

THE INVISIBILITY OF GENDER IN WAR

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Following the attacks on the World Trade Center and the Pentagon on September 11th, the United States launched a “war on terrorism” against the Taliban and al-Qaeda network in Afghanistan.¹ To help justify its military offensive, the White House initiated a campaign to condemn the oppression of Afghan women at the hands of the Taliban, a repressive regime that enforced a brutal form of gender apartheid against women that human rights organizations and feminists had decried for years.² As images of Afghan women covered in blue burqas flooded the national media, however, the Pentagon continued to enforce its own form of gender apartheid in Saudi Arabia, requiring female military personnel stationed in Saudi Arabia to comply with traditional Muslim gender norms.³ The regulations prohibited female military personnel from leaving their base off-duty unless they wore an abaya, the traditional head-to-toe black robe required of Muslim women in Saudi Arabia,⁴ and unless they were accompanied by a male.⁵ The military also prohibited female personnel from driving vehicles off-base, requiring that they ride in the backseats of cars driven by men.⁶

The abaya regulations raise critical questions about the nature and meaning of gender in the United States military – a masculine institution historically hostile to the presence of women. The regulations on their face treat female military personnel differently than male personnel. But the regulations are not merely “double standards” that violate the principle of formal equality. As this essay argues, the regulations are better understood as an institutional practice that construct and regulate the boundaries of gender in the military. A symbolic form of gender apartheid, the regulations construct female military personnel as women rather than warriors, separate from and different than their male com-

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1. Lionel Barber, *America's war: This week's attack on the US was launched from within, and George W. Bush's fight against terrorism will be prosecuted at home as well as abroad*, says Lionel Barber, FINANCIAL TIMES (London), Sept. 14, 2001, at 22.

2. See Susan Baer, *White House pushes for Afghan women's rights; Bush faces pressure to ensure they have say in new government*, BALT. SUN, Nov. 16, 2001, at 16A.

3. John E. Mulligan, *Female pilot sues U.S., alleging bias*, PROVIDENCE J.-BULL., Dec. 5, 2001, at A01.

4. *Id.*

5. *Id.*

6. *Id.*

rades. Stripped of their uniforms and hidden under the abaya, female officers are not “real” warriors, but merely women, subordinate and inferior. Ironically, the abaya simultaneously erases the female body while highlighting its gender. The regulations thus construct and reinforce the identity of the institution as masculine and male, illustrating the powerful, yet often invisible, ways in which the military continues to police the boundaries of gender to exclude women.

The abaya regulations became widely publicized in December 2001, when Air Force Lt. Col. Martha McSally filed suit against the Secretary of Defense challenging the regulations, which apply to eight hundred American women, as violating her rights to religious freedom and equal protection.⁷ One of the first female fighter pilots in the Air Force, McSally was the first woman to fly combat sorties over Iraq in the mid-1990s.⁸ She has served as a flight commander and has trained combat pilots deployed in Kosovo and South Korea.⁹ When she reported for duty in Saudi Arabia, however, she was told to put on an abaya over her flak jacket.¹⁰ Riding to the air force base in the back seat of a car, McSally felt invisible. “I cannot explain to you how humiliating it is to wear that thing,” she said later.¹¹

The military argued that its regulations help protect American women from harassment in this fundamentalist state, where religious officials are empowered to physically punish women who appear in public in violation of Muslim dress codes.¹² Saudi Arabia, however, does not require non-Muslim women to wear the abaya.¹³ The State Department does not require its employees in Saudi Arabia to wear an abaya, either on or off duty.¹⁴ McSally responds, “If we were called into South Africa during apartheid, would we put our African-American soldiers in separate quarters?”¹⁵ The abaya regulations undermine the authority of females like McSally, encouraging male service members to disrespect female officers and peers.¹⁶ Her lawyer explains:

Two 18-year-old privates leave the base. The woman is covered head to toe. The man wears a T-shirt, jeans and a baseball cap. When they get back to the base, the guy says, “Woman, get behind me,” and tells her to walk 10 steps back. Martha has seen this happen. It’s not good for morale.¹⁷

Shortly after McSally filed suit, the United States military modified its regulations to “strongly encourage,” but not require, that women wear the

7. *Id.*

8. Baer, *supra* note 2, at A01.

9. Mulligan, *supra* note 3, at A01.

10. Toby Harnden, ‘I cannot - I will not - put that thing on’ Martha McSally is the US Air Force’s senior female jet pilot - so why is she risking her hard-won position for a principle?, DAILY TELEGRAPH (London), January 15, 2002, at 15.

