

VANISHING POINTS

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Law, violence and spaces of exception in the “war on terror”

‘When one hears about another person’s physical pain, the events happening within the interior of that person’s body may seem to have the remote character of some deep subterranean fact, belonging to an invisible geography that, however portentous, has no reality because it has not yet manifested itself on the visible surface of the earth’

Elaine Scarry, *The body in pain: the making and unmaking of the world*

‘...the violence of law is often untraceably dispersed...’

Austin Sarat, *Law, violence and the possibility of justice*

‘Sacredness is a line of flight still present in contemporary politics, a line that is as such moving into zones increasingly vast and dark.... If today there is no longer any one clear figure of the sacred man, it is perhaps because we are all virtually *homines sacri*.’

Giorgio Agamben, *Homo sacer: sovereign power and bare life*

Power, visibility, space

Sovereign power

‘Traditionally,’ Michel Foucault tells us, ‘power was what was seen, what was shown, and what was manifested’. Conversely, ‘those on whom it was exercised could remain in the shade.’ The rituals of sovereign power had something of the sacred about them. They involved a spectacular, triumphant expression of individual potency, at

its most visible and indivisible at the summit of power, where ‘to be looked at, observed, described in detail, followed from day to day by an uninterrupted writing, was a privilege’. These arrangements were only interrupted when the sovereign’s existence was under attack. Then the offender would be put to death in a public ceremony that was at once torture, punishment and confirmation of the terrible power of the sovereign.

Biopower

The French philosopher sought to show that this whole apparatus was re-

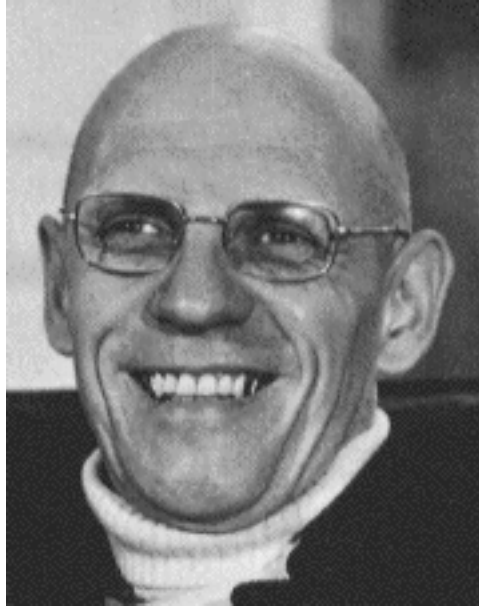
versed and displaced through the emergence of a distinctively modern apparatus of power. The threshold of visibility was lowered, and power descended to the depths, operating not through ceremony but through surveillance. It was now the subjects who had to be seen; it was by this very means that they were produced as subjects. ‘This was nothing less than the entry of life into history,’ Foucault later

‘This was nothing less than the entry of life into history, into the sphere of political techniques.’

declared, ‘into the sphere of political techniques.’ Where sovereign power had been predicated on the

right to kill – to take life or let live – power now established its dominion over life itself. Its first modality was an *anatomo-politics of the human body* (‘disciplinary power’), which imposed a compulsory visibility on its subjects that was exercised through its own invisibility. ‘It is the fact of being constantly seen,’ Foucault explained, ‘of being able always to be seen, that maintains the disciplined individual in his subjection.’ Punishment withdrew into the shadows, changing ‘from an art of unbearable sensations’ to ‘an economy of suspended rights’, in which ‘justice no longer took public responsibility for the violence that [was]

bound up with its practice.’ More generally, power worked to ‘confine the outside’: the margins of the social order, inhabited by the sick, the mad and the criminal, were created, calibrated and contained through enclosure, division and a



discipline of detail. The second modality of modern power was a *bio-politics of the human population*, directed towards the biological processes of the species body. ‘The old power of death that symbolized sovereign power was now carefully supplanted by the administration of bodies and the calculated management of life’ (‘governmentality’). For the first time in history, Foucault argued, ‘biological existence was reflected in political existence.’ This new constellation of power spiralled far beyond the state apparatus. It appealed to norms rather than laws; it deployed tactics rather than laws; ‘and if

need be [it used] the laws themselves as tactics.’ But this raised a vital question: if bio-power invests life ‘through and through’, how can it let die? It was here, so Foucault argued, that racism intervened to justify what he called ‘the death-function in the economy of biopower’. For racism made possible the distinction between ‘what must live and what must die’, so that particular groups could be exposed to death ‘or quite simply political death, expulsion, rejection...’

‘A hidden point of intersection’

These are familiar characterizations, even in this cartoonish form, but according to Italian philosopher Giorgio Agamben the ‘perspectival lines’ that they trace converge toward a ‘vanishing point’ that Foucault never located, a ‘hidden point of intersection between the juridical-institutional and the bio-political models of power.’ While Foucault insisted that sovereign power and biopower were ‘absolutely incompatible’, however, ‘point-for-point’ opposites, he was in fact acutely aware of their contradictory combination. He believed that their coexistence allowed the valences of sovereign power to conceal the mechanisms of coercion and domination that inhered within discipli-

nary power. And he argued that the two coincided exactly within the Third Reich, which generalized both sovereign power and biopower. Although Foucault concluded that only Nazism ‘took the play between the sovereign right to kill and the mechanisms of biopower to this paroxysmal point,’ he also suggested that ‘this play is inscribed in the workings of all states.’¹

Bare life

Agamben’s own thesis focuses on the same historical constellation. For him, the point of intersection between sovereign power and biopower is the production of what he calls ‘bare life’ – ‘life exposed to death’ – and he treats the concentration camp as both its exemplary locus and the paradigmatic (not paroxysmal) space of political modernity. There are

two critical distinctions between these philosophical projects.

First, Agamben refuses Foucault’s historical trajectory. He insists that ‘the inclusion of bare life in the political realm constitutes the original – if concealed – nucleus of sovereign power’, so that what characterizes a distinctively modern politics cannot be the entry of life into history but rather the ‘coincidence’ of bare life with the political realm. This coincidence is, however, contradictory: bare life is no longer at the margins of the political order, in fact it becomes a central object of political calculation, and yet it is excluded from its deliberations.

Secondly, and following directly from these proposals, Agamben twists Foucault’s spatial template. His account turns not on strategies through which the normal order contains and confines ‘the out-

¹ Michel Foucault, *Discipline and punish: the birth of the prison* (London: Penguin, 1977; first published in French, 1975) pp. 7-11, 187-8, 191-3; idem, *The history of sexuality: an introduction* (London: Penguin, 1978; first published in French, 1976) pp. 135-145; idem, “*Society must be defended*”: *Lectures at the Collège de France 1975-1976* (New York: Picador, 2003) pp. 23-41, 239-263: 35-7, 250, 253, 260; idem, ‘Governmentality’, in Graham Burchell, Colin Gordon, Peter Miller (eds) *The Foucault effect: studies in governmentality* (Chicago: University of Chicago Press, 1991) pp. 87-104.

side', but on strategies through which 'the outside' is included 'by the suspension of the juridical order's validity – by letting the juridical order withdraw from the exception and abandon it.' Agamben argues that this 'space of the exception' is produced through martial law and a state of emergency, which then become the ground through which sovereign power constitutes and extends itself.²

According to one commentator, a central task of critical analysis is to 'delineate the co-ordinates of this philosophical twilight zone.' This is not a purely philosophical zone, however, and what follows is not a philosophical essay. These ideas flicker in the margins of my argument, but I am only indirectly concerned with the 'vanishing point' that Agamben claims to see in Foucault's writings. Instead I use these ideas to bring into view a series of acutely material 'vanishing points' that have been produced through the intersections of sovereign power and biopower within the 'war on terror'. My focus is on the war prison, the

carceral archipelago that yokes Afghanistan through Guantánamo to Iraq and beyond. To be sure, the production of bare life in these places precedes the 'war': I think of all the Iraqi men, women and children who were murdered by Saddam's regime, and of all those who died as a result of the sanctions imposed by the United Nations. The war has produced bare life through other tactics at other sites too. Reducing homes to rubble by reducing cities to 'targets' within the co-ordinates of an abstract 'battle-space'; throwing a military cordon around Fallujah to ensure that its men and teenage boys could not escape the redemptive violence of the US Army: these also treat the deaths of ordinary people as uncountable and unaccountable. I focus on the 'war prison', however, because it brings into view a more complicated relationship between law, violence and space than most critics allow. While it has become a commonplace to describe the 'war on terror' as a 'war on law', I seek to show that it is also a war fought through the law ('law as tactic', as Foucault might say). While the

² Giorgio Agamben, *Homo sacer: sovereign power and bare life* (trans. Daniel Heller-Roazen) (Stanford: Stanford University Press, 1998; first published in Italian in 1995) pp. 6, 18, 20, 83. For commentaries on the relations between Foucault and Agamben, see Mitchell Dean, 'Four theses on the powers of life and death', *Contretemps* 5 (2004) pp. 16-29: 22; Diane Enns, 'Bare life and the occupied body', *Theory and event* 7.3 (2004); Mika Ojakangas, 'Impossible dialogue on bio-power: Agamben and Foucault', *Foucault studies* 2 (2005) pp. 5-28; Katia Genel, 'The question of biopower: Foucault and Agamben', *Rethinking Marxism* 18 (2006) pp. 43-62.

Bush administration shows manifest disdain for domestic and international laws, it neither dismisses nor disregards them. I also want to show that law is not somehow ‘outside’ violence, and that the ‘war on terror’ twists their embrace into ever more frenzied and furtive couplings. These considerations have important political implications. ‘If we want to resist the reassertion of the form of sovereignty at work today in the war on terror,’ Julian Reid argues, ‘it is essential that we focus upon this complicity of law and force: in other words, the complicity of the biopolitical and the sovereign.’ This means, among other things, that law becomes the site of struggle not only in its suspension *but also in its formulation, interpretation and application.*³

States of emergency and states of exception

Three days after the terrorist attacks on the Pentagon and the World Trade Center on 11 September 2001 President George W. Bush declared a National Emergency ‘by reason of [those]

attacks and the continuing and immediate threat of further attacks on the United States.’ This was followed by a further declaration on 23 September 2001 to deal with ‘the unusual and extraordinary threat to the national security, foreign policy and economy of the United States’ by ‘grave acts of terrorism and threats of terrorism committed by foreign terrorists.’ The Emergency has been renewed in each subsequent year, but this is not the only National Emergency of transnational reach declared by President Bush. I begin by tracing the process by which such emergencies have become the rule, and wire this to the state (and space) of exception produced through the ‘war on terror’.

Emergencies and the rule

On 17 June 2001, over two months before the hijacked aircraft were crashed into the Pentagon and the World Trade Center, the President had declared a National Emergency to respond to the continuing violence in Macedonia and Serbia that constituted ‘an unusual and extraordinary threat to the national security and foreign policy of the United States.’ On 2 July 2001 the President had continued the

³Julian Reid, ‘The biopolitics of the War on Terror’, *Third World Quarterly* 26 (2005) ppp. 237-52: 241; cf. Timothy Brennan and Keya Ganguly, ‘Crude wars’, *South Atlantic Quarterly* 105 (2006) pp. 19-35: 25-28.

National Emergency declared on 4 July 1999 to deal with the ‘unusual and extraordinary threat to the national security and foreign policy of the United State posed by the actions and policies of the Taliban in Afghanistan.’ And on 17 August 2001, the President had invoked the International Emergency Economic Powers Act to continue the Export Administration Act (1979), whose expiry also posed an ‘unusual and extraordinary threat to the national security, foreign policy and economy of the United States.’ The declaration was repeated in subsequent years, most recently on 2 August 2005.

