

JUDGING SEX IN WAR

*Karen Engle**

FOR WHOM THE BELL TOLLS. By *Ernest Hemingway*. New York: Charles Scribner Sons. Scribner 1996 ed. Pp. 471. Cloth, \$30; paper, \$15.

What does it mean—rape? When I said the word for the first time aloud, . . . it sent shivers down my spine. Now I can think it and write it with an untremling hand, say it out loud to get used to hearing it said. It sounds like the absolute worst, the end of everything—but it's not.

—Anonymous,
A Woman in Berlin, 1945¹

Generally, it bothers me when someone says raped women [R]aped women—that hurts a person, to be marked as a raped woman, as if you had no other characteristic, as if that were your sole identity.

—Judge Nusreta Sivac,
in *Calling the Ghosts*, 1996²

She said that nothing is done to oneself that one does not accept

—María,
in *For Whom the Bell Tolls*, 1940³

INTRODUCTION

Rape is often said to constitute a fate worse than death. It has long been deployed as an instrument of war and outlawed by international humanitarian law as a serious—sometimes even capital—crime. While disagreement exists over the meaning of rape and the proof that should be required to convict an individual of the crime, today the view that rape is harmful to women enjoys wide concurrence. Advocates for greater legal protection against rape often argue that rape brings shame upon raped women as well

* Cecil D. Redford Professor in Law, University of Texas School of Law; Director, Bernard and Audre Rapoport Center for Human Rights and Justice at the University of Texas School of Law. For their comments on earlier drafts of this Review, I am grateful to Helena Alviar, Neville Hoad, Rachel Holmes, Patricia Visseur-Sellers, and Judson Wood, as well as to participants at the Sexual Abuse and Exploitation of Women in Violent Conflict conference at the Netherlands Defence Academy and at the Conference on Gender, Globalization, and Governance at the University of Texas. I am also grateful to Janet Halley and Nanci Klein for many provocative and influential discussions on the issues discussed in this Review and to Matthew Dunlap for his research assistance.

1. ANONYMOUS, *A WOMAN IN BERLIN: EIGHT WEEKS IN THE CONQUERED CITY* 63 (Philip Boehm trans., Metropolitan Books 2005) (1953) (diary entry from May 1, 1945).
2. *CALLING THE GHOSTS: A STORY ABOUT RAPE, WAR AND WOMEN* (Women Make Movies 1996).
3. P. 73. The novel was first published in 1940, but it is set in 1937.

as upon their communities. Shame thus adds to rape's power as a war weapon. Sexual violence has not, however, been deployed as an instrument in every war. In this sense it is neither universal nor inevitable, as political scientist Elisabeth Jean Wood has recently demonstrated.⁴ If wartime rape is not inevitable, I would argue that neither is the shame often seen to accompany it.

In this Review, I use *For Whom the Bell Tolls*, Ernest Hemingway's novel of the Spanish Civil War, and other narratives that consider sexual violence in war to demonstrate that women's roles in war extend far beyond that of victim. By showing how different characters and agents in the stories offer possibilities for reimagining the harm of rape, I encourage feminists and humanitarians to question the assumption that women who have been raped in wartime are destroyed. By seeing rape as a fate worse than death, at least in part because of the harm of shame they assume it brings, feminists and humanitarians often exacerbate the very shame they hope to relieve. Particularly when made hypervisible in the context of mass rape,⁵ wartime rape risks becoming the exclusive identifying element for women who are members of the group primarily subjected to it.

Though rape has long been considered a crime, the past fifteen years have brought renewed attempts to define wartime rape as an international crime and to increase the enforcement of its prohibition. These attempts, largely but not exclusively spearheaded by Western feminists, have been aligned with the development of new international mechanisms for the adjudication of war crimes and crimes against humanity, including tribunals such as the International Criminal Tribunal for the Former Yugoslavia ("ICTY").

I have written elsewhere about the judicial treatment of rape by the ICTY and have argued that its jurisprudence—perhaps unwittingly and at the urging of many feminists—has functioned to limit the narratives about women in war, denying much of women's sexual, political, and military agency.⁶ During and after the conflict in Bosnia and Herzegovina, for example, many feminists tended to portray all women (but especially Bosnian Muslim women) as potential sexual victims and to deny the extent to which women participated in the war militarily and politically. All men (but especially Serbian men) were seen as potential sexual perpetrators, and the possibility of consensual sex between those on opposite sides of the war seemed inconceivable. In a series of what are generally considered progressive decisions, the ICTY found rape to be a war crime and in one case a

4. Elisabeth Jean Wood, *Variation in Sexual Violence during War*, 34 *POL. & SOC'Y* 307 (2006).

5. See Doris E. Buss, *The Rwanda Tribunal and the Making of Ethnic Rape* (June 2007) (unpublished manuscript, on file with author).

6. Karen Engle, *Feminism and Its (Dis)contents: Criminalizing Wartime Rape in Bosnia and Herzegovina*, 99 *AM. J. INT'L L.* 778 (2005).

crime against humanity.⁷ Yet these decisions served to reproduce many assumptions about women's (lack of) agency. Through its rules regarding evidence of consent and its equation of rape with torture, the ICTY essentially created a jurisprudence in which much of the sex between opposing sides in the war was made criminal.

For Whom the Bell Tolls offers a lens through which to view narratives about sex and war that are less essentialized than those that have generally appeared in the ICTY's decisions. Hemingway offers an account of war that is unusually open to the ambivalences of killing, the value and threat of sex to battle, and the meaning of life and death and one's sense of one's mission in war. I use Hemingway's novel both as a way to identify the suppression of certain types of narratives in the ICTY's decisions and to suggest new contours to some of the stories that in fact emerged in ICTY testimony. I neither want to equate all sexual relations that occur in war⁸ nor suggest that literary (fictional and nonfictional) narratives are necessarily more powerful than legal narratives. Rather, I hope to convince legal activists to consider the need for the admissibility of nuanced accounts of sex and war and to discourage them from assuming that suppression of such stories is necessary to a system of justice.

I. HEMINGWAY'S HISTORICAL CONTEXT

Over the three years between 1936 and 1939, fascist rebel forces, eventually supported by Italy and Germany, brought down the Second Spanish Republic. This military victory marked the beginning of Franco's dictatorship.

