Osama Bin Laden's demise at the hands of American Navy Seals has not put an end to the war or the ethical quicksand in which it has mired the United States. Rather, Bin Laden's death has served to stoke ongoing debates regarding the use of torture by the U.S. government for intelligence gathering purposes.²⁰⁶ While torture proponents quickly lauded "waterboarding" techniques for helping track the whereabouts of Osama Bin Laden,²⁰⁷ others just as quickly countered that the

illustrating the shortcomings of those superficial disciplinary actions, and detailing the serious and adverse consequences of the U.S.' failure to have a legal mechanism affixing criminal responsibility on commanders).

²⁰¹ JAMES J. STEPHAN & JENNIFER C. KARBERG, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, CENSUS OF STATE AND FEDERAL CORRECTIONAL FACILITIES, 2000 iv (2003), <http://www.bjs.gov/content/pub/pdf/csf00.pdf>.

²⁰² *Id.* at v.

²⁰³ See, e.g., Richard A. Opel Jr., *Private Prisons Found to Offer Little in Savings*, N.Y. TIMES, May 19, 2011, at A1.

²⁰⁴ Five days after the 9/11 attacks, then Vice-President Dick Cheney expressed to reporters that the "war on terror would not only be fought on the battlefield, but also by working 'the dark side.'" GOUREVITCH & MORRIS, *supra* note 20, at 28-29.

²⁰⁵ See President George W. Bush, Address to a Joint Session of Congress (Sept. 21, 2001), available at <http://edition.cnn.com/2001/US/09/20/gen.bush.transcript/> [hereinafter Bush Address]. The Taliban government of Afghanistan became the first target of the War on Terror after then Commander in Chief, George W. Bush, demanded that they hand over Osama Bin Laden and other operatives of the terrorist Al-Qaeda group believed to be responsible for the September 11, 2001 attacks on the World Trade Center and the Pentagon. *Id.*

²⁰⁶ See generally Scott Shane & Charlie Savage, *Harsh Methods of Questioning Debated Again*, N.Y. TIMES, May 4, 2011, at A1 (discussing and questioning the argument that "enhanced measures" of interrogation led to the intelligence that resulted in Bin Laden's capture).

²⁰⁷ Waterboarding is one form of "enhanced interrogation techniques" advocated in the so-called torture memos written by legal government advisor John Woo and signed by the then head of the legal counsel of the Department of Justice, Jay Bybee. See John Barry et al., *A Tortured Debate*, NEWSWEEK, June 21, 2004, at 50; see also generally Bybee Memorandum, *supra* note 119. Waterboarding occurs when the person under interrogation is immobilized and

information had been obtained without harsh treatment and that Abu Zubaydah, a detainee who had been "waterboarded" 83 times in August 2002, had revealed no new information.²⁰⁸

Informed by an organizational analysis of the events of Abu Ghraib, this Article suggests several key organizational leverage points within which real and lasting reform may be achieved for the American carceral system as a whole. These are: A) the rethinking and re-articulation of the goals of incarceration, B) the adequate and continued psychological assessment and training of correctional officers, and C) greater oversight of prisons and jails by independent commissions both at the state and federal level.

A. *Rethinking and Rearticulating Carceral Goals*

To avoid future abuses like those at Abu Ghraib, the American carceral system must make key changes to its organizational structure, notably its aims for incarceration. Specifically, it must move from carceral goals related to pure retribution to include rehabilitation as a paramount objective. Sharon Dolovich is a legal scholar who has written extensively on prison law.²⁰⁹ In one of her seminal works, she argues that the prison within American society has become a "catch-all" for all of society's ills and, worse, it serves to produce the very conduct which society abhors.²¹⁰ She has also argued that once the State takes on the role of punishment, the State then owes an affirmative duty to protect its prisoners from abuse, she terms this obligation, the state's "carceral burden."²¹¹

Dolovich argues:

The state's carceral burden is the price society pays for the decision to incarcerate convicted offenders. This arrangement may be thought of as society's carceral bargain. It allows society to remove certain individuals from the shared public space, but only on the condition that the state assumes an ongoing affirmative obligation to meet the basic human needs of the people exiled in this way. The prohibition on cruel punishment means that the terms of the bargain are nonnegotiable. If society prefers, it can choose not to incarcerate. But if it wants the benefits of incarceration, society must bear the burden. . .²¹²

There is no arguing that in the public's collective imagination, and effectively in practice, prison has become less a place of rehabilitation and more a vehicle for retribution.²¹³

water is poured over a cloth or other covering placed over the face, creating a sensation of drowning.