Other National Emergencies were continued or declared after September 2001. On 7 March 2003 the President determined that the actions of the government of Zimbabwe and others to undermine the democratic process posed an ‘unusual and extraordinary threat to the foreign policy of the United States’ and invoked the National Emergencies Act. On 19 October 2004, the President continued the National Emergency that had been declared on 21 October 1995 to deal with the threat ‘constituted by the actions of significant narcotics traffickers centered in Colombia, and the extreme level of violence, corruption and harm such ac-

tions cause in the United States and abroad.’ On 13 March 2003 the President continued the National Emergency declared on 15 March 1995 (and revised on 6 May 1995 and 19 August 1997) to deal with the threat ‘constituted by the actions and policies of the Government of Iran, including its support for international terrorism, efforts to undermine the Middle East peace process, and acquisition of weapons of mass destruction and the means to deliver them.’ On 21 January 2004 and again on 18 January 2005 the President continued the National Emergency that had been declared on 23 January 1995 (and modified on 20 August 1998) to deal with the threat ‘constituted by grave acts of violence committed by foreign terrorists who threaten to disrupt the Middle East peace process.’ On 26 February 2004 the President continued the National Emergency that had been declared on 1 March 1996 with respect to Cuba and ‘the ostensible enforcement of its sovereignty.’ On 11 May 2004 the President declared a National Emergency to meet the threat posed by ‘the actions of the Government of Syria in supporting terrorism, continuing its occupation of Lebanon, pursuing weapons of mass destruction and missile programs, and undermining United States and international

efforts with respect to the stabilization and reconstruction of Iraq.’ During the same period the President also terminated National Emergencies that had been declared with respect to Iraq (29 July 2004) and Libya (20 September 2004).⁴

For the United States, it seems, and despite the language used to proclaim them, national emergencies are not so ‘unusual and extraordinary’ after all. In fact, Agamben has suggested that President Bush ‘is attempting to produce a situation in which the emergency becomes the rule’ – in which ‘provisional and exceptional measures’ are transformed into ‘a technique of government’ – and you can see what he means. The cascade of

national emergencies did not begin with this president (Figure 1), but what most captures Agamben’s attention, and what distinguishes the double emergencies declared in September 2001, is their proximity to a supposedly new kind of war (the ‘war on terror’) and the legal formularies that have been mobilized around it.⁵

States of exception

Agamben’s own account turns on the rotations between sovereign power, the state of exception and bare life.⁶ It is a sophisticated thesis, drawing on a heterodox group of European thinkers – Benjamin, Foucault, Heidegger and Schmitt – and relying on a series of argumentation-

⁴ Emergency powers were invoked even before the foundation of the Republic, but the present powers derive largely from the National Emergencies Act that came into law on 14 September 1976 (amended in 1985). Between 1976 and 2005 38 national emergencies have been declared within the terms of the act; 22 of these have been wholly or partially revoked. President George W. Bush has declared eight of these national emergencies, and continued seven others. See Harold Relyea, ‘National Emergency Powers’, Congressional Research Service, The Library of Congress, Washington DC, updated 15 September 2005.

⁵ Giorgio Agamben, *State of exception* (trans. Kevin Attell) (Chicago: University of Chicago Press, 2005; first published in Italian in 2003) pp. 2, 22.

⁶ Agamben’s *Homo Sacer* project comprises several volumes that he says ‘should form a tetralogy’. Those published to date are: *Homo sacer op. cit.* [which he identifies as *Homo Sacer I*]; *State of exception [Homo Sacer II. 1] op. cit.*; *Remnants of Auschwitz: the witness and the archive [Homo Sacer III]* (trans. Daniel Heller-Roazen) (New York: Zone Books, 1999; first published in Italian in 1998).

sketches plucked from classical, medieval and early modern law to establish the modalities of sovereign power. Its pivot is the dismal figure of *homo sacer*, a position Agamben says was conferred by archaic Roman law upon those who could not be

ing to one and ‘a myth’ according to another.⁷ But his purpose is neither textual nor historical. Instead, he projects this figure into the present, as a sort of cipher or bearer of bare life, by making two moves.



sacrificed according to ritual (because they were outside divine law: their deaths were of no value to the gods) but who could be killed with impunity (because they were outside juridical law: their lives were of no value to their contemporaries). Critics have treated Agamben’s reading as partial and partisan: ‘extravagant’ accord-

First, Agamben argues that *homo sacer* emerges at the point where sovereign power suspends the law, whose absence thus falls over a zone not merely of exclusion but of abandonment. The production of such a space – the state of exception – is central to Agamben’s account of mod-

⁷ Peter Fitzpatrick, ‘Bare sovereignty: *Homo Sacer* and the insistence of law’, in Andrew Norris (ed), *Politics, metaphysics and death: essays on Giorgio Agamben’s Homo Sacer* (Durham: Duke University Press, 2005) pp. 49-73: 51-55; Rainer Maria Kiesow, ‘Law and life’, *loc. cit.*, pp. 248-261: 255. It will be apparent from these criticisms that the significance of Agamben’s argument does not depend on any parallels that might be drawn between the Roman Empire and the New Rome on the banks of the Potomac. What matters is less his reading of *homo sacer* than his elaboration of ‘bare life’.

ern biopolitics. This space is produced through a speech-act, or more accurately a decision in the sense of ‘a cut in life’, that is at once performative and paradoxical. It is performative because it draws a boundary between politically qualified life and merely existent life exposed and abandoned to violence: ‘bare life’. ‘However sacred man is,’ Benjamin wrote in his *Critique of Violence*, ‘there is no sacredness in his condition, in his bodily life vulnerable to injury by his fellow men.’⁸ If this remark is read as bodily life *made* vulnerable to injury (through a sovereign decision) then it becomes clear that bare life is at once ‘immediately politicized but nevertheless excluded from the *polis*.’⁹ The cut that severs this bare life from politically qualified life is paradoxical, however, and all forms of life are thereby made precarious, because the

boundary that it enacts is mobile, oscillating: in a word (Agamben’s word) *indistinct*. This is a necessary not a contingent condition, moreover, and crucially affects both time and space. First, the exception implies a non-linear temporality: ‘The exception does not subtract itself from the rule; rather, the rule, suspending itself, gives rise to the exception and, maintaining itself in relation to the exception, first constitutes itself as a rule.’ Secondly, the exception – literally that which is ‘taken outside’ – ‘cannot be included in the whole of which it is a member and cannot be a member of the whole in which it is always already included.’ The mapping of such a space requires a topology, Agamben concludes, because only a twisted cartography of power is capable of folding such propriety into such perversity.¹⁰

⁸ Walter Benjamin, ‘Critique of violence’, in Marcus Bullock and Michael W. Jennings (eds) *Walter Benjamin: Selected Writings, Volume I, 1913-1926* (Cambridge MA: Harvard University Press, 1996) pp. 236-252. Benjamin adds: ‘What is here pronounced sacred was according to ancient mythical thought the marked bearer of guilt: life itself.’ We might remind ourselves that *sacer* means both ‘sacred’ and ‘accursed’, but Agamben recognised this tension in his previous writings only to reject it in *Homo sacer*.

⁹ Catherine Mills, ‘Agamben’s messianic politics: biopolitics, abandonment and happy life’, *Contretemps* 5 (2004) pp. 42-62: 46. This is a critical distinction: ‘bare life’ is poised *between* political life (*bios*) and *zoe* (biological or existent life).

¹⁰ Agamben, *Homo Sacer op. cit.*, pp. 18-20, 25, 28, 37. My understanding of Agamben and the exception is indebted to Nasser Hussain, Melissa Ptacek, ‘Thresholds: sovereignty and the sacred’, *Law and society review* 34 (2000) pp. 495-515; Andrew Norris, ‘The exemplary exception: philosophical and political decisions in Giorgio Agamben’s *Homo Sacer*’, in Norris (ed) *Politics, metaphysics and death op. cit.*, pp. 262-283.

Second, Agamben argues that in the contemporary world the state of exception has become the rule. Writing while Hitler's armies advanced on Paris, Benjamin had warned that 'the "state of emergency" in which we live is not the exception but the rule', and Agamben endorses and enlarges this claim.¹¹ He treats the concentration camp as 'the materialization of the state of exception', 'the pure, absolute and impassable biopolitical space' in which juridical rule and bare life enter into a threshold of indistinction', through which 'law constantly passes over into fact and fact into law, and in which the two planes become indistinguishable.' But Agamben also insists that none of this is a rupture from the project of modernity. On the

contrary, his narrative is teleological, and he identifies the camp as 'the hidden paradigm of the political space of modernity' and suggests that its operations have been unfurled to such a degree that today, through the multiplication of the camp as a carceral archipelago, the state of exception has 'reached its maximum worldwide deployment.' By this means sovereign power has produced both an intensification and a proliferation of bare life. If this seems exorbitant, Agamben is perfectly undeterred. 'The normative aspect of law can be thus be obliterated and contradicted with impunity,' he continues, through a constellation of sovereign power and state violence that 'nevertheless still claims to be applying the law.' In

¹¹ Walter Benjamin, 'On the Concept of History', in Howard Eiland and Michael W. Jennings (eds) *Walter Benjamin: Selected Writings, Volume 4, 1938-1940* (Cambridge MA: Harvard University Press, 2003) pp. 389-400.

such a circumstance, he concludes, the camp has become ‘the new biopolitical *nomos* of the planet’ and ‘the juridico-political system [has transformed] itself into a killing machine’.¹²

Guantánamo and Abu Ghraib

As Agamben has developed this critique it is, above all, the ‘war on terror’ that has come to be in his sights. When he first addressed the state of exception that was authorized through the martial pronouncements of September 2001, its iconic site – what he called its *locus par excellence* – was the US Naval Station at Guantánamo Bay, Cuba, where from January 2002 men and boys captured dur-

ing the US invasion of Afghanistan have been imprisoned. Prisoners of a war on terror who were denied the status of prisoners of war, Agamben argued that their legal status was erased: they were not legal subjects but ‘legally unnameable and unclassifiable being[s]’, ‘the object of a pure de facto rule’ or a ‘raw power’ whose modalities were ‘entirely removed from the law and from judicial oversight.’ In the detainee at Guantánamo, he concluded, ‘bare life reaches its maximum indeterminacy.’¹³ After these comments were published, a second iconic site emerged: Abu Ghraib prison, west of Baghdad, where from August 2003 men, women and boys captured during the US

¹² Agamben, *Homo Sacer op. cit.*, pp. 12, 123, 170-1, 174, 176; Agamben, *State of exception op. cit.*, pp. 86-7. In classical political theory the *nomos* referred to the matrix of conventions through which political and ethical conduct was sanctioned, endorsed and accepted. The *nomos* performed three core functions: (1) the assignment of places; (2) the nomination of the powers that derive from them; and (3) the delineation of their perimeters. This brings into focus the active sense of geo-graphing required by Agamben’s discussion, because the *nomos* can be seen as a paradigmatic performance of space: ‘paradigmatic’ because it is accepted, taken for granted, and so serves as a template for political-moral ordering (*Ordnung*); and ‘performance’ because it is activated as a concrete ‘taking place’ or localization (*Ortung*). The fulcrum of Agamben’s argument is that the ordering of space that constitutes the *nomos* is produced not only by ‘the determination of a juridical and territorial ordering (of an *Ordnung* and an *Ortung*)’ but, above all, by ‘a “taking of the outside”, an exception (*Ausnahme*)’: *Homo sacer op. cit.*, p. 19. For further discussion, see Claudio Minca, ‘The return of the camp’, *Progress in human geography* 29 (2004) pp. 405-12. It should be noted, however, that Agamben’s treatment of the camp as a ‘paradigm’ in the sense of exemplar involves him in a series of logical, self-referential difficulties that pose serious problems for his (crucial) claim about the generalization of the camp: see Norris, ‘Exemplary exception’ *op. cit.*, pp. 273-8. Agamben provides his own gloss on paradigms in ‘What is a paradigm?’ European Graduate School, Saas-Fee, Switzerland, August 2002, at <http://www.egs.edu/faculty/agamben/agamben-what-is-a-paradigm-2002.html>.

¹³ Agamben, *State of exception op. cit.*, pp. 3-4; Ulrich Rauff, ‘An interview with Giorgio Agamben: Life, a work of art without an author: the state of exception, the administration of disorder and private life’, *German Law Journal* 5 (2004).

invasion of Iraq were imprisoned. In April 2004 it became a matter of public record that a number of prisoners held there had been abused and tortured by their American captors. Selected images were published, even more disturbing than those of shackled, jump-suited prisoners in the open cages at Guantánamo: pyramids of naked bodies, hooded captives made to simulate fellatio and masturbate for their grinning guards, a terrified prisoner being attacked by guard dogs, a naked man cowering on the floor at the end of a leash held by a woman soldier, and – the most haunting of all – a hooded man, standing on a rough box, bare feet gripping the edges, a ragged sackcloth shroud slipping off his shoulders, with his arms outstretched and wires attached to his trembling body. In clear contempt of the third and fourth Geneva Conventions and of international laws proscribing torture and other forms of cruel, degrading or inhuman treatment, surely here too is raw power and bare life.

What is the connection between these two sites? Stanley Cohen locates them ‘along the fault-lines in the American Empire: neo-liberal rationality in the

centre; madness at the multicultural edges.’¹⁴ But I doubt that this sort of geopolitical mapping, with its unambiguous delineation of centre and edge, can capture the folded and fractured geographies of American power. Instead, I want to explore the ‘exceptional’ geographies that have been produced by the White House. In the first case, Guantánamo has been construed as a legally constituted space of the exception. A number of possible detention sites were considered, including US bases on Midway, Wake and Tinian islands, former Pacific Island Trust territories administered by the United States, but Guantánamo was selected because the US Department of Justice believed that the indeterminate location of the Naval Station – as ‘foreign territory, not subject to US sovereignty’ – would militate against any attempt to use federal courts to obtain a writ of *habeas corpus* on behalf of enemy aliens held prisoner there. Other legal protections were withdrawn when, following further advice from the Department of Justice, the President determined that neither al-Qaeda nor Taliban prisoners qualified as prisoners of war under the Geneva Conventions. In the second case, Abu Ghraib was declared a

¹⁴ Stanley Cohen, ‘Post-moral torture: from Guantánamo to Abu Ghraib’, *Index on Censorship* (2005) pp. 24–30: 29.

crime scene, the incidents there held to be offences against both US military and international law, and official inquiries were conducted that issued in reprimands, disciplinary actions and (in the case of enlisted soldiers) courts-martial. What happened at Abu Ghraib was glossed as unacceptable but un-American, appalling but an aberration, inexcusable but an exception.