The Spanish Civil War attracted the interest and participation of men and women from both inside and outside Spain by literally providing a battleground for those who wanted to fight for various shades of fascism, antifascism, Marxism, and Communism. A number of women participated in the war, serving as nurses, militia fighters, and political and philanthropic supporters. The first British volunteer to be killed in battle, for example, was Felicia Browne, a Communist artist in Spain at the outset of the war who fought in a militia unit.⁹ One of the leading Spanish Communists at the time was Dolores Ibárruri Gómez, known as *La Pasionara* ("the passion flower"). Ibárruri delivered what became a well-known rallying cry for the Republic

7. Prosecutor v. Kunarac, Case Nos. IT-96-23-T & IT-96-23/1-T, Judgment, ¶ 436 (Feb. 22, 2001); Prosecutor v. Furundžija, Case No. IT-95-17/1-T, Judgment, ¶ 172 (Dec. 10, 1998).

8. For a description of the ways and extent to which sexual violence against women has often varied during war, see Wood, *supra* note 4.

9. Angela Jackson, *The Clarion Call: Women and the Spanish Civil War*, Lecture at the Belfast Institute of Further and Higher Education in celebration of International Women's Day (Mar. 8, 2006) (transcript available at <http://www.geocities.com/irelandscw/misc-IWDLecture.htm> (last visited Nov. 16, 2007)) (discussing British women's involvement in the war). Gerda Taro, the first female photographer to die on the front lines—crushed by a tank in 1937—captured a number of stunning images of militiawomen. These and other photographs by Taro have recently been exhibited at the International Center of Photography in New York. See GERDA TARO (Irme Schaber et al., eds. 2007).

during a radio address in July 1936: “It is better to die on your feet than to live on your knees. *No Pasarán!*”¹⁰ One of the Republican fighters in Hemingway’s fictional account of the war admires *La Pasionara* and repeats parts of this line during what turns out to be his final battle.¹¹

Ernest Hemingway and George Orwell were two of the many journalists who made their way to Spain to fight for the Republic. While Hemingway traveled with the Communist-led International Brigades, Orwell fought in the trenches for a Marxist militia group. They reported their experiences in different ways: Orwell in a nonfiction work entitled *Homage to Catalonia* and Hemingway in one of his best-known novels, *For Whom the Bell Tolls*.

Both books offer powerful narrative accounts of daily, even hourly, life during the war. Orwell’s book begins in December 1936 when he joins the militia. It concludes with his injury in mid-May 1937 and his fairly abrupt departure from Spain when the organization for which he fought began to be accused of treachery and fascism. Orwell takes us painstakingly through the various disagreements and deadly conflicts *among* the left supporters of the Republic, many of which he acknowledges he was unable to see while in the midst of the war. Hemingway, for his part, immerses us in the love, hatred, sex, hope, and despair of three days of battle in the spring of 1937.

Even though women played significant roles in the war, only one woman makes repeat appearances in Orwell’s book, and that is his wife. She is a nurse, but she is generally in the background, in Barcelona, whether he is there in the city with her or off fighting at the front. Orwell notes that, while women were fighting alongside men in the very early days of the war, few women remained in the militias by the time he came onto the scene several months later.¹² Thus, we do not see women on the battlefield in his book. In contrast, two women are integral to Hemingway’s fictional account. These women play a significant role in the guerilla operations undertaken by his characters. Hemingway’s portrayal of these two women both relies upon and challenges stereotypes about sex and gender in war. The novel provides a useful comparison with narratives of women in war embodied elsewhere, including in international jurisprudence.

10. DOLORES IBARRURI, *THEY SHALL NOT PASS: THE AUTOBIOGRAPHY OF LA PASIONARIA* 195 (1966). Ibarruri later became Secretary General and then President of the Communist Party of Spain, the latter post of which she held until her death in 1989. See Paul Hofman, *Obituaries Dolores Ibarruri, ‘La Pasionaria’ Of Spanish Civil War, Dies at 93; An Indomitable Leftist*, N.Y. TIMES, Nov. 13, 1989, at B15; BRANKO LAZITCH, *BIOGRAPHICAL DICTIONARY OF THE COMINTERN 190–191* (1986). For more on her remarkable life and career, see, for example, ANDRÉS SOREL, *DOLORES IBARRURI: PASIONARIA, MEMORIA HUMANA* (2d ed. 1989).

11. Pp. 309, 321. The character Joaquin repeats *La Pasionara*’s statement about it being better to die on your feet than live on your knees, which becomes the basis of part of the Republicans’ discussion during Sordo’s last stand. Pp. 309–21. Some of the Republicans question *La Pasionaria*’s commitment to the Republic, noting that her own son is living in Russia “studying dialectics” instead of fighting in Spain. P. 311. Joaquin begins to repeat the line to himself moments before the fatal attack, but shifts to “Hail Mary.” p. 321.

12. GEORGE ORWELL, *HOMAGE TO CATALONIA* 7 (1952). Somewhat ironically, Ibarruri herself encouraged women to return to their traditional roles at home after the first few months of the war. Jackson, *supra* note 9.

II. SEX AND GENDER IN *FOR WHOM THE BELL TOLLS*

In 471 pages, Hemingway explores in great detail three-and-a-half days behind fascist lines. The war is already underway, and he relates the characters' current lives as well as their memories of the earlier days of the war. The protagonist is Robert Jordan, a Spanish professor from the University of Montana who is fighting as a guerilla for the Republic during his sabbatical in Spain. He has been sent on what we learn from the beginning all believe will be a deadly mission—to blow up a bridge behind enemy lines. Two female characters play significant roles in the story, and they express sexual and political power in a way that challenges the dominant narratives often told about women in war, including those told by many feminists.

Pilar is the lover of a ruthless male guerilla leader named Pablo. She is also the ex-lover of a bullfighter. Rafael, a character referred to throughout the novel as “the gypsy,” describes Pilar as “[s]omething barbarous. . . . Something *very* barbarous. If you think Pablo is ugly you should see his woman. But brave. A hundred times braver than Pablo. But something barbarous” (p. 26). Pilar refers to herself as ugly as well. But she is strong and determined and, for a while, Pablo makes her the commander of the guerillas' mission. At least in this mission, she is firmly entrenched in the Republican camp. She has a broader range of jobs than most of the men in the novel—she cooks, fans the fire, tends the horses, and guards the post when Pablo disappears. She carries a gun.