²⁰⁸ See Scott Shane, *Waterboarding Used 266 Times on 2 Suspects*, N.Y. TIMES, April 20, 2009, at A1.

²⁰⁹ See, e.g., Sharon Dolovich, *Legitimate Punishment in Liberal Democracy*, 7 BUFF. CRIM. L. REV. 307, 438-40 (2004) (discussing overcrowding in prisons); and, Sharon Dolovich, *State Punishment and Private Prisons*, 55 DUKE L.J. 439 (2005) (discussing ethical issues stemming from the use of private prisons).

²¹⁰ Sharon Dolovich, *Incarceration American-Style*, 3 HARV. L. & POL'Y REV. 237, 240-41 (2009).

²¹¹ Sharon Dolovich, *Cruelty, Prison Conditions, and the Eighth Amendment*, 84 NEW YORK UNIVERSITY LAW REVIEW 881, 891, (2009).

²¹² *Id.* at 892

²¹³ See generally, e.g., MICHEL FOUCAULT, *DISCIPLINE AND PUNISH: THE BIRTH OF PRISON* (1977) (analyzing the social and theoretical mechanisms behind the massive changes that occurred in the carceral systems of western nations during the modern era); DAVID GARLAND, *THE CULTURE OF CONTROL: CRIME AND SOCIAL ORDER IN*

With limited educational opportunities available in prison and a lack of vocational programs or meaningful work, prison has become a “warehouse”²¹⁴ for society’s unwanted, rather than a place where offenders may redeem themselves. With a dismal national recidivism rate, wherein 67.5% of released prisoners are expected to recidivate within three years,²¹⁵ and with growing impunity surrounding human rights abuse meted out to prisoners,²¹⁶ it is time for a re-thinking and a public re-articulation by the government of the aims of incarceration in order to ensure that American society is meeting its carceral burden.

The Nixon administration saw the declaration of the “War on Drugs”²¹⁷ and President George W. Bush echoed the same martial sentiment when he announced his “War on Terror,”²¹⁸ a war that has proven to be an indiscriminate dragnet that captures many innocents, including American citizens.²¹⁹ Current recidivism rates make clear that a “lock ‘em up” attitude has done little to reduce crime or accomplish the ultimate goal of the penal system: protecting society. Rather, the many reports of human rights abuses indicate that the system’s overly punitive approach has led to widespread and callous disregard for the human dignity of prisoners. The present situation denotes a need for a rearticulation of carceral goals that privileges rehabilitation above retribution. According precedence to rehabilitation would result in a change in attitude as to how prisoners may be treated and would reaffirm a commitment to the human rights of all individuals, including prisoners.

CONTEMPORARY SOCIETY (2001) (examining recent changes in the criminal justice systems of America and Great Britain and arguing that these systems have been molded primarily by two social forces: modern social organization and neoconservative politics); ROBERT PERKINSON, TEXAS TOUGH: THE RISE OF AMERICA’S PRISON EMPIRE (2010) (presenting a history of the American carceral system from the ages of slavery to the present and analyzing how the Texan penal system has become one of the largest and most influential in the U.S.); *Lockdown* (National Geographic television broadcast 2007) (presenting an educational examination of prisons and jails in the U.S.).

²¹⁴ MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS 18 (2010) (“The stigma of criminality functions in much the same way that the stigma of race once did. It justifies a legal, social, and economic boundary between ‘us’ and ‘them.’ . . . [M]ass incarceration is designed to warehouse a population deemed disposable . . .”).

²¹⁵ See PATRICK A. LANGAN & DAVID J. LEVIN, BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, RECIDIVISM OF PRISONERS RELEASED IN 1994 1 (2002) (approximating a national recidivism rate by tracking 272,111 prisoners released from prisons in fifteen states; this population represents two-thirds of all prisoners released in the U.S. for that year).

²¹⁶ See *supra* Part I pp. 2-3.

²¹⁷ See, e.g., Richard Nixon, Remarks About an Intensified Program for Drug Abuse Prevention and Control (July 17, 1971), available at <http://www.presidency.ucsb.edu/ws/index.php?pid=3047#axzz1O4tlYr7a>; Richard Nixon, Special Message to the Congress on Control of Narcotics and Dangerous Drugs (July 14, 1969), available at <http://www.presidency.ucsb.edu/ws/?pid=2126#axzz2fxQ3II12>.