The distinctions between the two are not uniquely determined by the withdrawal of legal protections in one case and the application of legal sanctions in the other. The two different meanings of exception that are invoked depend on the articulation of two different space-times. ‘Guantánamo’ signifies not only an ambiguous space – a grey zone over which the United States claims jurisdiction but not sovereignty – but also a place of indeterminate time: ‘As a territory held by the United States in perpetuity over which sovereignty is indefinitely deferred, the temporal dimensions of Guantánamo’s location make it a chillingly appropriate place for the indefinite detention of unnamed enemies in what the administration calls a perpetual war against terror.’¹⁵

Conversely, ‘Abu Ghraib’ is made to appear as a precise punctuation in time and space: the abuse of prisoners was confined to Tier 1A of the so-called ‘Hard Site’ of the Baghdad Central Correctional Facility, and it occurred in a number of isolated incidents during the night shift from October through December 2003. As Senator Joesph Lieberman told reporters, ‘this was a cellblock that had gone wild.’¹⁶ One is produced as an exception by being located beyond the law; the other is produced as an exception by being localised within the law.

Agamben and Auschwitz

I want to contest these partitions by showing that ‘Guantánamo’ and ‘Abu Ghraib’ are connected through a series of spaces that fold in and out of them. In describing these connections as ‘foldings’ I am using Agamben’s topological vocabulary, but my mapping is guided by two critical considerations that I need to outline in turn. One concerns the state of exception and extra-territorialization – the volatile geographies produced through the

¹⁵ Amy Kaplan, ‘Where is Guantánamo?’ *American Quarterly* 57 (2005) 831-858: 837.

¹⁶ Dan Glaister and Julian Borger, ‘1800 new pictures add to US disgust’, *Guardian* 13 May 2004.

intersections of geopolitics and international law – and the other concerns witnessing and the apparatus of violence. Both of them arise from Agamben's reflections on Auschwitz but, as I must also make clear, I am not seeking to collapse 'American Empire' (and its proto-fascist potentialities) into the Third Reich.

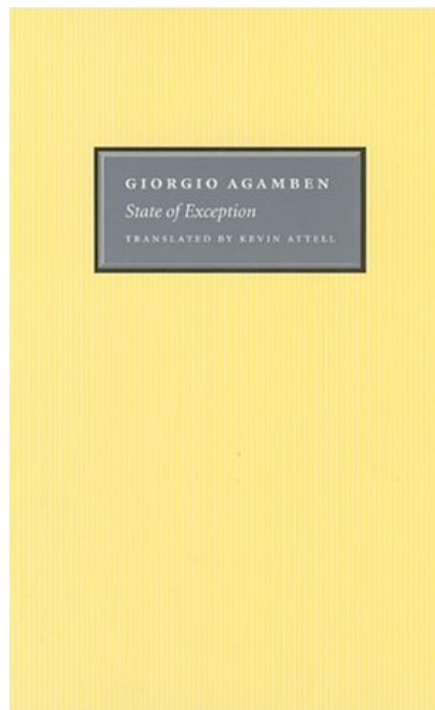
Exception and extra-territorialization

Agamben's description of the connections between sovereign power and the state of exception is almost always framed by a single state. His brief history of the state of exception in Europe and the United States is shaped by the exigencies of war: the American Civil War, the Franco-Prussian War, World War I and World War II. But the focus is on suspensions of national law during states of emergency declared by France, Germany, Italy, Britain and the United States.¹⁷ In treating the camp as the ex-

emplary locus of the modern space of exception, Agamben notes that concentration camps first emerged in colonial spaces of exception in Cuba (I will return to this) and South Africa, but he passes over both places to focus on Nazi concentration camps and, in particular, Auschwitz. But we should notice the location of Auschwitz. In these discussions Agamben constantly refers to concentration camps *in Germany*. The first concentration camps there were established by the Social Democrats during the successive

states of emergency declared by the Weimar government in the 1920s, and these provisions were continued and aggrandized after the *Volkwerdung*, the Nazi assumption of power in 1933, and the foundation of a concentration camp for political prisoners at Dachau that same year. This took place without any

formal declaration of emergency. On the contrary, under the Nazi regime the state of exception had been normalized, which is why Agamben can say that 'the camp is the space that is opened when the state of



¹⁷ Agamben, *State of exception op. cit.*, pp. 11-22.

exception begins to become the rule.’ More precisely, he argues that ‘in Germany the camp as such had become a permanent reality’. During the war concentration camps multiplied throughout Germany *and across occupied Europe*.

By 1940 most of the prisoners were non-German, and German Jews were stripped of their rights as citizens and eventually of their nationality too. All six extermination camps that were dedicated to the horrifying production of what Agamben calls the ‘German biopolitical body’ – Chelmo, Belzec,

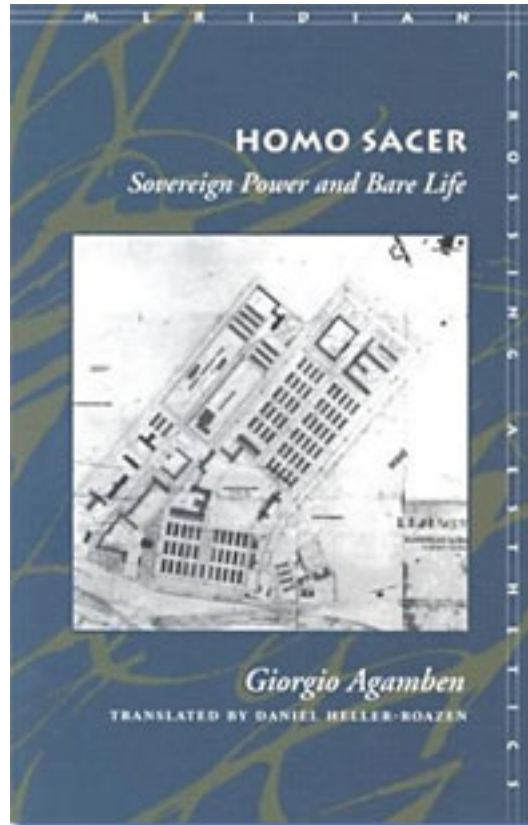
Treblinka, Sobibor, and those inside the concentration camps at Auschwitz-Birkenau and Majdanek – *were within Nazi-occupied Poland*.¹⁸ Agamben has drawn parallels between the legal status of

prisoners in these camps and prisoners in Guantánamo: their situations, so he says, are formally – ‘paradigmatically’ – equivalent.¹⁹ But to adjudicate such a claim, and to connect the metaphysics of power to its material inscriptions, it is

necessary to ask how the state of exception is mediated by the connections between war, military occupation and *international law*. This is of critical importance to the prosecution of the ‘war on terror’.²⁰

Agamben says next to nothing about this question – apart from a brief reference to *Lebensraum* passing

into *Todesraum* – whereas one of his principal provocations, the German jurist Carl Schmitt, repeatedly addressed the connections between war, military occupation and international law. He wrote a pas-



¹⁸ Agamben, *Homo sacer*, *op. cit*; idem, *Remnants*, *op. cit*.

¹⁹ Rauff, ‘Interview’ *op. cit*.

²⁰ Cf. Michael Byers, *War Law: international law and armed conflict* (London: Atlantic Books, 2005); Helen Duffy, *The ‘War on Terror’ and the framework of international law* (Cambridge: Cambridge University Press, 2005).

sionate denunciation of the continuing occupation of the Rhineland in the 1920s, and revisited the theme after the war. Schmitt saw a close connection between the state of exception within a state's territory and belligerent occupation where, in practice, 'the occupied population is subject to the holder of undifferentiated power without even the protection afforded to it indirectly by pure international law, for it is not a legal subject.'²¹ He must have known what he was talking about, given his complicity with the Nazi regime, but his argument raises a question that is central to any critical analysis of the 'war on terror'. If the *state* of exception is also a *space* of exception, as Agamben insists, then in these situations surely the exception depends on the articulation of *multiple* spaces of political-juridical violence and a 'taking outside'

through the *extra-territorial* inscriptions of colonizing power?

International law is no stranger to the inflections of colonialism and imperialism, and it is scarcely surprising that the perverse and paradoxical spatiality that Agamben attributes to the (national) state of exception should be compounded by the spatialities of international law. International law is decentred, without a unitary sovereign to ground or guarantee its powers; its provisions are distributed through a congeries of conventions, treaties, and organizations. For this reason, nineteenth-century legal philosopher John Austin famously declared that international law is not really law at all: laws could only be 'properly so called' if they were 'commands of a sovereign', which made international law merely 'law by close analogy'.²² After the Second World War one of Schmitt's sharpest interlocu-

²¹ Peter Stirk, 'Carl Schmitt, the law of occupation and the Iraq war', *Constellations* 11 (4) (2004) 527-36: 530. Schmitt addressed international law only to dismiss it because, as I note below, it cannot be founded on the constituting power of a sovereign decision.

²² According to Austin, the sovereign has the authority to 'abrogate the law at pleasure'. Prefiguring Schmitt's dictum that 'sovereign is he who decides the exception', Austin insisted that a sovereign who is bound to observe the law is no sovereign: 'Supreme power limited by positive law is a flat contradiction in terms'. See John Austin, *The province of jurisprudence determined* (edited by Wilfred E. Rumble) (Cambridge: Cambridge University Press, 1995; first published in 1832) p. 254.

tors extended this view (though to different ends) to suggest that ‘if international law is at the vanishing point of law, the law of war is perhaps even more conspicuously at the vanishing point of international law’. And more recently, Lieutenant-Colonel William Lietzau, Special Adviser to the General Counsel of the US Department of Defense, extended even that view to propose that ‘the global war on terror’ is at ‘the vanishing point of the law of war.’²³ Taken in sequence, these three telescoping perspectives direct the politico-legal gaze through an extended series of vanishing points towards ‘non-places’ for ‘non-people’: sites like Guantánamo and Abu Ghraib.

Witnessing and the apparatus of violence

Those visual metaphors raise a second set of questions: what happens when those sites become sights? The question is raised most powerfully by the images from Abu Ghraib, but despite the iconic status of both Guantánamo and Abu Ghraib – or, rather, because of it – we

need to remember that these are spaces of both constructed and *constricted* visibility and that most of what happens there continues to be shielded from the public gaze. The Department of Defense has published its own photographs of prisoners at Guantánamo, shackled between guards, kneeling and bound, or transported on stretchers to interrogation (Figure 2),



and of the camp and its cell-blocks (Figure 3).



²³ Hersch Lauterpacht, ‘The Problem of the Revision of the Law of War’, *British Yearbook of International Law* 29 (1952) pp. 360-82: 382; William K. Lietzau, ‘Combating terrorism: law enforcement or war?’ in *Terrorism and International Law: challenges and responses*, International Institute of Humanitarian Law (2002) 75-84: 79. Lietzau served as first Acting Chief Prosecutor for the Office of Military Commissions until May 2003.

The Joint Task Force at Guantánamo has its own web-site, with links to the Department of Defense's anodyne web-site on 'Detainee Affairs'.²⁴ But most of the official record of operations at Guantánamo remains classified. Similarly, while members of Congress viewed an additional cache of 1800 photographs and videos from Abu Ghraib, depicting what the Secretary of Defense eventually conceded was 'sadistic, cruel and inhumane' treatment of prisoners, his department has contested all Freedom of Information Act requests by the ACLU to release any of these photographs or videos. And what we have seen and do know



through the official sources is focused resolutely on men – here, at least, the gendering of *homo sacer* is no accident –



and the fate of women held at Abu Ghraib has been suppressed.²⁵

Still, the limited tranche of images that entered public cultures around the world multiplied with extraordinary speed. The authorized photographs from Guantánamo became commonplace, stock images used to illustrate each new story, and as such they inspired endless satirical reiterations (Figure 4).

²⁴ <http://www.defenselink.mil/home/features/gitmo>.

²⁵ Some women have broken the silence, but much of this has been confined to testimonies gathered by human rights organisations. Even so, the voices of women prisoners have been heard in the press: the appalling experience of Huda Alazawi and her sister Nahla, for example, is re-told in Luke Harding, 'After Abu Ghraib', *Guardian* 20 September 2004.

The scenes from Abu Ghraib sped through newspapers, magazines, television and websites even faster and wider – one May 2004 estimate had 24 million downloads a day – and in the fall and winter of 2004 many of the original photographs were displayed at the International Center of Photography in New York and the Andy Warhol Museum in Pittsburgh.²⁶ These images also attracted the attention of cartoonists, graphic designers, sculptors and artists around the world: from guerrilla reworkings of iPod posters (‘iRaq’) to incorporate the hooded man, which were fly-posted across New York and Los Angeles (Figure 5), through Sallahedin Sal-

lat’s Baghdad mural of a hooded Statue of Liberty flicking the switch to electrocute the trembling captive on the box, to the life-size canvases of torture at Abu Ghraib by Colombian artist Fernando Botero.²⁷

What are we to make of this image-frenzy? The photographs from Guantánamo did not attract the same visual-critical attention as those from Abu Ghraib, although some commentators have subsequently suggested that the appalling dehumanizations to which they testify were published precisely ‘to make known that a certain vanquishing had taken place, the reversal of national hu-



²⁶ ‘Abu Ghraib: pictures and movies already popular on p2p networks’, at <http://p2p.weblogsinc.com>, 28 May 2004; *Inconvenient evidence: Iraqi prison photographs from Abu Ghraib*, curated by Brian Wallis at the International Center of Photography and by Jessica Gogan and Thomas Sokolowski at The Andy Warhol Museum; text by Seymour Hersh. Journalist Seymour Hersh was instrumental in breaking the story of torture at Abu Ghraib in the *New Yorker*.