Pilar also cares deeply for another Republican woman. This other woman, María, is the second female character we get to know, although she is actually the first one we meet. Hemingway introduces us to this “girl” when she comes out of the cave at the camp to serve the men food (p. 22). María, unlike Pilar, is feminine. But she has cropped hair. She was once a shorn woman. She tells Robert Jordan that her hair was shaved regularly in prison. We learn that she was rescued by a guerilla band, the same band that she is now literally serving, in the aftermath of the only major action the group had seen in recent months: blowing up a train on which she was being transported. Her father was a Republican mayor of a village. He and her mother were killed by the fascists. These same fascists captured María, shaved her head, ridiculed her, and sexually abused her. Rafael explains, “You should have seen her when we brought her from the train. She was so ugly it would make you sick” (p. 24). And when Robert Jordan asks Rafael whose woman María is, Rafael replies, “Of no one. . . . This is a very strange woman. Is of no one. But she cooks well” (p. 24).

In some ways, Hemingway's female characters are stereotypical. They cook and tend camp. If Pilar is a warrior, María often seems more domestic. She remains in the background while Robert Jordan draws diagrams and considers how best to destroy the bridge. She is often sent away—generally by Pilar—when military operations are discussed. In this regard, María is portrayed in much the way that Orwell describes his own wife back in Barcelona.

María might be physically in the background, but she is often in the forefront of Robert Jordan's mind. He both relishes and fears the power of his sexual and emotional bond with María. Indeed, he sometimes sees those bonds as challenging his own ability as a warrior. In the book's first chapter, he declares that "there is no time for girls" (p. 7), and he revisits that conclusion on a number of occasions. At one point, for example, he begins to worry about the bridge, about how his plans might go awry: "Stop it, he told himself. You have made love to this girl and now your head is clear, properly clear, and you start to worry" (p. 161). He seems concerned at times that he cannot work clearly when he is thinking of her. Later in the novel, the gypsy Rafael disappears from his post at a crucial moment. When he eventually reappears, he is proudly carrying two hares he had tracked. The scene might well portend Robert Jordan's ultimate downfall. Rafael followed the hares because they were "ma[king] love in the snow" (p. 274), and Robert Jordan began calling María his "little rabbit" the night of their first sexual encounter (p. 71). But Robert Jordan does in fact continue as a warrior and a lover. Even though he will not permit María to join him on the battlefield (pp. 269–70), she awaits him in the guerilla camp as surely as Orwell's wife awaited him in Barcelona. Upon encountering María on his return to camp after blowing the bridge, Robert Jordan is surprised at himself: "He had never thought that you could know that there was a woman if there was battle . . ." (p. 456).

Robert Jordan's relationship with María also leads him to question his readiness to die: "María was very hard on his bigotry. So far she had not affected his resolution but he would much prefer not to die" (p. 164). In the end, he overcomes that threat as well, sending her away when he accepts that he has suffered a fatal wound. Insisting on remaining alone, he tries to reassure her that he will continue to live through and with her: "'I am with thee,' Robert Jordan shouted. 'I am with thee now. We are both there. Go!'" (p. 465). These are Robert Jordan's final words to María, spoken as she is led off by Pilar, denied her request to stay with the man she loves.

A. *María: More than a Victim*

One reading of María's character is as a woman who was and continues to be a victim in many of the ways that women are generally thought to be victims. Politically, she was seen by the fascists as the enemy because of her father's politics. She was punished by them with sexual acts and branded and shamed through the shaving of her head. María is an abused woman, both sexually and emotionally, and the abuse haunts her and her relationships throughout the novel. When she tells Robert Jordan that "things were done to" her and insists that he will not love her knowing this information, he responds that he does love her. "But something had happened to him and she knew it" (p. 71). Later, when Robert Jordan fantasizes his future life with María in Missoula, Montana, he does so in both traditional and shocking ways: "[S]he can be an instructor's wife and when undergraduates who take Spanish IV come in to smoke pipes in the evening and have those so

valuable informal discussions about Quevedo, Lope de Vega,” he muses, “María can tell them about how some of the blue-shirted crusaders for the true faith sat on her head while others twisted her arms and pulled her skirts up and stuffed them in her mouth” (p. 165).

María’s sexual wounds seem to be the ones that have affected her the most and from which she often aims to be healed. With Pilar’s and ultimately Robert Jordan’s encouragement, she believes that finding the right sexual and emotional encounter will cure her. María informs Robert Jordan that Pilar told her “that if I loved some one it would take it all away” (p. 73). Robert Jordan responds, “What she said is true” (p. 73). Later in the novel, Augustín, one of the men in the group present at María’s rescue, makes sure Robert Jordan knows she is not a whore: “What I mean is that this María does not do this lightly.”¹³

At some level, then, the rape defines María. Yet it is not the endpoint of the novel; the extent to which María expresses both sexual and political power challenges the dominant narratives often told about women who have been raped in war, including those told by feminists. Indeed, María is not simply a victim caught in a man’s war. She and Robert Jordan greet each other as comrades. And she flirts with him from the beginning. She makes her cropped hair sexy. In their first encounter, we see him eyeing her hands, face, teeth, and skin. Then he notes her hair, which was “cut short all over her head so that it was but little longer than the fur on a beaver pelt. She smiled in Robert Jordan’s face and put her brown hand up and ran it over her head, flattening the hair which rose again as her hand passed” (p. 22). Shortly thereafter, Robert Jordan looks again “at her hair, that was as thick and short and rippling when she passed her hand over it, now in embarrassment, as a grain field in the wind on a hillside” (p. 23). Is she embarrassed, or is this characterization a projection on his part? Either way, we know in this moment that they will fall for each other.

Later that evening, in a space they are sharing in the cave with the others, María’s hair becomes the medium for their mutual seduction:

“*Qué va,*” Robert Jordan said and reaching over, he ran his hand over the top of her head. He had been wanting to do that all day and now he did it, he could feel his throat swelling. She moved her head under his hand and smiled up at him and he felt the thick but silky roughness of the cropped head rippling between his fingers. Then his hand was on her neck and then he dropped it.

“Do it again,” she said. “I wanted you to do that all day!” (p. 67)

The seduction continues, and it is María who eventually pursues Robert Jordan in his bed. He has chosen to sleep outside the cave, away from the others, and she approaches him in his sleep.

13. P. 291. Robert Jordan responds that he does not take it lightly either: “It is because of the lack of time that there has been informality.” P. 291. The foreshadowing of Robert Jordan’s death is relentless—they will only have a few days together.