11. *Id.*

12. Edward T. Pound, *Saudi rule looser than Pentagon’s, Muslim dress code doesn’t demand U.S. women wear head-to-toe robe*, USA TODAY, April 24, 2001, at 3A.

13. *Id.*

14. *Id.*

15. Christina Cheakalos et al., *Dress Blues; Fighter pilot Martha McSally battles to liberate U.S. servicewomen in Saudi Arabia from a confining cloak*, PEOPLE, Feb. 11, 2002, at 71.

16. Mulligan, *supra* note 3.

17. *Id.*

abaya off-base.¹⁸ McSally's complaint, however, generated public support from diverse groups including women's rights organizations, such as the National Organization of Women, as well as conservative members of the religious right, such as Jesse Helms and McSally's counsel, the Rutherford Institute.¹⁹ While the military sought to frame the requirements as necessary to good order and discipline, critics focused on the abaya as a powerful symbol that violates women's rights to equality and religious freedom. Women's rights groups argued that requiring women, but not men, to conform to traditional Muslim dress requirements discriminates on the basis of sex.²⁰ Conservatives argued that the abaya is a religious symbol of Muslim faith, and that the regulation improperly compels female military personnel to adopt a tenet of the Muslim faith, in violation of their religious freedom.²¹

This conceptualization of the abaya as a means of subordination contrasts sharply with the approach of federal courts, which consistently have upheld military policies, including dress and grooming codes, that infringe on constitutional rights of religious freedom and equal protection. Courts have afforded great deference to military judgment, ignoring the social meaning of military practices by framing such disputes as conflicts between individual preferences versus national security interests. *Korematsu v. United States*²² is perhaps the most glaring example of judicial deference to military power, upholding the government's internment of Japanese-American citizens during World War II as a valid exercise of concern for wartime security.²³ In *Rostker v. Goldberg*,²⁴ the Court upheld the exclusion of women from selective service registration, finding that the male-only draft was justified in light of the statutory exclusion of women from combat.²⁵ In the decision, the Court agreed that the combat exclusion was legitimate.²⁶

18. *Military eases policy; But Muslim-dress flap continues for U.S. women*, NEWSDAY, Jan. 24, 2002, at A32. McSally continues to challenge the abaya policy, however, arguing that the regulations are coercive. There have been claims that, as a practical matter, individual commanders continue to enforce the requirement. *Id.*

19. Ann Gerhart, *The Air Force's flier in the ointment; Pilot sees partial victory in lawsuit over garb in Saudi Arabia – but at what cost to her career?*, CHI. TRIB., Jan. 30, 2002, at C1; Edward T. Pound, *Senators question military dress code: Women required to wear Saudi robe*, SEATTLE TIMES, May 29, 2001, at A4.

20. See, e.g., Michele Keller, *Female Fighter Pilot Battles U.S. Military's Double-Standard in Saudi Arabia*, National Organization for Women, at <http://www.now.org/nnt/spring-2002/mcsally.html> (last visited June 18, 2002) (arguing against "double standard" that requires female troops but not female diplomats to wear abayas, and the "double standard" that prohibits male troops from wearing Saudi garb but requires female troops to wear it).

21. See Jeffrey Chandler, *Women's clothing ranks as hot topic for military*, DAILY UNIVERSE VIA U-WIRE, July 26, 2001 (quoting Seven H. Aden, counsel for the Rutherford Institute, as explaining *inter alia* that "To put that outfit on an American servicewoman who may be of another faith, such as Christian, as some of them are, is a little like putting a yarmulke on a service person because they happen to be stationed in Jerusalem.").

22. 323 U.S. 214 (1944).