²⁷ On exhibitions in Iraq, see Nicholas Blanford, ‘Iraqi artists depict anger over Abu Ghraib’, *Christian Science Monitor* 15 June 2004. On Botero, see Elizabeth Nash, ‘The art of Abu Ghraib’, *Independent* 13 April 2005; Botero’s images may be viewed at http://www.zonaeuropa.com/20050413_2.htm.

miliation, a sign of successful vindication.’²⁸ The images from Abu Ghraib, in contrast, attracted visual-critical attention from the moment of their publication. Cultural critics have raised myriad questions about the connections between the original images and other photographic regimes in the United States – photographs of lynchings in the South and pornography were two of the most telling – but the most urgent interrogatories centred on the complex affiliations between aesthetics and politics.²⁹ In this case these are complicated by the fact that both sides in the ‘war on terror’ deploy images as strategic devices – the spectacular collapse of the Twin Towers on 9/11 and the grainy videos of kidnapped hostages in Iraq against ‘shock and awe’ and the photographs of caged prisoners at

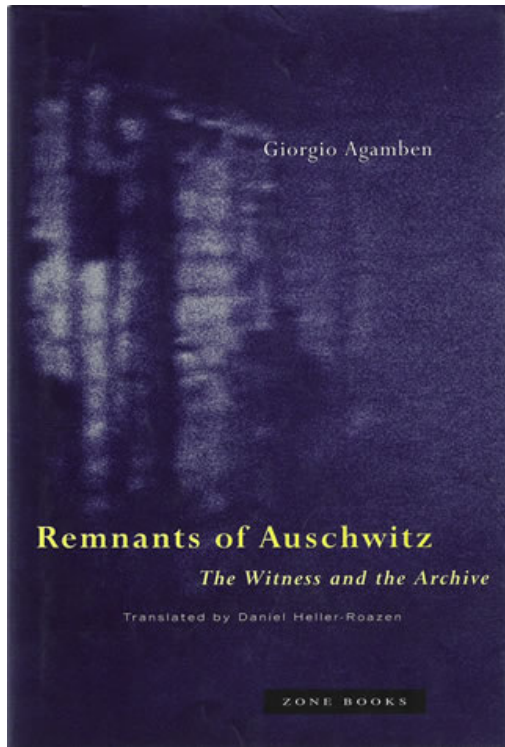
Guantánamo³⁰ – and by the strong supposition that, had it not been for the minimalist release of the Abu Ghraib images, neither the Pentagon nor the White House would have taken reports of prisoner abuse and torture with any seriousness (which is not to say that they have been taken with all possible seriousness). That the images have been aestheticized seems beyond doubt, then, but in many cases and contexts it seems no less clear that they also carry a political charge. And yet: I have come to agree with Mark Danner when he suggests that the photographs eventually came to stand in the way of an adequate understanding of what happened. The public gaze was directed towards the images not the process and policy behind them. Critical attention was focused on acts isolated as a series of stills and

²⁸ Judith Butler, ‘Indefinite detention’, in *her Precarious life: the powers of mourning and violence* (London and New York: Verso, 2004) pp. 50-100: 77. See also Naomi Klein, ‘The true purpose of torture’, *Guardian* 14 May 2005, who suggests that the Department of Defense released its photographs of caged prisoners at Guantánamo in order to confirm the absolutism of American power: to intimidate – to terrorise – not only individuals but the collective will to resist. I do not wish to be misunderstood: there were (and continue to be) vigorous denunciations of the carceral regime at Guantánamo Bay, but these critiques neither originate in nor focus on the images that were distributed by the Department of Defense.

²⁹ For particularly thoughtful commentaries, see Dora Apel, ‘Torture culture: lynching photographs and the images of Abu Ghraib’, *Art Journal* 62 (2) Summer 2005 pp. 88-100; Susan Sontag, ‘Regarding the torture of others’, *New York Times Magazine*, 23 May 2004; W.J.T. Mitchell, ‘The unspeakable and the unimaginable: word and image in a time of terror’, *English literary history* 72 (2005) pp. 291-308.

³⁰ For a commentary, see Retort [Ian Boal, T.J. Clark, Joseph Matthews, Michael Watts], *Afflicted powers: capital and spectacle in a new age of war* (London: Verso, 2005).

frames rather than on the apparatus that produced them.³¹



These concerns intersect with Agamben's reflections on Auschwitz and the ethics of bearing witness. He carefully distinguishes two senses of 'witness': one

is juridical, and concerns third-party testimony to establish the facts of the matter in a trial, whereas the other derives from first-hand experience that radically estranges its testimony from law that 'is solely directed toward judgement, independent of truth and justice.' This distinction opens into a lacuna, because those who survived Auschwitz are witnesses in neither sense. They were scarcely third-party observers, but neither can they substitute for the first-hand testimony of

those millions who died in the camps. Agamben confronts the absence – 'the untestifiable, that to which no one has borne witness' – through the figure of the *Muselmann* ('the Muslim'), the abject prisoner who moved in the indeterminate shadows of life and death, in a space where 'humanity and non-humanity' constantly passed through each other. He thus reads the *Muselmann* as a 'perfect cipher' for the camp itself, the bearer of its secret performative geography.³²

In a passionate commentary on this argument, however, Jay Bernstein suggests that what becomes lost from view, as a constitutive moment in Agamben's itinerary of reductions to bare life, is the complex of institutions, practices and people through which human beings were transformed into *Muselmänner*: the gas-chambers, the guards, the huts, the watch-towers, the railways, the police, the roundups, in short the whole apparatus of violence of the Reich itself.

'At no point does [Agamben's] account veer off from the space of impossi-

³¹ Mark Danner, *Torture and truth: America, Abu Ghraib and the war on terror* (New York: New York Review of Books, 2004) pp. xiii, 9, 40, 47.

³² Agamben, *Remnants op. cit.*, 17-18, 41, 47.

ble sight to the wider terrain: from the victim to the executioners, to the nature of the camps, to the ethical dispositions of those set upon reducing the human to the inhuman. Just the inhuman itself fills Agamben's gaze, and hence ours; such is the *pure* desire to bear witness.'

This may seem like one philosopher criticizing another for being a philosopher, but that would be to miss the point. Bernstein's concern is that Agamben transforms the act of witnessing into an aesthetic act that re-stages what he calls 'the pornography of horror' through its constitutive abstraction. For Bernstein, this aestheticization betrays 'one of the deepest strains in Agamben's thought' by 'suppressing the very ethical space it means to elaborate.' If this is so, then what are we

left with? What remains? Bernstein's answer:

'Not the chambers or Auschwitz, not a place or set of practices, not the apotheosis of a complex historical trajectory, just the result of it all. With this we can hear the shutter of Agamben's philosophic camera snap open and closed. Click!'³³

The contemporary resonance of Bernstein's response needs no emphasis, but it does need qualification. For Abu Ghraib is not Auschwitz; America's prisoners are not all *Muselmänner*; and they have not all been silenced. Although official investigations into US 'detention operations' contained no testimony from anyone held at Guantánamo, and although the final reports briskly shuffled depositions from the victims at Abu Ghraib into

³³ J.M. Bernstein, 'Bare life, bearing witness: Auschwitz and the pornography of horror', *parallax* 10 (1) (2004) pp. 2-16: 3, 7, 14. See also Catherine Mills, 'Linguistic survival and ethicality: biopolitics, subjectification and testimony in *Remnants of Auschwitz*', in Norris (ed) *Politics, metaphysics and death op. cit.*, pp. 198-221: 218 note 4.

appendices so that the torture they suffered could be rendered in the main text as an abstract sequence of actions performed by one set of bodies on another set of bodies, none the less prisoners released from both places have provided harrowing evidence of their experiences.³⁴ There is nothing straightforward about this, because here too we are in the presence of the incommunicable: physical pain is an assault not only on bodies but also on language itself. ‘Physical pain does not simply resist language,’ Elaine Scarry notes, ‘but actively destroys it, bringing about an immediate reversion to a state anterior to language, to the sounds and cries a human being makes before language is learned.’

³⁵ If prisoners are thus reduced to bare life, violently cast into a world beyond language, then the act of remembering trauma is both infinitely fragile and, in its potentiality, profoundly political. For the attempt to give voice to their physical pain gives the lie to those who would ventriloquise its infliction as ‘intelligence-gathering’.³⁶

Even so, in order to pre-empt the closure that Bernstein so acutely identifies – ‘Click!’ – and to avoid subjecting the prisoners at Guantánamo and Abu Ghraib to the further indignity of becoming the pure objects of Theory, it is vitally important to recover the lines of sight (flight?)

³⁴ This explains my own reading of the guerrilla iPod posters. Apel, ‘Torture culture’ *op. cit.*, sees in them the commodification of the ‘war on terror’. For her, they evoke both the profits made by US corporations in Iraq through non-competitive contracts and the outsourcing of torture to ‘civilian contractors’. But the images also make direct reference to sound, and so open a space for voices and the dissemination of testimony.

³⁵ Elaine Scarry, *The body in pain: the making and unmaking of the world* (New York: Oxford University Press, 1985) p. 4. ‘As the content of one’s world disintegrates,’ she adds, ‘so the content of one’s language disintegrates: as the self disintegrates, so that which would express and project the self is robbed of its source and subject’ (p. 35).

³⁶ *Ibid.*, pp. 12-14. For a brilliant reflection on these matters, that engages directly and sympathetically with Agamben, see Jenny Edkins, ‘Testimony and sovereign power after Auschwitz: Holocaust witnesses and Kosovo refugees’, in her *Trauma and the memory of politics* (Cambridge: Cambridge University Press, 2003) pp. 175-214.

that converge on these ‘vanishing points’ and to reconstruct the spaces that fold in and out of the sites of their captivity. ‘Torture’ derives from the Latin *torquere* meaning ‘to twist’, and under the sign of our colonial modernity torture not only twists bodies – piling them on top of one another, shackling them to bed frames, standing them on boxes – but also twists space and time.³⁷ To explicate this requires in turn the topology of sovereign power, and hence of the state of exception, to be understood in a particular way. Michael Dillon has argued that:

‘The topology of sovereign power is not in fact a space at all. It is a dividing practice. As such it does work. That work is not simply or even primarily, however, to command the domain of the inside of law and of order. Rather, it is to effect

a passage between inside and outside, law and violence...’³⁸

I accept much of Dillon’s argument, but conceptions of space need not be limited to the container model that he properly rejects. I prefer to treat space as a performance, a doing, because only in this way do I think it possible to show (first) how ‘Guantanamo’ has been produced through a series of juridical divisions, a sort of parsing of legal sentences, and (second) how ‘Guantanamo’ and other spaces were folded into ‘Abu Ghraib’ and beyond. I have briefly reintroduced the



³⁷ This is intrinsic to the practice of torture wherein, as Mark Bowden notes, space and time, ‘the anchors of identity’, are made ‘to come unmoored’ so that the victim is marooned in a bizarre ‘landscape of persuasion’ where everything becomes ‘tangled’. Mark Bowden, ‘The dark art of interrogation’, *Atlantic Monthly*, October 2003; see also his ‘Lessons of Abu Ghraib’, *loc. cit.*, July/August 2004.

³⁸ Michael Dillon, ‘Correlating sovereign and biopower’, in Jenny Edkins, Véronique Pin-Fat, Michael J. Shapiro (eds) *Sovereign lives: power in global politics* (New York: Routledge, 2004) pp. 41-60: 56.

scare-quotes to emphasize that neither is reducible to a single space: both are prisons but their cages and bars are not able to contain the practices that are inscribed through them. In explaining why this is the case, I also hope to show that law and violence are not opposed but hold each other in a deadly embrace.³⁹

Guantánamo Bay

Critics have described the Bush administration as waging ‘a war on law’, and the President has provided them with substantial evidence. ‘International law?’ he responded to a reporter in December 2003. ‘I’d better call my lawyer. I don’t know what you’re talking about by international law.’⁴⁰ More particularly, it has become common to treat the US prison complex at Guantánamo Bay as a ‘lawless place’ that is ‘beyond the reach of national

and international law’; a place where sovereign power has been mobilized ‘outside the rule of law’; a wild zone subject to ‘a lawless and prerogatory power’, where ‘the law is effectively suspended in both its national and international forms’ and where sovereign power is extended ‘in excess of the law’. Agamben himself describes the state of exception as ‘a kenomatic state’, a vacant space limned by the ‘emptiness of law’.⁴¹ I want to change the landscape these claims bring into view by triangulating ‘Guantánamo’ from three points. First, I plot the contours of Euro-American exceptionalism in order to mark the colonial, colonizing gestures through which it has been authorized; next, I rattle the chain that yokes colonialism, violence and the law at Guantánamo; finally I trace the legal and paralegal production of Guantánamo as a staging-post for the ‘war on terror’. En route, it will become clear

³⁹ Cf. ‘The sovereign is the point of indistinction between violence and law, the threshold on which violence passes over into law and law passes over into violence’: Agamben, *Remnants op. cit.*, p. 32. On performance, performativity and space see Gillian Rose, ‘Performing space’, in Doreen Massey, John Allen and Philip Sarre (eds) *Human geography today* (Cambridge: Polity Press, 1999) pp. 247-59.