María seeks out love with Robert Jordan in part to erase the past, as Pilar had encouraged. But Pilar had suggested something more to María: “She said that nothing is done to oneself that one does not accept and that if I loved some one it would take it all away” (p. 73). It was to this statement that Robert Jordan had replied, “What she said is true” (p. 73). And he had already told her “I love thee, María . . . And no one has done anything to thee. Thee, they cannot touch. No one has touched thee, little rabbit” (p. 71). In this encounter, we learn that María is not destined to be forever marked solely or even primarily by the rape. As if offering physical and emotional proof of her future potential, María relates, “She said for me to tell you that I am not sick. She knows about such things and she said to tell you that” (p. 73). María continues, “And now I am happy that I did not die. I am so happy that I did not die” (p. 73).

As María learns to make love over the next few days, she begins to enjoy it. “I die each time. Do you not die?” she asks Robert Jordan after making love in a clearing (p. 160). “No. Almost. But did thee feel the earth move?” (p. 160). And, indeed, she says she did. When she later tells Pilar, Pilar informs her and Robert Jordan that the earth only moves three times—if that—in people’s lives (pp. 174–75).

At times, María understands the sexual violence she experienced and her response to it as part of the battle. She makes clear to Robert Jordan on at least two occasions that she “fought” those who sexually assaulted her. When she first tells him of the assault, she says, “Where things were done to me I fought until I could not see” (p. 71). After she and Robert Jordan decide to marry (even though Republicans generally opposed marriage), she insists that he know for his “own pride”: “Never did I submit to any one. Always I fought and always it took two of them or more to do me the harm” (p. 350). This fighting was for her (or her future husband’s) sexual honor, but also for her political honor. María recounts that when her father was shot, he said, “*Viva la República*” (p. 350). When her mother was shot, she said, “Viva my husband who was the Mayor of this village” (p. 350). And María says, “I hoped they would shoot me too and I was going to say ‘*Viva la República y vivan mis padres*’ . . .” (p. 350). Unlike her mother, María would make her political loyalties known. Yet her statement demonstrates an understanding of the mutual constitution of politics and family.

B. *Pilar: More than a Female Warrior*

Like María, Pilar is a stereotypical character in many ways. She is stereotypical of those women who are permitted to act as men and be treated as men. Pilar is neither sexually attractive nor in need of the protection for which María’s vulnerability cries out. Although she cooks for and sometimes tends to the men, she is accepted as commander of the mission, and she replaces Pablo as a fighter. That all on the mission see her as physically unattractive seems to lend to her credibility.

In other ways, however, Pilar's character defies expectations. In particular, her recollections about her own past suggest sexual and political power and desire that sometimes take advantage of her position as a woman. Pilar is intensely sexual, and she openly discusses sex and her previous sexual relationships, particularly with a bullfighter with whom she was in love for many years (pp. 85–86). She often acts as a mentor to María, encouraging and counseling her through both her sexual and emotional relationship with Robert Jordan. She also infantilizes María at times, clearly seeing herself as María's guardian and perhaps even considering María her chattel. In the same conversation in which Augustín tells Robert Jordan that María is not a whore, he also relays that, since the group first encountered María, "the Pilar has kept her away from all as fiercely as though she were in a convent of Carmelites. You cannot imagine with what fierceness she guarded her. You come, and she gives her to thee as a present. How does that seem to thee?" (p. 290). Pilar seems to appear to Augustín, then, as both nun and pimp.

The relationship between Robert Jordan and María is marked by this triangulation with Pilar throughout the novel. Erotic attraction and sexual tension link Pilar and María, and Hemingway portrays a complex relationship between the two women. Pilar both asserts and denies her sexual feelings for María. After telling Robert Jordan that "[y]ou can have her in a little while, *Inglés*" (p. 154), she says to María in front of him, "'He can have thee,' . . . and ran her finger around the lobe of the girl's ear. 'But I am very jealous' " (p. 154). Then, after claiming there is always "something" between women "that there should not be," she reasserts her heterosexual identity: "Listen, *guapa*, I love thee and he can have thee, I am no *tortillera* but a woman made for men."¹⁴ María responds that she loves Pilar too and, when Pilar insists that the "silliness [about their feelings for each other] is over," María maintains that "[i]t was not silly" (p. 155).

When Robert Jordan and Pilar meet, she is firmly established in her role as warrior. And when Pablo makes Pilar commander, she cannot remove herself or be directed away from the politics or the fighting as can María. But there was a time before this encounter when Pilar's role appears to have been more stereotypically feminine, with all the power that brings. We learn how, in this earlier context, she intermittently deployed her roles as militant and as the leader's lover, which functioned to allow her both to participate in and to distance herself from violence.

Pilar tells a particularly graphic story of a Republican guerilla victory early in the war and the cruel, shockingly brutal executions of the fascists that followed (pp. 103–29). Pablo directed the executions, but most of the village participated. As Pilar tells the story, the involvement of the entire village was important so that all could take responsibility for the victory and for the violence that ensued:

14. Pp. 154–55. *Tortillera* is a slang, and generally pejorative, term for lesbian.

Certainly if the fascists were to be executed by the people, it was better for all the people to have a part in it, and I wished to share the guilt as much as any, just as I hoped to share in the benefits when the town should be ours. (pp. 118–19)

But after one particularly humiliating murder, Pilar says, “I felt a feeling of shame and distaste, and . . . I wished that I might disassociate myself altogether from the lines, and I walked away, across the square, and sat down on a bench under one of the big trees that gave shade there” (p. 119). After speaking with some men who had also left the line, Pilar volunteered to go speak with Pablo. It would seem to have been her role to tame her man, and it would appear she had the power to do so.

In the end, however, Pilar never even attempted to stop Pablo. Instead of pleading with him to end the massacre, she ended up fighting with a drunkard for a good position to see it. When the drunken man pushed her aside, she hit him in the groin. While he was yelling, “*No hay derecho, mujer*. This, woman, you have no right to do,” she was watching a mob—at the orchestration of Pablo—beat and chop a priest to death (p. 125). That night, she tells Robert Jordan and María, she slept with Pablo but, at his request, they did not make love. He believed it would have been in “bad taste after the killing of so many people” (p. 128). He then slept “like a baby,” while she stayed awake all night “full of shame and a sense of wrongdoing” (p. 127–28). In her retelling of this story, Pilar never denies her involvement, her politics, her loyalty, or her shame. When Robert Jordan first asks her what happened, she responds, “Much. And all of it ugly. Even that which was glorious” (p. 99).