²¹⁸ Bush Address, *supra* note 205.

²¹⁹ See, Peter Finn, “U.S. citizen sues over treatment in ‘rendition’”, THE WASHINGTON POST (November 11, 2009), <http://www.washingtonpost.com/wp-dyn/content/article/2009/11/10/AR2009111012772.html> (detailing the capture and “rendition” of an American citizen to foreign countries where he was tortured); see also, National Defense Authorization Act for Fiscal Year 2012, Pub.L. 112–81. This NDAA contains several controversial sections (see article), the chief being §§ 1021-1022, which affirm provisions authorizing the indefinite military detention of civilians, including U.S. citizens, contained in the Authorization for Use of Military Force (AUMF), Pub.L. 107–40. See also, “New Bill Authorizes Rendition of American Citizens Living within the United States to Other Countries for Torture” WASHINGTON’S BLOG (DECEMBER 21, 2011), <http://www.washingtonsblog.com/2011/12/new-bill-authorizes-rendition-of-american-citizens-living-within-the-united-states-to-other-countries-for-torture.html>.

B. Adequate and Continued Training and Psychological Assessment of Officers

Organizational lessons from Abu Ghraib teach us that the American carceral system must better prepare itself, and specifically its workers, to deal with the effects that a total institution such as prisons can have on their psyches and thus actions.²²⁰ As Goffman’s work highlights, officers and guards within prisons must be prepared to deal with the mental effects of isolation and constant danger. The government holds the affirmative duty to adequately train and prepare correctional officers for the rigors of working in a prison.

A prison guard’s preparation will vary from state to state – sometimes even from county to county – however, the training typically consists of a few weeks of training coupled with an apprenticeship, termed “on the job” training.²²¹ Whether overseas or domestic, there should be standardized and uniform training of correctional officers in all American prisons. This would prevent the tendency towards “practical drift,” wherein a lack of clear standards leads officers to make up operating procedures that accomplish what they perceive as the goals of their job, even where those new procedures might go against societal norms.²²² The training of correctional officers should also take into account the effects of a total institution;²²³ officers should be prepared to deal with the mental effects of isolation and constant danger. In addition to “report up” protocols, wherein the prison officer would report any witnessed abuse to superiors, there should also be “report out” mechanisms in place to support whistleblowers and enable the outflow of information from within the organization.

Additionally, although there may be some mention that candidates should be of sound mind, and an eye and physical exam is often administered, there is usually no specific requirement for a psychological examination.²²⁴ A standardized and generalized psychological evaluation—perhaps akin to tests currently required of aspiring police cadets²²⁵—should be mandated for all correctional officers, regardless of whether the officer will work in a public, private, or military prison. These tests should be administered periodically for the duration of an officer’s tenure. While the preliminary psychological tests will ensure that officers with sadistic or violent tendencies will be excluded from consideration for employment, continued testing will help identify officers who either begin to develop those tendencies or begin to over-identify with their authoritative role and experience a diminished sense of empathy.

²²⁰ See *supra* Part I.A.

²²¹ See generally, e.g., STATE OF CAL., BD. OF CORR.’S, ADULT CORRECTIONS OFFICER CORE TRAINING COURSE MANUAL (2000); STATE OF FLA., DEP’T OF LAW ENFORCEMENT, TRADITIONAL CORRECTIONAL BASIC RECRUIT TRAINING PROGRAM (2011).

²²² See *supra* Part III.B.b.1.

²²³ See *supra* Part I.A.

²²⁴ See generally, e.g., *Correctional Officer: California State Personnel Board Specification*, CAL. DEP’T OF HUMAN RES.’S, <http://www.calhr.ca.gov/state-hr-professionals/pages/9662.aspx> (last visited February 25, 2013) (listing the qualifications and desirable qualities of applicants for correctional officer positions).

²²⁵ In some jurisdictions, potential police cadets are subject to psychological tests, although this may be at the discretion of the police department. See, e.g., CADET SELECTION PROCEDURES, PENNSYLVANIA STATE POLICE, <http://www.portal.state.pa.us/portal/server.pt?open=512&objID=4451&&PageID=474394&mode=2> (last visited November 11, 2013). But see MINIMUM QUALIFICATIONS, LAS VEGAS METROPOLITAN POLICE DEPARTMENT, <http://agency.governmentjobs.com/lvmpd/default.cfm?action=viewclassspec&ClassSpecID=35076> (last visited November 11, 2013) (requiring only a physical test and no psychological test for potential recruits).