⁴⁰ Philippe Sands, *Lawless world: America and the making and breaking of global rules* (London: Allen Lane, 2005) p. xii; ‘President discusses year-end accomplishments in Cabinet meeting’, at <http://www.whitehouse.gov/news/releases>, 11 December 2003.

⁴¹ Amy Kaplan, ‘Homeland insecurities: reflections on language and space,’ *Radical History Review* 85 (2003) pp. 82-93: 91-2; idem, ‘Where is Guantánamo?’ *op. cit.* p. 832; Butler, ‘Indefinite detention’ *op. cit.*, pp. 51, 56, 64; Agamben, *State of exception op. cit.*, pp. 6, 86.

that Bush does indeed know what ‘international law’ is about – and that he has repeatedly called his lawyers.

Euro-American exceptionalism

In their attempt to unravel the connections between what they call ‘our brutal global state of war’ and ‘the age of Empire’, Michael Hardt and Antonio Negri begin with the politico-juridical intersections between two exceptions, one European and the other American.⁴² These intersections are also effacements, however, and to show why this is so I want to revisit Agamben’s reading of the work of Carl Schmitt to draw out the shadows of colonial power cast by these two exceptions. Part of Schmitt’s purpose was to show that in Europe in the sixteenth and seventeenth centuries the theological-moral model of the ‘just war’ sanctioned by the medieval Christian Church against infidels yielded to the secular-juridical model of a regulated and rationalized war between formally equiva-

lent sovereign states. In this economy of death warring sovereigns were required to recognise each other as legal equals, and on the field of battle their subjects were obliged to recognise each other as subjects. There were thus, at least in principle, mutually acknowledged limits to enmity and violence, and within this space – the space of the *jus publicum Europaeum* – sovereign power operated, so Schmitt claimed, through normative regulation. He argued that unlimited enmity and unrestrained violence were now bracketed and projected ‘beyond the line’ into the non-European (and specifically the ‘New’) world. As William Rasch puts it, ‘Europe sublimate[d] its animality by establishing the Americas as an extralegal zone in which bestial deeds [could] be “acted out” far away.’ Schmitt identified this zone of alterity – the space supposedly vacant for the play of colonial power – with ‘the state of nature in which everything is possible’ and also with the state of exception which ‘bases itself in an obviously analogous fashion on the idea of delimited, free

⁴² Michael Hardt and Antonio Negri, *Multitude: war and democracy in the age of empire* (New York: Penguin, 2004) pp. 5-10.

and empty space' understood as a 'temporary and spatial sphere in which every law



is suspended.' For Agamben, however, this was no analogy. Instead, the state of nature and the state of exception emerge as 'but two sides of a single topological process in which what was presupposed as external (the state of nature) now reappears, as in a Möbius strip or a Leyden jar, in the inside (as state of exception).'

⁴³

This is a contentious but highly effective fiction, a celebration of a particular constellation of political and economic power, and Schmitt's work has to be approached with the utmost critical vigilance (in relation to both Europe and 'not-Europe').⁴⁴ His central, elegiac point was that the line – a colonial meridian – had slowly dissolved by the early twentieth century, and that the wild zones of colonial violence had appeared within the ruins of the European order. What had happened, and according to Agamben is still happening, is that the 'juridically empty' space of the state of exception 'has transgressed its spatiotemporal boundaries and now, overflowing outside them, is starting to coincide with the normal order,

⁴³ Carl Schmitt, *The Nomos of the Earth in the international law of the jus publicum Europaeum* (trans. Gary Ulmen) (New York: Telos, 2003; first published in German in 1950). My understanding of Schmitt has been facilitated by William Rasch, 'Human rights as geopolitics: Carl Schmitt and the legal form of American supremacy', *Cultural critique* 54 (2003) pp. 120-47; Matti Koskeniemi, 'International law as political theology: how to read *Nomos der Erde*?' *Constellations* 11 (2004) pp. 492-511; Agamben, *Homo sacer op. cit.*, pp. 36-7.

⁴⁴ Schmitt substitutes teleology for history; his account of a 'virtuous past' in which war within Europe was subject to rationalization and regulation is a projection of political theology onto the plane of absolutism: Koskeniemi, 'International law' *op. cit.*, p. 499.

in which everything again becomes possible.’ The dissolution of the line should not be read as a reversion to Hobbes’ state of nature, however, but rather as the emergence of the state of exception as what Agamben sees as ‘the permanent structure of juridical-political *de*-localization and *dis*-location.’ What was once confined is now loose in the world.

45

Two conclusions follow from this rough sketch that bear directly on the production of ‘Guantánamo’. First, by implication, the space of normative regulation was produced by European states asserting their sovereignty over the world beyond the line and co-producing through those assertions a vast colonial space of exception. But its ‘topographies of cruelty’, as Achille Mbembe calls them, can-

not be reduced to and hence derived from a space of absolute lawlessness.⁴⁶ Colonial wars were raw, ruthless, feral; but the violence of colonialism was not confined to warfare. The law was intimately involved in the modalities of colonial violence, and international law bears the marks of those colonial predations; its locus is drawn not only through relations of sovereign states, therefore, but also through what Peter Fitzpatrick calls ‘the colonial domination of people burdened by racial difference.’⁴⁷ This is not a peculiarity of international law, which shares in a generalized gallery of imaginative geographies where the other is marked as irredeemably other, and this cultural carapace is extremely important. The two operate together, and the racializations that they jointly license have been given a particular force by President Bush’s declara-

⁴⁵ Agamben, *Homo sacer op. cit.*, pp. 17-18 (my emphasis).

⁴⁶ Achille Mbembe, ‘Necropolitics’, *Public culture* 15 (2003) pp. 11-40. Mbembe works with both Schmitt and Agamben to expose the conjunctions between colonial modernity, sovereign power and what he calls ‘the work of death’. He sometimes makes the conjuncture conditional: ‘the colonies are the locus par excellence where the controls and guarantees of judicial order *can* be suspended’; ‘the colonies *might* be ruled over in absolute lawlessness’ (p. 24; my emphases). But the tenor of his argument is to treat colonial power as synonymous with lawlessness, and this means that he cannot adequately register the ways in which law and violence march hand in hand.

⁴⁷ Rasch, ‘Human rights’ *op. cit.*, pp. 127-8; Peter Fitzpatrick, “‘Gods would be needed...’: American Empire and the rule of (international) law”, *Leiden journal of international law* 16 (2003) pp. 429-66: 448. Richard Falk emphasizes that international law has a contradictory constitution, operating under the sign of colonialism as an instrument of both rule and resistance, ‘a Frankenstein that cannot be consistently controlled by its inventors’: ‘Orientalism and international law: a matter of contemporary urgency’, *Arab World Geographer* 7 (2004) 103-116: 109. But as we will see, the law produces its own monsters too.

tion of the ‘war on terror’ as a war of ‘Civilization’ against the barbarians at the gates (and within the walls). This invocation of an *indivisible* global civilization works to make the exception – understood as a zone of indistinction between the law and its suspension – *invisible* by conjuring a shape-shifting, nomadic enemy who inhabits the shadows beyond the human. This is a strategy that does not so much *sense* the presence of the enemy, like the midnight scurrying of rats, as *produce* the enemy through the classifications of its own unnatural history. Schmitt himself warned that to confiscate the word ‘humanity’ and mobilize it to wage war would mean ‘denying the enemy the quality of being human and declaring him to be an outlaw of humanity.’ By this means, he continued, war can ‘be driven to the most extreme inhumanity’. In short, ‘to fight in the name of humanity does not eliminate enmity’, as Andrew Norris observes: ‘it only makes one’s enemy the representative or embodiment of the inhuman.’⁴⁸ These reductions, given form through both the law and its suspension,

reactivate a colonial past in a colonial present:

‘These fine ethnic distinctions effectively revive a colonial economy in which inhumanity, measured against the benchmark of healthier imperial standards, diminishes human rights and can defer human recognition. The native, the enemy, the prisoner and all the other shadowy “third things” lodged between animal and human can only be held accountable under special emergency rules and fierce martial laws. Their lowly status underscores the fact that they cannot be reciprocally endowed with the same vital humanity enjoyed by their well-heeled captors, conquerors,

⁴⁸ Rasch, ‘Human rights’ *op. cit.*, p. 130; Carl Schmitt, *The concept of the political* (trans. George Schwab) (Chicago: University of Chicago Press, 1996; first published in German in 1932) p. 54; Andrew Norris, “‘Us and Them’: the politics of American self-assertion after 9/11”, *Metaphilosophy* 35 (2004) pp. 249-27.

judges, executioners and other racial betters.’⁴⁹

Second, by extrapolation, the United States has sought not only to displace ‘old Europe’ (Rumsfeld’s dismissive phrase) but also to arrogate to itself the power to draw new horizons of visibility and to constitute itself ‘as the sovereign who transcends the law and thus assures its meaning and enforcement.’ In seeking to occupy the space of the global sovereign, this strategy renders international law as ‘normal law’, so to speak, ‘law properly so called’ in something like Austin’s sense, only to be able to announce its bracketing or suspension. The logic articulated through the ‘war on terror’ thus derives directly from Schmitt’s political theology: it asserts that if ‘international law is to be seen as universal and international politics as ethical,’ then, as Costas Douzinas remarks, ‘one power must be ex-

empted from its operations, and through its forceful intervention and sovereign interpretation of the law, give it its desired seamlessness.’ It also gives it its ruthlessness, for the humanism that this licenses is what Douzinas calls a ‘military humanism’ that effaces its uncounted others as so many mute bearers of bare life. This is the pivot around which the radical critique of American Empire turns. Where once the United States claimed to be exempt from the corruptions of European forms of sovereignty, Hardt and Negri argue that it now claims exemption from the law itself. And where once war was regulated, subordinated to international law, it is now regulating, exploiting the conjunctions between violence and the law.⁵⁰

Colonialism, violence and the law

Colonialism frequently operates under the imprimatur of law, both in the

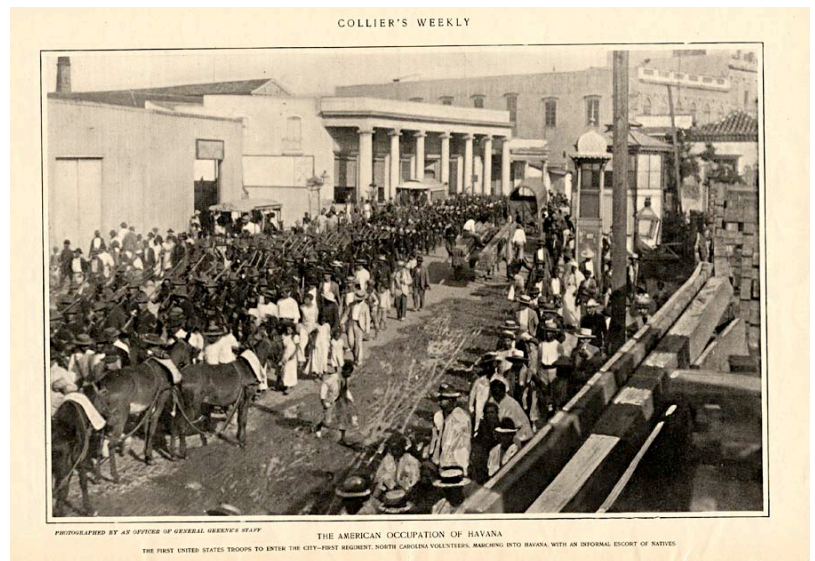
⁴⁹Paul Gilroy, “‘Where ignorant armies clash by night’: homogeneous community and the planetary aspect’, *International journal of cultural studies* 6 (3) (2003) pp. 261-276: 263; see also Derek Gregory, *The colonial present: Afghanistan, Palestine, Iraq* (Oxford: Blackwell, 2004).