III. THE FORCE OF NARRATIVE

Robert Jordan admires Pilar for her storytelling. But it would seem that Pilar is powerless to write her stories, even if—through Hemingway’s deployment of a standard convention of literary narrative—we are permitted to read them. After hearing Pilar’s shocking account of the early days of the revolution, Robert Jordan says to himself, “If that woman could only write. . . . God, how she could tell a story. She’s better than Quevedo, he thought. He never wrote the death of any Don Faustino as well as she told it” (p. 134). And indeed, any reader cannot help but be moved and disgusted by Pilar’s story. Robert Jordan explains its power in the following way: “I wish I could write well enough to write that story, he thought. What we did. Not what the others did to us. He knew enough about that. He knew plenty about that behind the lines. But you had to have known the people before” (pp. 134–35).

In this context, Pilar is a part of the “we.” The “we” who have done horrible things, who have engaged in atrocities that the law of war continually seeks to eliminate. Pilar’s story is not about sexual violence. But it is violent, and it involves a woman who thought she might have the power to stop the violence but did not try. It involves a woman who helped convince men to participate in violent killings. It involves a woman who

wanted to witness the horrors as they occurred: she grabbed a chair and stared through the window.

Many feminists have long argued that women's voices have been excluded, ignored, or suppressed in dominant narratives and that attention to their voices would result in a more just world. Perhaps Hemingway recognized both the need and impossibility for the emergence of women's voices in traditional narrative; even Robert Jordan cannot tell Pilar's story.

Of course, just as many Western feminists have criticized dominant narratives for being premised on men's perspectives, they themselves have often come under attack for basing their counternarratives on the perspectives of straight, upper-middle-class women of European descent.¹⁵ I aim to be critical of this feminist valorization of "women's narrative," but by asking *what* stories, not *whose* stories, feminist advocates have in mind when they suggest that women's stories need to be told and heard. Are they imagining stories like the ones recounted by Pilar?

In the context of the ICTY, I have argued that feminist advocates and the ICTY alike could often only identify women as rape victims.¹⁶ Witnesses were primarily asked to testify about the sexual and other violence they experienced. It was a prosecution after all, and such is the role of the victim. But the witness testimony was often more complex than what the prosecution or the ICTY might have seen as relevant. Some of that complexity managed to make its way into the public trial records; journalists and other writers provided even more material demonstrating the varied experiences of the witnesses.

I briefly sketch below some roles that women played during the war in the former Yugoslavia that were not incorporated into the dominant narrative of the ICTY's decisions. Although women's roles and the treatment of women differ in different wars, I suspect that these narratives produced about women's roles could be found in the discourse of almost any war.

A. Women as Military Actors

Women have fought in many, if not most, wars. Women serve as soldiers and, like Pilar, participate in atrocities. Like men, women have sexual lives during war. Unlike men, however, women's sexual lives are often considered separate from—or as replacements for—their military activity, particularly when the sex has reproductive consequences. Thus, if women are thought to be soldiers, they are generally not imagined to be

15. For early, influential discussions of the relationship of storytelling to feminist legal theory and arguments that stories of certain groups of women are often suppressed in feminist legal scholarship, see Patricia A. Cain, *Feminist Jurisprudence: Grounding the Theories*, 4 BERKELEY WOMEN'S L.J. 191 (1989–90) (outlining the role of consciousness-raising in feminist legal theory and discussing the exclusion of lesbians' stories in the literature). See also Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990) (discussing the exclusion of black women's experiences in feminist legal theory).

16. Engle, *supra* note 6, at 794–96.

mothers, and vice versa. In other words, where motherhood starts, military service often ends.

In *For Whom the Bell Tolls*, for example, we are introduced to a Spanish Lieutenant-Colonel who became a Republican so he could divorce his wife. We are told that now “his twenty-three-year-old mistress was having a baby, as were nearly all the other girls who had started out as *milicianas* in the July of the year before” (p. 399). In Orwell’s account of the war, he describes the experience of dressing for battle with the help of the wife of a fellow soldier: “It was rather humiliating that I had to be shown how to put on my new leather cartridge-boxes by a Spanish girl . . .”¹⁷ He expresses a sense of dissonance over her current appearance and his knowledge of her background:

She was a gentle, dark-eyed, intensely feminine creature who looked as though her life-work was to rock a cradle, but who as a matter of fact had fought bravely in the street-battles of July. At this time she was carrying a baby which was born just ten months after the outbreak of war and had perhaps been begotten behind a barricade.¹⁸

If it was hard to imagine women as both soldiers *and* mothers in war-time Spain, any acknowledgment of women’s role as warrior instead of mother is likewise hard to find in the ITCY decisions and testimony arising out of the war in the former Yugoslavia. Women did in fact serve as soldiers. But it took a *Cosmopolitan* reporter to discuss and show their service. In September 1994, *Cosmopolitan* published a story entitled “Bosnia: Women Are Fighting Back.”¹⁹ “As the war limps on in the former Yugoslavia,” the magazine’s lead-in to the story reads, “[w]omen, if they’re mentioned at all, are portrayed as pathetic victims of war. To redress the balance, Cosmo sent Political Editor, Lesley Abdela, to an embattled Bosnian enclave and to the Croatian capital, Zagreb, to meet some of the courageous women who are caught in the crossfire.”²⁰ Note that even in this headline/introduction, women are “caught” in the war.

The ICTY has not generally portrayed women as military combatants or discussed atrocities committed by women on the battlefield or in conflict, and only in rare cases has it scrutinized the actions of women. The Office of the Prosecutor brought charges against former Serb president Biljana Plavsic, including counts of genocide and crimes against humanity, although those charges were eventually dropped when she pleaded guilty to lesser charges.²¹ The same prosecutor’s office had earlier brought charges before the International Criminal Tribunal for Rwanda against former Rwandan

17. ORWELL, *supra* note 12, at 13.

18. *Id.*

19. Lesley Abdela, *Bosnia: Women Are Fighting Back*, COSMOPOLITAN (U.K.), Sept. 1994, at 16.

20. *Id.*

21. Case Information Sheet—Plavsic Case (IT-00-39 & 40/1), <http://www.un.org/icty/glance/plavsic.htm> (last visited Nov. 16, 2007).

Minister of Family and Women's Affairs Pauline Nyiramasuhuko for genocide and crimes against humanity. Her crimes included inciting Hutu men to rape Tutsi women.²² Despite evidence that women participated on all sides of the war in Bosnia and Herzegovina and that large numbers of women participated in the Rwandan genocide, these are the only two females who have been accused before the tribunals.