23. *Id.*

24. 453 U.S. 57 (1981).

25. *Id.* at 77-78.

26. See *id.* at 83 (Brennan, J., dissenting) ("I assume what has not been challenged in this case-- that excluding women from combat positions does not offend the Constitution."); see also *id.* at 93 (Marshall, J., dissenting) ("Had appellees raised a constitutional challenge to the prohibition against

Federal courts routinely have deferred to military judgments about appropriate behavior and conduct of uniformed personnel, especially where the United States invokes claims of national security. Military dress codes have long been upheld by federal courts, even those regulations that infringe on First Amendment rights to religious freedom. The central issue for the courts is whether the regulation is related to good discipline and order, as defined by the military command. In *Goldman v. Weinberger*,²⁷ for example, the United States Supreme Court upheld the Army's ban on service members wearing yarmulkes while on duty.²⁸ While acknowledging that the regulation infringed on the free exercise right of Jewish service members, the Court deferred to the military's judgment that the dress code was necessary to maintain order and discipline. In upholding the ban on yarmulkes and other military regulations, the courts explicitly have recognized as legitimate the asserted need for uniformity and cohesion within the armed services. The Court in *Goldman* found that the "essence of military service" is the "subordination of the desires and interests of the individual to the needs of the [military] service."²⁹ Rather than tolerate individuality, the military "must foster instinctive obedience, unity, commitment, and esprit de corps."³⁰ The Court deferred to the military's judgment that uniforms eliminate individual distinctions, except for rank, and encourage "a sense of hierarchical unity."³¹

In *United States v. Lugo*,³² the Military Court of Appeals more recently upheld a Marine Corps regulation that prohibited male marines from wearing earrings.³³ A male enlisted marine corporal challenged the order on the grounds that the earring ban (1) did not reasonably relate to military duty, but rather unreasonably interfered with the private rights of individual Marines; and (2) violated the right to equal protection guaranteed by the Due Process Clause of the Fifth Amendment.³⁴ The court rejected both claims. Citing *Goldman v. Weinberger*, the court held that the essence of military service involves the subordination of individual desires to the needs of military service.³⁵ Marine restrictions on the civilian apparel and jewelry worn off-duty by Marines is designed to ensure that off-duty Marines "do not dress in extreme or eccentric civilian attire that detracts from the public 'spit-and-polish' image of the United States Marine Corps and the good order and discipline of its personnel."³⁶ While *Goldman* admitted that the Army's regulation infringed on Jewish service members' right to practice their religion, *Lugo* ignored that the ban on males wearing earrings enforced stereotypical norms of gender. While the court admitted that the regulations

assignment of women to combat, [the Senate's findings] might well provide persuasive reasons for upholding the restrictions.").

27. 475 U.S. 503 (1986).

28. *Id.* at 510.

29. *Id.* at 507.

30. *Id.*

31. *Id.* at 508.

32. 54 M.J. 558 (N-M. Ct. Crim. App. 2000).

33. *Id.* at 560.

34. *Id.* at 559-60.

35. *Id.* at 559.

36. *Id.* at 560.

were “gender driven,”³⁷ it accepted without analysis the social norms underlying such gender distinctions and failed to consider whether the ban on males wearing earrings reflected, or perpetuated, stereotypical norms of masculinity.

Like the sex-specific ban on earrings upheld by the court in Lugo, the sex-specific requirement that women wear the abaya could be categorized by the courts as a military dress code designed to advance good order within the military and our national security interests in Saudi Arabia.³⁸ Conceptualizing the abaya as a gender-neutral dress regulation, however, ignores its social meaning as a symbol of female subordination in the dominant U.S. culture. The abaya is not gender-neutral, but an institutional practice that constructs and regulates gender in the military, stigmatizes female military personnel as different and inferior.