⁵⁰Anne Orford, ‘The destiny of international law’, *Leiden journal of international law* 17 (2004) pp. 441-76: 444; Costas Douzinas, *The end of human rights* (Oxford: Hart, 2000) p. 329; idem, ‘Humanity, military humanism and the new moral order’, *Economy and society* 32 (2003) pp. 159-183; Hardt and Negri, *Multitude op. cit.*, pp. 9, 22.

past and (as the people of Palestine and Iraq know only too well) in the present, and its violent assaults on land, liberty and life are regularly authorized and articulated through legal formularies. The legislative and interpretive fields, the actions of rulers and judges, are thus suffused with violence. If their metropolitan operation ‘takes place in a field of pain and death’, as Robert Cover once presciently observed, then how much more anguished is their colonial mode of address; if their normal powers are ‘realized in the flesh’, as he also remarked, then how much more painful is their emergency invocation.⁵¹

Guantánamo Bay bears the marks of these ligatures between colonialism, violence and the law. Its modern history has been shaped by military encounters between three imperial powers – Spain, the United States and the Soviet Union – and by enduring military occupation. Cubans rose against their Spanish occupiers three times in the nineteenth century: in

1868-78, 1879-8 and 1895-98. One of the principal architects of the final War of Independence was the exiled writer, José Martí, who was killed in a battle with the Spanish army just one month after he returned to the island. It was one of his poems that later provided the inspiration for the song ‘Guantánamera’. Alarmed by the strength and success of the revolutionaries, the Spanish military governor sought to cut off their support in the countryside through a policy of *reconcentración*. Hundreds of thousands of peasants were forcibly relocated into barbed-wire con-



centration camps close to the towns and cities, where many (some reports said as much as one half) of them were left to starve to death. An American Senator

⁵¹ Robert Cover, ‘Violence and the word’, *Yale Law Journal* 95 (1986) pp. 1601-1629; Nasser Hussain, ‘Towards a jurisprudence of emergency: colonialism and the rule of law’, *Law and critique* 10 (1999) pp. 93-115; idem, *The jurisprudence of emergency: colonialism and the rule of law* (Ann Arbor: University of Michigan Press, 2003).

who travelled through the four western provinces described a landscape of indistinction and terror: 'It is neither peace nor war. It is concentration and desolation.' Public opinion in the United States was inflamed by press reports of these atrocities, but the desire for military intervention was also motivated by thoroughly

instrumental economic and strategic interests. In fact the United States had made repeated attempts to purchase Cuba from Spain in

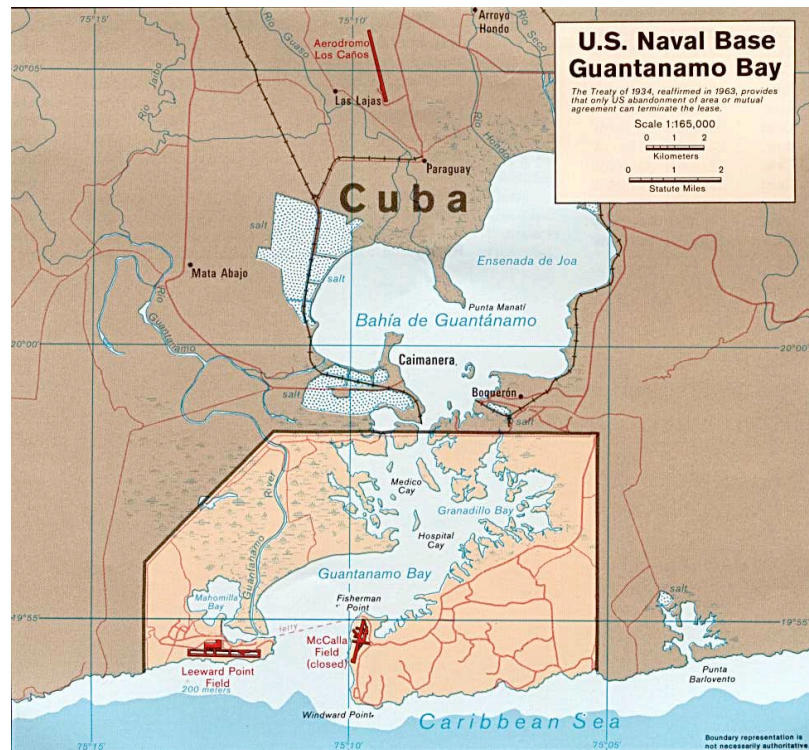
the closing decades of the nineteenth century, and it was only after the last of these offers had been rejected in 1897 that Washington, buoyed by the rising tide of public opinion, found a pretext and in 1898 declared war on Spain. The ironies

multiply. Then as now, this was an image war. Photographs of the effects of Spain's counter-insurgency operations heightened public condemnation of its oppressive colonial regime. This is the origin of the apocryphal telegram from William Randolph Hearst to Thomas Remington in Havana: 'You furnish the pictures, and I'll

furnish the war.' And, as Daniel Ross wryly observes, 'the American prize for its outrage at Spanish concentration camps

in Cuba has become the right to run its own camp on the same territory.'⁵²

When peace was concluded later that year Spain relinquished all its overseas possessions but Cuba, far from being



⁵² Louis Pérez, *Cuba between empires, 1878-1902* (Pittsburgh: University of Pittsburgh Press, 1983) pp. 55-6; Ada Ferrer, *Insurgent Cuba: race, nation and revolution 1868-1898* (Chapel Hill: University of North Carolina Press, 1999); W. Joseph Campbell, 'Not likely sent: the Remington-Hearst "telegrams"', *Journalism and mass communication quarterly* 77 (2000) pp. 405-22; Daniel Ross, *Violent democracy* (Cambridge: Cambridge University Press, 2004) p. 128.

free, remained under American military occupation for three more years. In 1901 the United States stipulated its conditions for Cuban independence through provisions set out in the Platt Amendment to the appropriations bill in the US Congress that authorized the continued financing of the occupation. The Cuban Constitutional Assembly rejected these provisions as an encroachment on the independence and sovereignty of the island, but the United States insisted that military occupation would not end without their incorporation into the constitution. They were narrowly endorsed by the Assembly in 1902, and reserved to the United States the right to intervene in the future ‘for the preservation of Cuban independence’ and, to that end, required Cuba to sell or lease to the United States ‘lands necessary for coaling or naval stations’.⁵³ Accordingly Guantánamo Bay was leased from Cuba in February 1903 ‘for the time required for the purposes of coaling and naval stations’ and the United States was permitted ‘to do any and all things necessary to fit the premises for use as coaling and naval stations only, and for no other purpose’ (Figure 7). The lease could only be termi-

nated with the consent of both parties or through the unilateral abandonment of the base by the United States. Its central provision read thus:

‘While on the one hand the United States recognizes the continuance of the ultimate sovereignty of the Republic of Cuba over the above described areas of land and water, on the other hand the Republic of Cuba consents that during the period of the occupation by the United States of said areas under the terms of this agreement the United States shall exercise complete jurisdiction and control over and within said areas.’

The language, as Kaplan argues, imposes a hierarchy between recognition and consent, ‘rendering Cuban sovereignty over Guantánamo Bay contingent on the acknowledgment of the United States, in exchange for which Cuba agrees to cede

⁵³ The US invoked these provisions to support its military interventions in 1906, 1912, 1917 and 1920. The Platt Amendment was abrogated in 1934, when a new treaty was signed between the US and Cuba, but this did not affect the lease of Guantánamo.

sovereignty over part of the territory it never controlled.’ The lease also locates Guantánamo in an ambiguous space between the ‘ultimate sovereignty’ of Cuba and the ‘complete jurisdiction’ of the United States.⁵⁴

In 1959, following the revolution, the government of Cuba tried unsuccessfully to terminate the lease, and since then it has maintained that the presence of American armed forces on Cuban soil is an illegal occupation (as President Fidel Castro puts it, ‘a knife in the heart of Cuba’s sovereignty’). At the height of the Cuban missile crisis in October 1962, President John F. Kennedy rejected the advice of his

Secretary of Defense Robert McNamara to propose a timetable for US withdrawal from Guantánamo as a *quid pro quo* for the removal of Soviet medium-range missiles and bombers from the island. Ken-

nedy also ignored requests from both Khrushchev and Castro to return Guantánamo to Cuba. The base’s perimeter was strengthened as a symbolic frontier between capitalism and communism, and Guantánamo remained under American occupation throughout the Cold War and beyond. Over the years the base provided logistical support for US military interventions in Cuba as well as the Dominican Republic, Guatemala, Grenada, Nicaragua and Panama. Before the final decade of the twentieth century, however, its role was being reassessed, and in 1988



James H. Webb, Secretary of the Navy, thought it ‘reasonable to conclude that we will lose our lease in Guantánamo Bay in 1999.’ His conclusion was premature; the lease was retained. From 1991 to 1994 Guantánamo Bay was used to provide de-

⁵⁴ Louis Pérez, *Cuba under the Platt Amendment, 1902-1934* (Pittsburgh: University of Pittsburgh Press, 1986); Alfred de Zayas, ‘The status of Guantánamo and the status of the detainees’, Douglas Mc.K. Brown Lecture, University of British Columbia, November 2003; Kaplan, ‘Where is Guantánamo?’ *op. cit.* p. 836

tention camps for 36,000 refugees from the military coup in Haiti who were denied entry to the United States, and again in 1994-5 to imprison 21,000 Cubans seeking asylum in the United States. The forced repatriation of the detainees was justified on the grounds that they were not entitled to constitutional protection until they were at or within the borders of the United States. This claim traded on Guantánamo's ambiguous location, but the construction of detention camps also violated the terms of the lease, which allowed the land to be used only as a coal-ing or naval station. A prison camp is at best an extra-legal appendix to the original agreement, and yet it became the central mission of the base.⁵⁵

When Kaplan describes Guantánamo as 'haunted by the ghosts of empire', then, she is surely correct. She also suggests that its history reveals 'a logic grounded in imperialism, whereby coercive state power has been routinely

mobilized beyond the sovereignty of national territory and outside the rule of law.' Much of that is accurate too; but the base has also emerged through a long process of legal argument, and it subsists through legal formularies – bundles of memoranda and minutes, acts and amendments, treaties and the terms of the lease itself – that, taken together, have produced a legal impasse: a stand-off between the United States (which insists it has a right to occupy Guantánamo) and Cuba (which has declared the continued occupation illegal). For this reason it seems necessary to add that the space of Guantánamo also derives from law at a standstill. It is a zone of indistinction where the legalized and the extra-legal cross over into one another.⁵⁶

Producing Guantánamo

The Bush administration has made much of the presumptive novelty of the 'war on terror', but the selection of Guantánamo as a prison camp, the desig-

⁵⁵ Minutes of the National Security Council meeting, 20 October 1962, at the Avalon Project at Yale Law School, <http://www.yale.edu/lawweb/avalon>; 'U.S. Military: Strength Through Flexibility', Remarks by James H. Webb, National Press Club, Washington D.C., 13 January 1988; de Zayas, 'The status of Guantánamo' *op. cit.* The initial camps for Haitian refugees were set up around radio antennas on the south side of the base and identified by radio call-signs (Camp Alpha through Camp Golf); later camps were set up on the north side of the base and given call-signs from the opposite end of the phonetic alphabet (including Camp X-Ray).

⁵⁶ Kaplan, 'Where is Guantánamo?' *op. cit.*, pp. 832, 836; cf. Agamben, *State of exception op. cit.*, p. 48, who describes the state of exception as both 'an emptiness *and standstill* of law' (my emphasis).

nation of its inmates as ‘unlawful combatants’, and the delineation of a regime of interrogation do not depart from the historical templates that shaped the base’s colonial history and their mobilization of legal protocols. In particular, Fleur Johns argues that:

‘The plight of the Guantánamo detainees is less an outcome of law’s suspension or evisceration than of elaborate regulatory efforts by a range of legal authorities. The detention camps are above all works of legal representation and classification. They are spaces where law and liberal proceduralism speak and operate *in excess*.’⁵⁷

This seems to me exactly right; but what is the imperative behind such excess? What demands such an involuted legalism

through which the law is contorted into ever more baroque distinctions? The answer is, in part, a matter of indeterminacy: the Bush administration did not speak with a single voice (until the President spoke). For far from the reactivation of the prison camps at Guantánamo signalling the retreat of law from the field of battle, there was a vigorous debate between the Departments of Defense and Justice and the State Department over the prosecution of the ‘war on terror’. Legal advisers and political principals constantly invoked legal precedents and interpretations to support their rival claims.

The immediate objective, on which both sides seem to have agreed, was to place selected prisoners taken during the war in Afghanistan beyond the reach of any federal district court that might entertain a *habeas corpus* petition.

⁵⁸ Here the ambiguous status of Guantánamo conferred a distinct advantage over other possible sites like the US

⁵⁷ Fleur Johns, ‘Guantánamo Bay and the annihilation of the exception’, *European journal of international law* 16 (2005) pp. 613-35: 614.