Many women and men—feminists and nonfeminists alike—have a difficult time seeing women as soldiers or perpetrators of violence, especially sexual violence. In recent decades, some attention has been paid to how women military members often experience sexual abuse and harassment at the hands of their male counterparts. Yet it remains exceptional to see discussion of women inciting such violence. Thus, when photographs of female U.S. soldiers as perpetrators in the Abu Ghraib prison in Iraq were disseminated, Barbara Ehrenreich wrote the following:

A certain kind of feminism, or perhaps I should say a certain kind of feminist naivete, died in Abu Ghraib. It was a feminism that saw men as the perpetual perpetrators, women as the perpetual victims and male sexual violence against women as the root of all injustice. Rape has repeatedly been an instrument of war and, to some feminists, it was beginning to look as if war was an extension of rape. There seemed to be at least some evidence that male sexual sadism was connected to our species' tragic propensity for violence. That was before we had seen female sexual sadism in action.²³

Ehrenreich described her discovery succinctly: "What we have learned from Abu Ghraib, once and for all, is that a uterus is not a substitute for a conscience."²⁴

The belief that women would somehow be exempted from acting as perpetrators of war crimes is, as Ehrenreich acknowledges, naïve. But perhaps she overstates the pervasiveness of this naiveté—or overly generalizes her own experience of it. Anyone who has read *For Whom the Bell Tolls*, for example, has seen accounts of women committing atrocities, although perhaps with the added guilt and shame ("conscience"?) that at least some of the men do not seem to experience in the novel. For Robert Jordan, the force of Pilar's story is its unique—but not necessarily gendered—perspective about what "we" did. He could not tell the same story because "you had to have known the people before. You had to know what they had been in the village."²⁵

22. Prosecutor v. Nyiramasuhuko & Ntahobali, Case No. ICTR-97-21-I, Amended Indictment, ¶ 5.8 (Mar. 2, 2001).

23. Barbara Ehrenreich, *Prison Abuse; Feminism's Assumptions Upended; A Uterus Is Not a Substitute for a Conscience. Giving Women Positions of Power Won't Change Society by Itself*, L.A. TIMES, May 16, 2004, at M1.

24. *Id.*

25. P. 135. Robert Jordan continues with a provocative comment on the role of interveners:

B. Women as Political Actors

In a number of its decisions, the ICTY describes the history of the conflict in Bosnia and Herzegovina. Yet these decisions generally fail to account for the sociocultural-political context of the war in which women clearly played a role. The ICTY is not alone in its failure to see the political role of women. Many feminists, for example, portrayed Serbian women as apolitical or, at most, as “cheerleaders” for their husbands.²⁶ In fact, Serbian women often tended to be nationalist: a 1994 survey even showed them to be *more* nationalist than Serbian men.²⁷

Of course, we know that women held a number of important political positions in Bosnia, Croatia, and Serbia. Many women in political positions or who had expressed their political beliefs were imprisoned or detained. Some were raped. But at the moment they are identified as raped, they often lose their political identity. Both women and men who are tortured and raped should be permitted to be seen as political—as well as sexual and military—actors. It seems that this possibility is often more open to men than to women.

In *For Whom the Bell Tolls*, María and Robert Jordan both struggle to integrate these various identities—sexual, political, raped, and tortured—for María. Their difficulty in doing so is not uncommon. Nusreta Sivac, a Bosnian judge who was detained at Omarska, expresses this difficulty in a 1996 documentary: “Generally, it bothers me when someone says raped women . . . [R]aped women—that hurts a person, to be marked as a raped woman, as if you had no other characteristic, as if that were your sole identity.”²⁸

C. Women as Sexual Actors

I have already suggested that María both reinforces and challenges many stereotypical ideas, not just about women, but about raped women. The novel neither denies the harms, effects, or resonances of sexual assault—on either the victim or those who encounter her—nor accepts them as natural or necessary. Rape is not necessarily a fate worse than death; women can have “healthy” and “normal” emotional and sexual lives—even after rape.

The *partizans* did their damage and pulled out. The peasants stayed and took the punishment. I've always known about the other, he thought. What we did to them at the start.

I've always known it and hated it and I have heard it mentioned shamelessly and shamefully But that damned woman made me see it as though I had been there.

P. 135.

26. See, e.g., Helke Sander, *Prologue to MASS RAPE: THE WAR AGAINST WOMEN IN BOSNIA-HERZEGOVINA*, at xvii (Alexandra Stiglmeier ed., 1994). I have discussed Sander's position in more detail in Engle, *supra* note 6, at 797–98.

27. See Carol S. Lilly & Jill A. Irvine, *Negotiating Interests: Women and Nationalism in Serbia and Croatia, 1990-1997*, 16 E. EUR. POL. & SOCIETIES 109, 139 (2002) (discussing the survey).

28. CALLING THE GHOSTS, *supra* note 2.

The question of the harm of rape took center stage in the testimony of Dr. Sanda Raskovic-Ivic, a psychiatrist and psychotherapist called by the defense during one of the ICTY trials. Dr. Raskovic-Ivic had reviewed the statements of several of the witnesses in the *Kunarac* case. The doctor said she found “striking the facility with which the [women, who all testified that they had been raped,] adapted to normal life without having previously gone through any kind of treatment, basically, and that they managed to get out of all of that on their own in such a remarkable way.”²⁹ On cross-examination, the prosecution asked Dr. Raskovic-Ivic, “Isn’t it true that after a traumatic event there are people who simply get over it and go on living?” She responded that “going on with one’s life is something that may only appear to be so. . . . I think that the key problem is emotional rehabilitation and finding a partner relationship, which is very difficult.”³⁰ And a bit later, after discussing how two of her patients who had been raped now took tranquilizers to have sex with their husbands—to have sex, not enjoy it, she noted—Dr. Raskovic-Ivic added that “I have not seen in my practice that women after that would fully recuperate, rehabilitate, get married, have children, especially without professional assistance.”³¹

Hemingway’s account of María challenges this understanding of the *necessary* effects of rape. He never suggests that she was not raped or that her love for Robert Jordan is not real. Indeed, María’s character offers us a model for a response to rape that neither shames nor exacerbates the victimization of the individual who suffered the harm.

The ICTY also addressed the extent to which women in war zones are capable of having consensual sex, especially with men on the other side. War in the former Yugoslavia naturalized ethnic hatred. For many inside and outside the war, rape and other types of sexual assault began to be seen as inevitable symptoms of that hatred, making it hard to imagine consensual sex—much less love—between individuals from different ethnic groups. Thus, the defense sometimes used the presence of such relationships to challenge allegations of rape. The Office of the Prosecutor responded at least in one instance by acknowledging such relationships and refusing to see them as a threat to its case, in much the way it chose not to treat the resilience of its rape-victim witnesses as undermining its case. In the *Kunarac* trial, for example, the prosecution referenced such evidence in its closing argument, and even used it to take a jab at the credibility of Dr. Raskovic-Ivic:

The Prosecution does not deny that there was a situation in Foca at this time in which a Muslim girl did fall in love with a Serb soldier, and this was the case with Witness 191 who truly did fall in love with a man who rescued her from the accused Kunarac. She ended up choosing to stay and

29. Prosecutor v. Kunarac, Case Nos. IT-96-23-T & IT-96-23/1-T, Transcript of Record at 5473 (Sept. 12, 2000).

30. *Id.* at 5468–69.