C. Greater Independent Oversight of Prisons

American prisons operate with only minimal external supervision and are essentially allowed to self-police. The U.S. Bureau of Prisons is responsible for monitoring federal prisons²²⁶ and state prisons are typically supervised by the Department of Corrections of the particular state. Additionally, the American Correctional Association, composed of prison directors from across the nation, also conducts audits and accredits prisons.²²⁷ Such incestuous professional dynamics and self-monitoring can foster incentives and opportunities for misconduct and deviance.²²⁸ The fact that structural secrecy played a major role in enabling and perpetuating the abuse at Abu Ghraib signifies the need for an outside regulatory agency to monitor all American prisons. Only this type of external supervision can ensure transparency and guarantee prisons are operating in accordance with international human rights regulations.

Such an outside regulatory agency could take the form of a congressional-type committee with investigatory oversight. For civilian prisons, given the increased privatization of the carceral system²²⁹ and the trend towards what some caution is an “American Prison Industrial Complex,”²³⁰ the agency must be able to implement regulations that private prisons are required to follow. Further, to ensure that competitive business interests do not lead to amoral calculations and deviant acts as part of a normalized business procedure, the necessary regulations must be proposed and administered by independent boards that have no financial stake within the system.

V. CONCLUSION

The United States prides itself on being an arbiter of human rights law.²³¹ As evidence of the nation’s deep respect for the sanctity of human life and liberty as well as its practical understanding that preserving human rights fosters international security, American soldiers have been deployed for humanitarian interventions, spanning from World War II to the Bosnian war and, more recently, the Arab Spring.²³² Thus, it is inconsistent that American law should allow

²²⁶ See generally *About the Bureau of Prisons*, FEDERAL BUREAU OF PRISONS, U.S. DEP’T OF JUSTICE, <http://www.bop.gov/about/index.jsp> (last visited October 2, 2013).

²²⁷ See generally *Standards & Accreditation*, AMERICAN CORR.’AL ASS’N, <https://www.aca.org/standards/> (last visited September 18, 2013).

²²⁸ See Katz, *supra* note 155; see also *supra* Part II.B.b.5.

²²⁹ From 2000–2011, the percentage of inmates held in private facilities rose from 6.3% to 8.2%. See ALLEN J. BECK & PAIGE M. HARRISON, BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, PRISONERS IN 2000 7 (2001); E. ANNE CARSON & WILLIAM J. SABOL, BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, PRISONERS IN 2011 32 (2012).

²³⁰ See, e.g., Angela Davis, *Masked Racism: Reflections on the Prison Industrial Complex*, COLORLINES (Sept. 10, 1998), http://www.colorlines.com/archives/1998/09/masked_racism_reflections_on_the_prison_industrial_complex.html; Eric Schlosser, *The Prison-Industrial Complex*, ATLANTIC MONTHLY, Dec. 1998, at 51.

²³¹ See generally, e.g., President Jimmy Carter, Inaugural Address (January 20, 1977), available at <http://www.famous-speeches-and-speech-topics.info/presidential-speeches/jimmy-carter-speech-inaugural-address.html>; President Jimmy Carter, Address at Commencement Exercises at the University of Notre Dame (May 22, 1977), available at <http://www.presidency.ucsb.edu/ws/index.php?pid=7552>; President Barack Obama, Speech to the United Nations General Assembly (September 25, 2012), available at http://www.nytimes.com/2012/09/26/world/obamas-speech-to-the-united-nations-general-assembly-text.html?pagewanted=all&_r=0.

²³² See generally, e.g., Robert A. Pape, *When Duty Calls: A Pragmatic Standard of Humanitarian Intervention*, 37 INT’L SEC. 41 (2012) (examining the justifications for U.S. humanitarian intervention).

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human rights abuses to continue within its own carceral system. This Article provides a *radical* analysis of the cause of abuses within the American prison system; that is, it uncovers the *root* of the problem and reveals it to be organizational. Targeted laws that address the organizational sources for deviance within the American carceral complex will allow for better prevention of the sort of abuses seen at Abu Ghraib and within domestic prisons.