⁵⁸ A writ of *habeas corpus* orders a prisoner to be brought before a court to determine whether s/he has been imprisoned lawfully. Congress granted all federal courts jurisdiction under title 28 of the United States Code to issue such writs to release from custody prisoners held by state or federal agencies in violation of the Constitution. *Habeas corpus* has been described as ‘the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action’ (Harris v. Nelson, 394 U.S. 286, 290-91 (1969)), but its genealogy is more complicated and contradictory than this liberal reading implies: see, for example, Husain, ‘The “Writ of Liberty” in a regime of conquest: Habeas corpus and the colonial judiciary’, in his *Jurisprudence op. cit.*, Ch. 3.

bases on Midway and Wake, which were included within the federal district of Hawaii. For Guantánamo was ‘neither part of the United States nor a possession or territory of the United States’ and yet the United States exercised ‘complete jurisdiction’ over the base. The reactivation of Guantánamo thus produced the space envisaged in the President’s Military Order of 13 November 2001, in which it would be possible to detain and try suspects ‘for violation of the laws of war and other applicable laws’ while simultaneously suspending ‘the principles of law and rules of evidence generally recognised in the trial of criminal cases in the United States district courts’.⁵⁹ These provisions, elaborated through a series of detailed memo-

randas, allowed a convergence between sovereign power and governmentality through what Judith Butler describes as ‘a law that is no law, a court that is no court, a process that is no process.’ She sees this as an instrumental, expedient, paralegal tactic, in which both detention and trial are determined by discretionary judgments that ‘function within a manufactured law or that manufacture law as they are performed.’⁶⁰

The imperative of indefinite detention, extending the emergency *ad infinitum*, jibed against a second objective that interrupted its limbo through the counter-imperative of speed.⁶¹ This is where battle was joined between Defense and Jus-

⁵⁹ ‘Detention, treatment and trial of certain non-citizens in the war against terrorism’, Military Order, 13 November 2001; ‘Possible *Habeas* jurisdiction over aliens held in Guantánamo Bay, Cuba’, Memorandum from Patrick F. Philbin and John C. Yoo, Deputy Assistant Attorneys General, US Department of Justice, to William J. Haynes II, General Counsel, US Department of Defense, 28 December 2001: both reprinted in Karen J. Greenberg and Joshua L. Dratel (eds), *The Torture Papers: the road to Abu Ghraib* (Cambridge: Cambridge University Press, 2005) pp. 25-28; 29-37. In June 2004, however, the Supreme Court ruled that it had jurisdiction over Guantánamo to hear *habeas corpus* petitions from those imprisoned there. This landmark ruling was subsequently challenged by the Detainee Treatment Act (2005) that, *inter alia*, limited jurisdiction to the validity of the decision to detain a non-citizen as an ‘enemy combatant’; it also reaffirmed that ‘For the purposes of this section, the term “United States”, when used in a geographic sense, ... does not include the United States Naval Station, Guantánamo Bay, Cuba.’ See also pp. 00-00, below.

⁶⁰ Butler, ‘Indefinite detention’ *op. cit.*, pp. 58, 62; Johns, ‘Guantánamo Bay’ *op. cit.*, radicalizes this interpretation: for her, Guantanamo Bay is ‘more cogently read as the jurisdictional outcome of attempts to *domesticate* the political possibilities occasioned by the experience of exceptionalism.’ The regime at Guantanamo Bay, so she suggests, ‘is dedicated to producing experiences of having no option, no doubt and no responsibility’.

⁶¹ Butler says much less about this second imperative, though she does acknowledge that the withdrawal of legal protections from the prisoners and their indefinite detention are effected through their constitution as ‘less than human’: pp. 75-6, 98. Johns is silent on the question.

tice and the State Department. The first group argued that the ‘war on terror’ had inaugurated a new paradigm that required interrogators ‘to quickly obtain information from captured terrorists and their sponsors’, and in their view this rendered ‘obsolete [the] Geneva [Convention]’s strict limitations on questioning of enemy prisoners’. That being so – and law officers in the State Department protested that it was not so: ‘a decision that the Conventions do apply [to *all* parties in the war in Afghanistan] is consistent with the plain language of the Conventions and the unvaried practice of the United States’ – interrogations would have to be conducted

beyond the prosecutorial reach of both the federal War Crimes Act and the Geneva Conventions. Accepting the advice of Defense and Justice, Bush declared that none of the provisions of the Geneva Conventions applied to al-Qaeda prisoners. He also accepted that he had the authority ‘under the Constitution to suspend [the] Geneva [Conventions] as between the United States and Afghanistan’, and his favoured legal advisers outlined several ways in which he might do so. Bush decided not to invoke this option (though he reserved the right to do so in future); he preferred the expedient of deeming Taliban prisoners to be ‘unlawful combatants’

who did not qualify as prisoners of war under the Geneva Conventions.’⁶² There are established procedures to determine the status of prisoners taken during armed conflict, but the White House insisted that these were only to be invoked where there was doubt. And in the view of the President’s inner circle, reinforced by what one has to see as their political theology, there could never be any doubt.⁶³

Here was sovereign power at its most naked, and when the first prisoners from Afghanistan arrived at Guantánamo Bay in January 2002, it was equally clear that they were to be reduced to bare life. All legal protections had been visibly withdrawn from them. Photographs of their transportation and incarceration at once displayed and reinforced their reduction to something less than human. They had been chained, gloved, ear-muffled and masked throughout their twenty-seven

⁶² ‘Application of treaties and laws to al Qaeda and Taliban detainees’, Draft memorandum for William J. Haynes III, General Counsel, Department of Defense, from John Yoo (Deputy Assistant Attorney General) and Robert Delabunty (Special Counsel), 9 January 2002; ‘Application of treaties and laws to al Qaeda and Taliban detainees’, Memorandum for Alberto Gonzales, Counsel to the President, and William J. Haynes III, General Counsel, Department of Defense, from Department of Justice, 22 January 2002; ‘Comments on your paper on the Geneva Conventions’, Memorandum for Counsel to the President, from William H. Taft IV, Legal Adviser, Department of State, 2 February 2002; ‘Humane treatment of al Qaeda and Taliban detainees’, Memorandum from the President, 7 February 2002: in Greenberg and Dratel (eds) *Torture Papers op. cit.*, pp. 38-79: 67, 69; pp. 81-117: 102; 129; 134. In the draft memorandum it was conceded that ‘there remains the distinct question whether such determinations would be valid as a matter of international law’ but, in a passage deleted from the final version of 22 January, the authors had insisted that it would be ‘implausible’ to claim ‘that *all* obligations imposed by the Geneva Conventions are absolute and that non-performance is *never* excusable’ (p. 69).

⁶³ For reviews of these determinations, see Kenneth Watkins, ‘Warriors without rights? Combatants, unprivileged belligerents and the struggle over legitimacy’, Occasional Paper, Program on Humanitarian Policy and Conflict Research, Harvard University, Winter 2005; de Zayas, ‘The status of Guantánamo’ *op. cit.*; G.H. Aldrich, ‘The Taliban, Al Qaeda and the determination of illegal combatants’, *American journal of international law* 96 (2002) pp. 891-898. When Combatant Status Review Tribunals were finally established, the record of their proceedings confirmed Butler’s characterization. Defendants were told that the tribunals followed US law but legal representation was not necessary because they were not legal proceedings. When one defendant repeatedly raised the issue of international law, he was told: ‘I don’t care about international law. I don’t want to hear the words “international law” again. We are not concerned with international law.’ See *Guantánamo and beyond: the continued pursuit of unchecked executive power* (Amnesty International, 13 May 2005) pp. 54-5.

hour flight, and arrived soaked in their own bodily waste. Otherwise, the chairman of the Joint Chiefs of Staff explained, they would ‘gnaw through hydraulic lines at the back of a C-17 to bring it down’. As they slowly shuffled down the ramp in their jumpsuits, one reporter wrote: ‘[They] don’t look natural. They look like giant bright orange flies.’ Then were led off to their makeshift steel-mesh cages at Camp X-Ray.⁶⁴

A senior CIA analyst concluded



that many of the prisoners who were transferred from Afghanistan to Guantánamo were minor players or wholly innocent people who had been

turned in by warlords and local militia, police officers and villagers to settle old scores or to receive bounties of thousands of dollars.⁶⁵ While this is truly dreadful, our horror ought not to be measured by the innocence or guilt of the prisoners – which in any case is subject to the judicial process denied to them – but by the calculated withdrawal of subjecthood from all of them. The legal determinations of the location of Guantánamo Bay worked in concert with the Manichean imaginative geographies of the ‘war on terror’ to produce what Butler calls ‘a zone of uninhabitability’:

‘The exclusionary matrix by which subjects are formed requires the simultaneous production of a domain of abject beings.... The abject designates here precisely those “unlivable” and “uninhabitable” zones of social life which are nevertheless densely populated by those who do not

⁶⁴ See David Rose, *Guantánamo: America’s war on human rights* (London: Faber and Faber, 2004); Gregory, Colonial present *op. cit.*, 66.

⁶⁵ Tim Golden, Dan Van Natta Jr, ‘US said to overstate value of Guantánamo detainees’, *New York Times* 21 June 2004; Michelle Faul, ‘Gitmo detainees say they were sold’, *Associated Press* 31 May 2005.

enjoy the status of the subject, but whose living under the sign of the “unlivable” is required to circumscribe the domain of the subject. This zone of uninhabitability will constitute the defining limit of the subject’s domain.’⁶⁶

If the prisoners were ‘bodies that mattered’, to continue to speak with Butler, then in Washington measures were being contemplated to ensure that they



mat-
tered *only* as bodies: as biopoliticized bare life.⁶⁷ Throughout the discussion that fol-

lows, two considerations need to be kept in mind. First, the Bush administration repeatedly insisted that prisoners would be treated in a manner ‘consistent with’ the Geneva Conventions. Secondly, such a claim – however implausible it turns out to be – relegates the treatment of prisoners to a matter of policy not law; it is not an acknowledgement that the actions of the United States are *subject to* the Geneva Conventions, and this lexical slippage creates a space of executive discretion (Schmitt’s ‘decision’) that would otherwise be closed by international law.⁶⁸

At the end of February 2002 the Department of Justice prepared a memorandum for the Department of Defense on the legal constraints that might inhibit the interrogation of the prisoners, and by the summer Alberto Gonzales, Counsel to the President and now Attorney-General, had requested and received advice from the Department of Justice about the bearing of the Convention Against Torture and Other

⁶⁶ Judith Butler, *Bodies that matter: on the discursive limits of “sex”* (New York: Routledge, 1993) p. 3.

⁶⁷ Cf. J.M. Coetzee, *Waiting for the barbarians* (New York: Vintage, 2000; first published in 1980) p. 12: ‘[M]y torturers ... were interested only in what it means to live in a body, as a body, a body which can entertain notions of justice only as long as it is whole and well, which very soon forgets them when its head is gripped and a pipe is pushed down its gullet and pints of salt water are poured into it until it coughs and retches and flails and voids itself.’

⁶⁸ Nigel Rodley, ‘Looking-glass war’, *Index on Censorship* (2005) pp. 54-61: 55; Butler, *Precarious life op. cit.*, pp. 80-1.

Cruel, Inhuman and Degrading Treatment or Punishment as implemented by title 18 of the United States Code on the conduct of interrogations outside the United States. This memorandum began by noting that title 18 applied only to torture committed outside the United States. Although Justice (I am tempted to add [sic] each time I write that word) had not been asked to address the question of location, a footnote recorded that title 18 defined the United States as ‘all areas under the jurisdiction of the United States’, including all places and waters ‘continental or insular’. Guantánamo Bay, which had been located outside the United States in order to foreclose *habeas corpus* petitions from prisoners held there, was now brought within the United States in order to forestall prosecutions for torturing

them. As Voltaire put it: ‘Those who can make you believe absurdities can make you commit atrocities.’⁶⁹

The memorandum also provided an intricate parsing of definitions of ‘torture’ which not only raised the bar at which the conjunction of violence and pain turned into torture but made this threshold the property of the torturer. First, ‘only the most extreme forms of physical or mental harm’ would constitute torture: severe pain that would ‘ordinarily’ be associated with ‘death, organ failure or serious impairment of bodily functions’, or severe mental suffering that produced ‘prolonged mental harm’. This allowed ‘a significant range of acts that though they might constitute cruel, inhuman or degrading treatment fail to rise to the level

⁶⁹ If this makes Guantánamo a ‘third space’, it is also a powerful reminder that such spaces, however transgressive they may be, are not inherently liberating.

of torture.’ Second, a defendant could only be convicted if these consequences were a known and intended outcome of his or her actions: ‘Where a defendant acts in good faith, he acts with an honest belief that he has not engaged in the proscribed conduct.’ If these sophistries were not enough, Gonzales was finally, implausibly but chillingly assured that ‘criminal statutes’ could not infringe on the President’s ‘complete’ and ‘ultimate’ authority over the conduct of war, including the interrogation of prisoners.⁷⁰

This memorandum had been prepared with CIA rather than military interrogations in mind, but the lines were already becoming blurred. In October 2002 the Joint Chiefs of Staff were presented with recommendations from the Joint Task Force charged with conducting ‘Department of Defense/Interagency’ interro-

gations at Guantánamo to allow a graduated series of increasingly ‘aggressive’ techniques to be used against prisoners who had ‘tenaciously resisted’ current methods. Category I techniques involved direct questioning, yelling and deception; Category II techniques involved the use of stress positions, hooding, removal of clothing and forced shaving, and the induction of stress through aversion (‘such as fear of dogs’); Category III techniques involved convincing the prisoner that death or severe pain were imminent for him and/or his family, ‘exposure to cold weather or water’, and ‘use of a wet towel and dripping water to induce the misperception of suffocation.’ The Department of Defense authorized the first two categories and noted that while all the techniques in the third category may be ‘legally available’ their approval was not warranted ‘at this time’. In January 2003,