31. *Id.* at 5469.

marrying him. Love does happen, despite the assertions by the Defence psychologist Raskovic-Ivic that it is impossible under these circumstances, and therefore attacks the credibility of Witness 191. But love only happens when someone treats another person like a human being, with tenderness and understanding, and a recognition that love must be given freely if it is to be love at all.³²

In the end, the trial chamber acknowledged that this consensual relationship existed.³³

Witness 191's relationship was obviously not the only interethnic relationship in Foca during the war. In response to a question by the prosecution concerning a possible relationship between an active Serbian male soldier and a Bosnian Muslim civilian, a defense witness stated, "Indeed, I didn't ask, and it was not the only case. Even now some girls go out with Muslim young men, and vice versa. We had so many mixed marriages, so that it wasn't a big surprise. It was normal, whatever one says about it."³⁴

Although Hemingway does not suggest any possibility of consensual sex between María and the fascists (and perhaps uses her strong political position to make it unlikely), it is hard not to imagine that consensual sex occurred between members of different sides in the war. War, even if not especially civil war, offers no exception to interethnic, interracial, or inter-political sexual liaisons. The possibility of such sexual relations should not be dismissed solely in the interest of making rape less difficult to prove.

D. *Men as Agents of Kindness*

Women are of course not the only ones given limited room to maneuver within a gender role. If women are principally seen as victims of men during war, men are generally identified as perpetrators of wartime atrocities. Whether the war is defined primarily by ethnicity or politics, one ethnicity or political group is usually seen as having committed the gravest atrocities.

Hemingway's novel challenges these dichotomies. Pilar is both a woman and a Republican who participated in the commission of war crimes. And the novel is filled with men who act kindly toward women, most notably toward María. But these men are fighting on the same side as María and politically allied with her. Perhaps politics supersedes gender.³⁵

Many of the feminist analyses of the war in Bosnia and Herzegovina tended to view it along gendered and sexual lines that made Serb men into

32. Transcript of Record at 6277 (Nov. 20, 2000), *Kunarac* (Case Nos. IT-96-23-T & IT-96-23/1-T).

33. Judgment, ¶¶ 271, 280, 293 (Feb. 22, 2001), *Kunarac* (Case Nos. IT-96-23-T & IT-96-23/1-T).

34. Transcript of Record at 5682 (Sept. 14, 2000), *Kunarac* (Case Nos. IT-96-23-T & IT-96-23/1-T) (Witness DM).

35. This is not to say that there were only two political positions in the war. Indeed, Orwell's book questions the neat division between fascists and Republicans by focusing on the many disagreements among the latter group. See, e.g., ORWELL, *supra* note 12, at 58–64.

potential rapists and Muslim women into their potential rape victims.³⁶ For those who wished to convict Serb men of genocide for rapes committed against Bosnian Muslim women, the accumulation of testimony about horrendous acts committed by Serb men against Bosnian Muslim women would seem to have been of use. Testimony of other types of acts might have been considered better overlooked or omitted.

The ICTY prosecutors resisted the temptation to allow this dichotomization of bad and good acts to dictate the line between useful and harmful testimony. It permitted and even used testimony about acts of “goodness” by Serbs toward Bosnian Muslim women. Consider, for example, the prosecutor’s statements in closing argument in the *Kunarac* case:

Scattered throughout the testimony of exceedingly cruel acts were moments of goodness, and the witnesses told you about them: About the Serb woman who befriended those kept at Partizan and did what she could to protect them; about the guards at Partizan who did manage to turn away the soldiers when they came to take women; about the soldier who saved Witnesses 191 and 186 from the accused Kunarac, and who, as 191 poignantly put it, “Didn’t see me just as a Muslim but as a human being,” and whom she later married; and even about those Serb soldiers who refused to rape despite all the pressure from their peers.³⁷

The accused used this and similar testimony about acts of kindness, even those produced by prosecution testimony, as evidence of their innocence. The prosecution, however, did not shy away from this testimony. At least in some cases, the prosecution seemed to think that such testimony was not only not damaging, but relevant to the prosecution.

IV. THE FORCE OF SHAME

Like all narratives, legal narratives are necessarily limited. Decisions are made about the admissibility of evidence based on its relevance and the extent to which it is likely to be prejudicial. The ICTY chose, in its rules of evidence and in its subsequent jurisprudence, not to permit evidence of sexual consent as a defense to many charges of rape and not to require that the prosecution prove lack of consent. Although some feminists have criticized the ICTY for not being clear enough about the irrelevance of consent or for taking a while to develop its jurisprudence in the area, in general the ICTY’s decisions on rape have been received as feminist victories.

I have suggested elsewhere that, in part by not permitting a defense of consent in what the tribunal labels “inherently coercive” circumstances, the ICTY’s jurisprudence risks labeling as rape all sex between members of opposite sides of a conflict.³⁸ But the absence of the consent defense matters for another reason: such limits necessarily restrict the stories that might be

36. Engle, *supra* note 6, at 794–96.

37. Transcript of Record, *supra* note 32, at 6273–74.

38. Engle, *supra* note 6, at 803–06.

told. Perhaps unwittingly, they prevent women from articulating the ways in which, as María explained it, they *fought* back. Recall that for María, her fight was both personal and political, and not only in the sense that the personal is political; it provided a way for her to fight fascism. In this sense, even as a civilian, she fought in the civil war.

Many civilians play important roles in war. Particularly when they are on the front lines, the military–civilian line is often blurred, as it was for María when the fascists captured her village. Indeed, sometimes civilians on the front have a more intense experience of war than soldiers who are not near the fighting.

A *Woman in Berlin*, a recently revived narrative account of the Russian occupation of Berlin in 1945, demonstrates some of the ways in which the struggle for survival often challenges the dichotomy between war and peace, and between rape and consensual sex. The book reproduces the anonymous diary of a German woman before and immediately following the fall of Berlin.³⁹ In the diary, the woman records multiple rapes of herself and others by Russian soldiers. She also describes how, on several occasions, she made calculated decisions to agree to and even seek out sexual acts for food, money, and protection. After Hitler’s defeat, when male German soldiers are about to begin to return to Berlin, the diarist makes clear her sense of having personally fought on the front:

And the women do their best to hide their men and protect them from the angry enemy. . . .