To understand the meaning of the abaya requires shifting from a positivist understanding of gender that underlies current jurisprudence, to a more structural analysis that locates gender as a social practice that intersects with a range of social institutions, relationships, and constructs.³⁹ As recent social theorists have argued, gender is a social practice situated within structures of specific social relations and institutions.⁴⁰ Gender constructs and maintains socially significant differences between men and women, differences that naturalize social inequality between men and women and privilege the social definition and characteristics of masculinity.⁴¹ Gender not only organizes social relations between individuals, but also organizes social structures such as the workplace, state, and other organizations and institutions.⁴² Institutions themselves are gendered, relying on a range of social and institutional practices, both material and symbolic, to enforce gender boundaries.⁴³

37. Lugo, 54 M.J. at 560.

38. In *Romer v. Evans*, the U.S. Supreme Court struck down a Colorado statute that prohibited the legislature from enacting laws to protect persons from discrimination on the basis of sexual orientation, holding that the law was based upon animus toward a particular group, and therefore violated the basic requirement of equal protection. 517 U.S. 620 (1996). While *Romer* emphasizes the anti-caste proscription inherent in the equal protection clause, the United States can invoke the need to protect its troops from harm in Saudi Arabia, and the need to preserve national security – the type of judgments in which the Court historically has deferred to the military.

39. See R.W. CONNELL, *MASCULINITIES* 71 (1995). My analysis of gender as a social institution draws upon recent social theory, as more fully discussed in Valorie K. Vojdik, *Gender Outlaws: Challenging Masculinity in Traditionally Male Institutions*, 19 *BERKELEY WOMEN'S L.J.* 68 (2002) (comparing the conceptualization of gender as a social practice or institution with gender as a classificatory scheme as used in current equal protection doctrine).

40. Sociologists R.W. Connell and Judith Lorber, for example, analyze gender as a social practice rather than a category or classification. See *id.* at 71-76 (defining gender as a social practice); JUDITH LORBER, *PARADOXES OF GENDER* 1-5 (1994) (analyzing gender as “a process of social construction, a system of social stratification, and an institution that structures every aspect of our lives because of its embeddedness in the family, the workplace, and the state, as well as in sexuality, language and culture”).

41. PIERRE BOURDIEU, *MASCULINE DOMINATION* 8-12 (Richard Nice trans., Stanford Univ. Press 2001) (1998).

42. Lorber, *supra* note 40, at 6 (“Gender organizes social relations in everyday life as well as in the major social structures, such as social class and the hierarchies of bureaucratic organizations. The gendered microstructure and the gendered macrostructure reproduce and reinforce each other.”) (citation omitted).

43. See BOURDIEU, *supra* note 41, at 24.

Within the military, the abaya regulations are a powerful means of constructing and enforcing gender boundaries. The military is a quintessentially masculine institution that historically excluded women. Even today, women comprise only 14 percent of the armed services. Although statutory restrictions on women in combat have been eliminated,⁴⁴ the Army and the Marines continue to exclude women from the majority of combat positions.⁴⁵ In this society, and most others, the military constructs warriors as male and masculine, relying on rites of institution that test the identity of individual men as masculine, while reinforcing solidarity among men as a group.

As Joshua Goldstein argues, the relationship between gender and war is reciprocal: warriors are constructed as masculine, and masculinity is constructed through war.⁴⁶ Despite the social construction of warriors as masculine, war does not come naturally to men.⁴⁷ “War is hell,” as General MacArthur said. In World War II, approximately one quarter of troops evacuated to Army facilities were not physically injured, but were overwhelmed by battle, “babbling, crying, shaking, or stunned, unable to hear or talk.”⁴⁸ To induce men to fight, the military compels men to prove their identity as men through symbolic, and actual, enactment of masculinity.⁴⁹ As many theorists have observed, masculinity is constructed “in front of and for other men and against femininity.”⁵⁰ Rituals and practices such as gang rape or group harassment function as “veritable tests of manliness” that challenge men to prove their masculinity by eradicating the feminine.⁵¹

Within the military, such rituals abound. Warriors, the military teaches, are male. From the beginning, drill sergeants humiliate recruits by calling them “pussies,” “sissies,” “girls,” or “fags.”⁵² Cadence calls, called joadies, often denigrate women or celebrate male sexual domination of women. At the Naval Academy in the late 1980s, the glee club favorite tune was “The S&M Man,” sung to the tune of “The Candy Man.”⁵³ The first verse went: “Who can take a chain saw/Cut the bitch in two/Fuck the bottom half/and give the other half to you.”⁵⁴ A formal photograph of a Marine platoon whose members graduated from recruit training in 1989 shows the men posed with their drill instructors “holding a blown-up picture of a naked women and a hand-lettered sign read-

44. JOSHUA S. GOLDSTEIN, *WAR AND GENDER* 87 (2001) (stating that, as of 1999, nearly 200,000 women served in the military).

45. *Id.* at 93, 98-99 (After the Gulf War, the Administration lifted Naval and Air Force restrictions on women in combat for almost all airplanes and ships, except submarines and Navy commandos. The Army opened combat support positions to women in 1994.).

46. See GOLDSTEIN, *supra* note 44, at 5-6.

47. *Id.* at 252-57.

48. *Id.* at 258.

49. *Id.* at 252.

50. See BOURDIEU, *supra* note 41, at 53; see also CONNELL, *supra* note 39, at 44 (“[M]asculinity and femininity are inherently relational concepts, which have meaning in relation to each other, as a social demarcation and a cultural opposition.”).

51. BOURDIEU, *supra* note 41, at 52.

52. See LINDA BIRD FRANCKE, *GROUND ZERO: THE GENDER WARS IN THE MILITARY* 155 (1997) (“Army drill sergeants in the early 90s still humiliated lagging male recruits by calling them ‘sissies,’ ‘crybabies,’ and ‘girls.’”)

53. *Id.* at 190-91.

54. *Id.*

ing, 'kill, rape, pillage, burn.'"⁵⁵ In 1994, ABC broadcast videotapes documenting sado-sexual hazing practices in the elite Marine Corps silent drill team, during "Hell Night," the culmination of a grueling training program.⁵⁶ The videos showed a team leader painting military shoe polish containing toluene, a caustic and hazardous substance, on the genitals of a new drill team member.⁵⁷

Masculinity is similarly enforced in the military through the feminization of enemies and the symbolic (and often real) enactment of rape as domination.⁵⁸ During the Gulf War, for example, a U.S. pilot who shot down a male Iraqi pilot triumphantly announced that he "cold smoked the bitch."⁵⁹ Rape is another common means of sexually subordinating the enemy during wartime.⁶⁰ In World War II, Japanese forces raped over 20,000 Chinese women and girls in Nanking; Pakistani forces raped nearly 200,000 women during the war against Bangladesh independence.⁶¹ Gendered massacre has also been used to "feminize" entire communities by murdering their men; in Bosnia, for example, Serbs massacred Bosnian men and raped between 20,000 and 50,000 women.⁶² Rape was also "a means of ethnic cleansing...central to the conquest" of Bosnian people.⁶³

The integration of women into the military fundamentally challenges the identity of the warrior as male, as Kenneth Karst and others have argued.⁶⁴ The decision to exclude women from combat explicitly has rested, *inter alia*, on the military's claim that women, like homosexuals, would undermine male bonding and the cohesion of troops. In 1994, the Army issued a report that explained its decision to continue to exclude women from combat, arguing that allowing women in combat would undermine unit cohesion and disrupt the "unique bonds" crucial to motivating men to fight in battle. Bonding and unit cohesion, the Army concluded, are "best developed in a single gender all male environment" preserved from women.⁶⁵

This hyper-masculine military culture has fostered widespread hostility toward, and harassment of, military women.⁶⁶ According to a 1995 Department of Defense study, nearly 70 percent of military women have experienced sexual harassment in their workplace.⁶⁷ An Army senior review panel similarly re-

55. *Id.* at 157.

56. See *Prime Time Live* (ABC television broadcast, July 28, 1994) (transcript #360-3).

57. *Id.*

58. GOLDSTEIN, *supra* note 44, at 356.

59. *Id.*

60. *Id.* at 362.

61. *Id.* at 363.

62. *Id.* at 357, 363.

63. GOLDSTEIN, *supra* note 44, at 363.

64. See, e.g., Kenneth L. Karst, *The Pursuit of Manhood and the Desegregation of the Armed Forces*, 38 UCLA L. REV. 499 (1991); Madeline Morris, *By Force of Arms: Rape, War, and Military Culture*, 45 DUKE L.J. 651, 748-753 (1996) (discussing the "phenomenon of linking military identity with masculinity").