. . . [T]here’s something about this that bothers me. I often find myself thinking about the fuss I used to make over the men on leave, how I pampered them, how much respect I showed them. And some of them had come from cities like Paris or Oslo, which were farther from the front than Berlin, where we were under constant bombardment. Or else they’d been in places where there was absolute peace⁴⁰

The bombardment to which she refers is not only sexual violence but the general violence civilians face from being in a war zone—the lack of secure housing, food, and water supplies, and the reality of constant attacks.

The diarist also considers the importance of women narrating their own war stories. In her reflections on German troops on leave in Berlin during the war, she notes how “they loved to tell their stories, which always involved exploits that showed them in a good light. We, on the other hand, will have to keep politely mum; each one of us will have to act as if she in particular was spared.”⁴¹ The diarist’s apparently foregone conclusion that the return of the men will silence the women comes as a bit of a surprise,

39. ANONYMOUS, *supra* note 1. Thanks to Janet Halley for introducing me to this book. For her review essay of the same, see Janet Halley, *Rape in Berlin, or, Can Literary Memoir Help Us Think about Sexual Violence in International Humanitarian Law?*, 9 MELBOURNE J. INT’L L. (forthcoming 2008, unpublished manuscript, on file with author).

40. *Id.* at 149.

41. *Id.*

given that earlier in the same diary entry she speaks of the ways in which the collective expression of the experience of rape has been beneficial to the women: “[T]his mass rape is something we are overcoming collectively All the women help each other by speaking about it, airing their pain, and allowing others to air theirs and spit out what they’ve suffered.”⁴² She contrasts this “collective experience” of wartime rape with the individual experience in peacetime. In the latter, “there’d be the whole peacetime hoopla of reporting the crime, taking the statement, questioning witnesses, arrest and confrontation, news reports and neighborhood gossip.”⁴³

In contrasting the collective and individual experiences of rape in war and peace, the diarist makes clear that she is not denying the emotional harm that women might experience in each instance—this “doesn’t mean that creatures more delicate than [a sixteen-year old she is discussing] won’t fall apart or suffer for the rest of their lives”⁴⁴—but lifelong suffering need not be the norm. Collective response is the key to collective recovery, and such collective action is assumed to be stifled by the men’s return. But why? Would there be no way to bring men into the collective political and emotional response? How would the men respond if they were given no alternative? What if no woman claimed to have been “spared”?

I do not mean to suggest that men do not guard their own secrets or experience shame and guilt from wartime acts, from things that were done to them and things they did to others. Even the popular images of the “Vietnam vet” and the “Holocaust survivor” (both generally gendered male) as emotionally devastated or stoically silent (or both) attest to this dynamic. And indeed, *A Woman in Berlin* has caused a stir in Germany since its first publication in English in 1953 for a number of reasons.⁴⁵ It was not only the sexual content—and the author’s “shameless immorality,” as one critic put it—that made the diary taboo.⁴⁶ The diary also reflects criticism of Hitler throughout, indicating that many German civilians almost welcomed the fall of Berlin.

Yet the diarist attempts to make sense of her participation and political agency in the war. Many German soldiers and even leaders in the Third Reich began to understand in the aftermath of the war that when one is on the losing side, it sometimes pays to be a victim. The diarist is attuned to this dynamic and does not hide her own ambivalence about the role that civilians and soldiers alike played in the rise and acts of the Third Reich:

42. *Id.* at 147.

43. *Id.*

44. *Id.*

45. First released in English in 1953, it took five years before the book was published in German. Even then, a Swiss, not German, press published it. Hans Magnus Enzensberger, *Foreword to A WOMAN IN BERLIN*, *supra* note 1, at ix, xi.

46. As Hans Magnus Enzensberger, who was responsible for the reissue of the text in 2003, explains in the book’s foreword: “German readers were obviously not ready to face some uncomfortable truths, and the book was met with either hostility or silence. One of the few critics who reviewed it complained about the author’s ‘shameless immorality.’” *Id.*

[E]veryone is now turning their backs on Adolf, no one was ever a supporter. . . .

What about me? Was I for . . . or against? What's clear is that I was there, that I breathed what was in the air, and it affected all of us, even if we didn't want it to.⁴⁷

This passage reflects a significant capacity for collective responsibility in the midst of victimization. Like Pilar's story, the diary—by focusing on terrifying acts committed by those who see themselves as fighting fascism—forces the reader to question the perpetrator–victim dichotomy. The Republicans and the Russians become the victimizers, while the fascists (or at least their repressed civilian population) become the victims. Recall that Pilar admits her own “feeling of shame and distaste”—at being a *participant* (p. 119). The diarist discusses her own possible complicity with a fascist regime, but without denying her suffering. In this latter sense, she is like María; her experience as a rape victim does not fully define her.

Shame might thrive on silence, but it also thrives on narratives that make certain acts or experiences shameful. The diarist's discussion of the collective response by women in Berlin in 1945 provides one way to confront and combat those narratives (and the shame). Her recognition of her own responsibility, both in some of the individual sexual encounters and as a political participant in the nation, provides another. Hemingway's two female characters offer additional models, from Pilar's embrace of the shame to María's sexual and emotional pursuit of Robert Jordan. There are countless other responses we can—or should attempt to—imagine. Indeed, political, legal, military, and literary narratives might all be enriched by an embrace of these often contradictory responses to and experiences of shame.

CONCLUSION

In this Review, I have sought to demonstrate similarities and differences in narratives from a variety of sources, fictional and nonfictional, about sex and gender in war and its aftermath. Both literary and legal accounts offer possibilities for perpetuating as well as for challenging dominant norms and beliefs about sex, gender roles, and war. One genre is not more “accurate” or more useful than the other. Each works within its own internal rules of evidence and makes decisions about what is relevant, as I have done numerous times in this Review. In my own determinations about relevance, I have attempted both to pursue the inclusion and development of contradictory and ambivalent narratives and to reject the inevitability of certain harms and consequences of sexual violence. Overstating gender differences through the universalizing of harms experienced by women in war is likely to lead to the proliferation of legal rules and

47. ANONYMOUS, *supra* note 1, at 168.

popular understandings that further entrench the power dynamics we often seek to combat.