65. *Id.* at 194-195.

66. For a detailed discussion of the culture of harassment against women in the military, see generally FRANK, *supra* note 52.

67. Heather Antecol and Deborah Cobb-Clark, *The Sexual Harassment of Female Active-Duty Personnel: Effects on Job Satisfaction and Intentions to Remain in the Military*, April 2, 2002, at 7-8, available at <http://gsbwww.uchicago.edu/labor/antecol.pdf> (stating that data from the Department of Defense's 1995 Status of the Armed Forces Surveys: Form B-Gender Issues establish that "70.9 percent

ported in 1997 that 80 percent of men and 84 percent of women reported experiencing inappropriate harassment such as “crude or offensive actions, sexism, unwanted sexual attention or more serious problems like assault.”⁶⁸ Symbolic violence often spills over to actual violence toward women.

The Tailhook scandal graphically illustrated the widespread hostility and violence toward women in the Navy. The Tailhook Association is an elite group of Naval pilots who have achieved a tailhook landing on an aircraft carrier. At its annual convention in 1991, 83 women filed complaints that they had been sexually assaulted by male pilots on the urine- and beer-soaked floors of the third floor of the conference hotel, where hospitality suites featured female strippers and prostitutes.⁶⁹ Women were forced to walk through a gauntlet of nearly 300 men who groped, pinched and fondled their buttocks, breasts and genitals.⁷⁰ A Pentagon report concluded that such attacks had occurred at Tailhook conventions since 1988.⁷¹ According to a Pentagon report, many of the attendees viewed the conference as a “free-fire zone,” in which the officers “could act indiscriminately and without fear of censure or retribution in matters of sexual conduct or drunkenness.”⁷² For example, male Naval officers engaged in Tailhook “traditions” such as walking around with their testicles protruding from their pants, “mooning” and “streaking,” shaving women’s legs, and a host of other sexualized behavior. In one incident, male officers publicly shaved a woman’s pubic hair.⁷³

Other similar incidents have escaped public notice. Before the Tailhook incident, another group of Navy men gang raped a female helicopter pilot, enacting the sexualized violence toward women glorified in the joadies.⁷⁴ Francke reports that at Fort Hood, Texas, in the 1970s, “the rape rate was so high that 6th Air Cavalry assault helicopters flew nightly patrols over the base.”⁷⁵

The admission of women into the federal service academies met with similar harassment and abuse. At the Naval Academy, male midshipmen denigrated their female classmates with “WUBA” jokes that transformed women from equals into sexualized subjects of male violence and power. WUBA, a term that referred to the first female uniforms (“Working Uniform Blue Alpha”) was used by male midshipmen as an acronym for female midshipmen, but translated to mean “Women Used By All.”⁷⁶ “What do you call a mid who fucks a WUBA? Too lazy to beat off. What is the difference between a warthog and a WUBA? About 200 pounds, but the WUBA has more hair.”⁷⁷ Misogynistic cadence calls

of active-duty women reported experiencing some type of sexually harassing behavior in the twelve months prior to the survey”).

68. Nolan Walters, *Army announces changes to reduce sexual harassment, improve gender equality*, KNIGHT RIDDER/TRIBUNE NEWS SERV., Sept. 11, 1997, at K8778.

69. Mark Thompson, *Tailhook case lands 140; Inquiry describes a sexual “free-fire” zone*, HOUS. CHRON., April 24, 1993, at A1.

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. FRANCKE, *supra* note 52, at 181.

75. *Id.* at 165.

76. *See, e.g., id.* at 204-205; *see generally* 183-219 (1997); JEAN ZIMMERMAN, *TAILSPIN: WOMEN AT WAR IN THE WAKE OF TAILHOOK* 239 (1995).

77. ZIMMERMAN, *supra* note 76, at 239.

continued after women were admitted, identifying war with sexualized violence. According to one report, for example, midshipmen ran in formation to the cadence “Rape, Maim, Kill Babies. Rape, Maim, Kill Babies.”⁷⁸ A 1994 GAO report documented continued resistance to women in the service academies: 50 percent of female Naval midshipmen and 59 percent of female Air Force cadets reported experiencing some form of harassment at least twice a month.⁷⁹ At West Point, half of female cadets experienced offensive gestures, posters or graffiti, and derogatory comments at least once a month; one in six reported being repeated targets of “unwanted horseplay or hijinks;” and one in seven reported “unwanted sexual advances.”⁸⁰

Within this masculine institution, sexual harassment and denigration of females and femininity serves a regulatory function, policing the boundaries between the sexes, punishing women (as well as men) who transgress the bounds of gender.⁸¹ By exaggerating gender differences, harassment sends the message that women do not belong in this male preserve.⁸²

The abaya rules similarly enforce gender boundaries within the military, constructing the identity of warriors as male and masculine while simultaneously excluding women as different and inferior. The decision to require female military personnel to wear the abaya on its face treats women differently than men – violating the military’s asserted need to subordinate individual preferences and promote cohesion by enforcing uniformity of appearance among its members. Though their lives are equally at risk, females like Lt. Col. McSally are treated differently than their male peers simply based on their sex. But the abaya requirement is not merely a “double standard” that violates formal equality. It is an institutional practice that constructs female military personnel as women rather than warriors. In a culture which seeks to subordinate the individual to the collective group, the abaya symbolically and materially excludes female officers as warriors. It not only marks women as separate from and different than men, but erases their identity and status as warriors. It is a symbolic form of gender apartheid, enforcing the bounds of gender within an institution that otherwise insists that uniformity of appearance is critical for good order and discipline.

While the military has argued that the abaya requirement is culturally “sensitive” to the conservative Muslim society in Saudi Arabia, that argument ignores that the meaning of the abaya is not fixed or essential, but socially and culturally specific. As a religious practice among Muslims in Saudi Arabia, the abaya is a form of hijab, the Muslim doctrine that compels men and women to dress modestly.⁸³ While many in the U.S. understand the practice as a means of gender subordination in a society that overtly discriminates against women,

78. *Id.* at 238.

79. FRANKE, *supra* note 52, at 191.

80. *Id.* at 204.

81. See Vicki Schultz, *Reconceptualizing Sexual Harassment*, 107 YALE L.J. 1683, 1756-61 (1998) (arguing that sexual harassment serves to undermine women’s competence within the workplace, preserving the definition of the job as male and masculine.).

82. *Id.* at 1760.

83. See, e.g., Jennifer Sposito, *Uncovering the truth behind traditional Muslim hijab*, GUARDIAN VIA U-WIRE, May 23, 2002.

many Muslims consider the abaya or hijab to symbolize the commitment to living a life of goodness and nobility prescribed by the Koran.⁸⁴

Within the U.S. military culture, however, the abaya requirement is a powerful symbol of the subordination and inferiority of female troops. By requiring female military personnel like McSally to conform to restrictions imposed on Muslim women in Saudi Arabia, the military compels the ritual enactment of gender subordination. McSally as a military officer becomes invisible; she instead appears as a feminized subject of male domination, both powerless and subject to violation. Rather than promote order and discipline, the requirement encourages male military personnel to disrespect their female officers, as McSally reports. Like sexual harassment, the rules operate to humiliate and punish those women who transgress the bounds of gender within our society. At the same time, the identity of warriors as male is reinforced and the boundaries of gender in the military are preserved.

Focusing on the social meaning of the abaya requirement is an important step toward making gender visible in this historically masculine institution. Like the misogynistic cadence calls and ritualistic harassment of women at Tailhook, the abaya requirement actively constructs and reaffirms the identity of the military and its warriors as male and masculine. Reconceptualizing gender as a social practice that occurs within specific institutions, including the military, reveals the complex ways in which gender is constructed within institutions themselves.

84. *Id.*; see also Barbara Brotman, *In praise of the veil*, CHI. TRIB., Dec. 19, 2001, at C1 (discussing the range of views of the meaning of hijab among Muslim women).