⁷⁰ ‘Standards of conduct for interrogation under 18 USC §§ 2340-2340A’, Memorandum for Alberto Gonzales, Counsel to the President, from Jay S. Bybee [written by John Yoo], Assistant Attorney General, Department of Justice, 1 August 2002; Memorandum for Alberto Gonzales, Counsel to the President, from John Yoo, Deputy Assistant Attorney General, Department of Justice, 1 August 2002: in Greenberg and Dratel (eds) *Torture Papers op. cit.*, pp. 172-217, 218-222: 202-3. The second memorandum did not promise the President complete absolution because ‘it would be impossible to control the actions of a rogue (sic) prosecutor or judge’ (p. 218). These determinations were repudiated as soon as the memorandum became public in June 2004, and conveniently replaced by new guidelines just one week before Congressional hearings on Gonzales’ nomination as Attorney General. In those meetings, however, Gonzales reaffirmed that ‘there is no legal obligation under [the Convention Against Torture] on cruel, inhuman or degrading treatment with respect to aliens overseas.’ For commentaries, see Tom Engelhardt, ‘George Orwell ... meet Franz Kafka’, at <http://www.tomdispatch.com>, 13 June 2004; David Cole, ‘What Bush wants to hear’, *New York Review of Books*, 17 November 2005; Lisa Hajjar, ‘Torture and the lawless “New Paradigm”’, *Interventions: Middle East Report Online*, at <http://www.merip.org/mero>, 9 December 2005.

however, Secretary of Defense Donald Rumsfeld withdrew his permission for the use of Category II techniques and convened a Working Group to prepare an in-house assessment of 'Detainee Interrogations in the Global War on Terrorism'. Its report followed the memorandum of the previous August to the letter. It found that, because Guantánamo is within the United States for the purpose of title 18, 'the torture Statute does not apply to the conduct of US personnel at GTMO.' It reaffirmed the inadmissibility of the Geneva Conventions and noted that the US Government would reject any attempt by the International Criminal Court to assert jurisdiction over US nationals. And in reaffirming the ultimate authority of the President its authors made an astonishing appeal to the precedent set by the Nuremberg tribunals: 'The defense of superior orders will generally be available for US Armed Forces personnel engaged in exceptional interrogations except where the conduct goes so far as to be patently un-

lawful.' Those last two words had been so eviscerated by the law officers favoured by the White House, however, that it is necessary to ask what sort of regime underwrites its conduct through a reference to the Third Reich? The final report suggested a range of 35 interrogation techniques from 'asking straightforward questions' and providing or removing privileges through hooding, 'mild physical contact' and dietary or environmental manipulation to 'exceptional' measures that included isolation, 20-hour interrogations, forced shaving, prolonged standing, sleep deprivation, 'quick, glancing slaps', removal of clothing and 'use of aversions' ('simple presence of dog'). Rumsfeld approved 24 of these techniques. Although he withheld approval of all the exceptional measures other than isolation, however, he also accepted that 'interrogators [ought to be] be provided with reasonable latitude to vary techniques' for reasons that included the degree of resistance and 'the urgency of obtaining information'.⁷¹

⁷¹ 'Request for approval of counter-resistance strategies', Memorandum for Commander, Joint Task Force 170 from LTC Jerald Phifer, Director J2, 11 October 2002; 'Counter-resistance techniques', Memorandum for Chairman of the Joint Chiefs of Staff from General James Hill, US Southern Command, 25 October 2002; Memorandum for Secretary of Defense from William J. Haynes II, General Counsel, Department of Defense, 27 November 2002; Draft Working Group Report on Detainee Interrogations in the Global War on Terrorism, 6 March 2003; Working Group Report on Detainee Interrogations in the Global War on Terrorism, 4 April 2003; 'Counter-resistance techniques in the war on terrorism', Memorandum from Secretary of Defense for the Commander US Southern Command, 16 April 2003: in Greenberg and Dratel (eds) *Torture Papers op. cit.*, pp. 228; 223; 237; 241-285: 265-6; 286-359: 291; 360-365: 365.

I have no way of knowing how much ‘latitude’ that final clause was intended to allow; I simply make two observations.

First, testimony from prisoners released from



Guantánamo makes it clear that the red lines were repeatedly crossed. There have been consistent reports of enforced nudity; exposure to extremes of temperature; dep-

rivation of adequate food, water and pain medication; induced disorientation through loud music, strobe lighting and sleep deprivation; menacing by dogs; prolonged short-shackling in foetal positions; sexual taunting and assault; immersion in toilet bowls to induce fear of drowning; and isolation for months at a time.⁷² Secondly,

⁷² See, for example, David Rose, ‘How we survived jail hell’, *Observer* 14 March 2004; Severin Carrell, ‘US guards at Guantánamo tortured me, says UK man,’ *Independent* 24 April 2005; ‘Detention in Afghanistan and Guantánamo Bay: statement of Shafiq Rasul, Asif Iqbal and Rhuhel Ahmed’, Center for Constitutional Rights, New York, 26 July 2004; Guantánamo and beyond *op. cit.*; ‘Testimony of Guantánamo detainee Jumah al-Dossari’, Amnesty International, 7 November 2005; Mark Oliver, “‘They couldn’t take away my dignity’”, *Guardian* 18 November 2005.

notwithstanding the limitations placed on military interrogations, the CIA had been authorized to use six ‘enhanced’ techniques since March 2002, which included forcing prisoners to stand, handcuffed and shackled, for more than forty hours; forcing them to stand naked in a cold cell for prolonged periods and frequently dousing them with cold water; and simulated drowning (‘waterboarding’). The CIA ran its own prison within the complex (at Camp Echo), but the CIA and the military frequently worked in concert: Guantánamo was the operating base for a Joint Task Force (Department of Defense/CIA) and combined ‘Tiger Teams’ conducted the interrogations.⁷³

During the summer of 2000, when Senator John McCain proposed an amendment to the Defense Appropriation Bill that would ban cruel, inhuman or degrading treatment or punishment of anyone in US custody anywhere, the Vice-President insisted that the CIA should be exempt – it required ‘extra latitude’ (that word again) – and the White House vigorously rejected any such measure that would ‘restrict the President’s authority [not ability] to protect Americans from terrorist attack.’ The bill passed the Senate 90-9 and the House 308-122, but when the President reluctantly signed the Detainee Treatment Act into law he added a defiant signing statement insisting that he would interpret its provisions in a manner consis-

⁷³ Dana Priest, Scott Higham, ‘At Guantánamo, a prison within a prison’, *Washington Post* 17 December 2004; Douglas Jehl, ‘Classified report warned on CIA’s tactics in interrogation’, *New York Times* 9 November 2005; Brian Ross, Richard Esposito, ‘CIA’s harsh interrogation tactics described’, *ABC News* 18 November 2005. The Director of the CIA insisted that none of these techniques constituted torture, but an editorial in the *Washington Post* asked: ‘If an American pilot is captured in the Middle East, then beaten, held naked in a cold cell and subjected to simulated drowning, will [CIA Director] Goss say that he has not been tortured?’ ‘Director for Torture’, *Washington Post* 23 November 2005.

tent with ‘constitutional limitations on the judicial power’ and his own executive powers to protect national security, and he made it clear that he reserved the right to waive those restrictions in ‘special situations.’ Thus the hermeneutic circle – the mutuality of interpretation – is hammered flat until it fits the Oval Office.⁷⁴

The aggrandizement of sovereign power is characteristic of colonial regimes, and the obsession with torture is a commonplace of colonial violence. There are intimate connections between the methods deployed by the United States and those deployed by France in Algeria, Britain in Africa, and Israel in Palestine. More: from the School of the Americas (now the Western Hemisphere Institute for Security Cooperation), originally based in Panama and since 1984 at Fort Benning in Columbus, Georgia, the United States has

trained more than 60,000 soldiers and police officers from the Caribbean and Central and South America in counter-insurgency methods that include coercive interrogation and torture.⁷⁵ These too are the ghosts of empire, raised from the dead to haunt the living. What is novel about the present situation is that these are no longer spectral figures; they beat the bounds of the space of exception. As Naomi Klein explains,

‘When torture is covertly practiced but officially and legally repudiated, there is still the hope that if atrocities are exposed, justice could prevail. When torture is pseudo-legal and when those responsible merely deny that it is torture, what dies is what

⁷⁴ Josh White, ‘President relents, backs torture ban’, *Washington Post* 16 December 2005; Charlie Savage, ‘Bush could bypass new torture ban’, *Boston Globe* 4 January 2006. Until George W. Bush assumed power, signing statements had been issued 322 times since 1817, but in his first term alone, Bush issued them 435 times. He has used them most frequently to assert the unsurpassable power of ‘the unitary executive’ over that of both the legislature and the judiciary: Philip W. Cooper, ‘George W. Bush, Edgar Allan Poe and the use and abuse of Presidential signing statements’, *Presidential Studies Quarterly* 35 (2005) pp. 515-532; Jennifer van Bergen, ‘The unitary executive’, *Counterpunch* 12 January 2006.

⁷⁵ Neil MacMaster, ‘Torture: from Algiers to Abu Ghraib’, *Race and Class* 46 (2) (2004) pp. 1-20; Lesley Gill, *The School of the Americas: military training and political violence in the Americas* (Durham: Duke University Press, 2004); Jennifer Harbury, *Truth, torture and the American way: the history and consequences of US involvement in torture* (Boston: Beacon Press, 2005).

Hannah Arendt called “the judicial person in man”; soon enough, victims no longer both to search for justice, so sure are they of the futility (and danger) of that quest.’⁷⁶

How, then, do these legal, paralegal and extra-legal geographies bear on the torture of US prisoners at Abu Ghraib?

Abu Ghraib

Abu Ghraib had been a ‘vanishing point’ since its construction by British and Dutch contractors in the 1960s. Intended to replace the old Ottoman-era prison, Bab al Mouadam in Baghdad, the new prison occupied a vast site thirty kilometers west of the capital. After the CIA-backed coup that brought the Ba’ath party back to power in 1968, mass arrests, torture and imprisonment of opponents of the regime resumed, and political prisoners were consigned to Abu Ghraib even before it officially opened in 1970. The prison was under the control of the Directorate of General Security, and was the scene of some of the worst excesses of Saddam Hussein’s regime. It soon became as

overcrowded as Bab al Mouadam. Originally designed to incarcerate 4,800 prisoners, by 2001 it may have held more than 15,000, many of whom were detained without charge or judicial process, and who relied on friends and families to bring them food. Within its walls prisoners were routinely beaten, broken and degraded, stripped, chilled, and electrocuted. Thousands were put to death, sometimes two or three hanging from the scaffold at the same time, their bodies buried in unmarked graves. And yet, as Amnesty International reported, Article 22 (a) of the Iraqi Interim Constitution affirmed ‘the dignity of the person’ and the inadmissibility of causing ‘any physical or psychological harm’, and the Iraqi Penal Code specifically criminalized the use of torture by any public servant. What sort of place was this, at once inside and outside the law? Photographs and videos were taken of the torturers and their victims, and some of them eventually found their way on to Baghdad’s street markets. What sort of penal regime records its atrocities in such grisly visual detail? The answers to these questions are devastatingly simple and, we now know, hideously familiar. Anyone suspected of being an opponent of the regime was abandoned by the law,

⁷⁶ Naomi Klein, ‘Never before! Our amnesiac torture debate’, *Nation* 26 December 2005.

and the very act of recording their torture exacerbated the humiliation, extended it to friends and families who saw the images, and cast dark shadows of intimidation over countless others.⁷⁷

This history is immensely important, but not because it can be invoked to excuse what happened after the American rehabilitation of Abu Ghraib in the summer of 2003. Far worse atrocities took place there under Saddam Hussein, but it is grotesque to hold up his regime as a standard to judge the ill-treatment and torture of Iraqi prisoners by their American captors.⁷⁸ Neither is it important because there is a direct parallel between Saddam's Iraq and Bush's Iraq. The possessive is dismally significant in both cases, but the geographies that fold in and out of these constellations of power are radically different. Instead, this history matters for the lives it remembers, and for the memories that were reawakened by the reopening of the prison under American administration. After the cruise missiles, the

cluster bombs and the killings I doubt that many people's fears were dispelled by the large sign that replaced Saddam's portrait at the main gate: 'America is a friend of all Iraqi people.'

The decision to fold the invasion and occupation of Iraq into the 'war on terror' was as misleading as it was mistaken, and it produced another series of fraught intersections between violence and the law. On the one side, coalition forces were surprisingly surprised by the widespread resistance to continued military occupation, and their aggressive counter-insurgency operations served only to alienate more people and to intensify the insurgency. The collection of executable intelligence was placed at the centre of this spiral. That this was a decision bears emphasis. It would have been possible (in fact preferable) to explore the political, economic and cultural bases of the insurgency instead of privileging military intelligence and military violence. But such a strategy was proscribed by the very logic

⁷⁷'Iraq: Systematic torture of political prisoners', Amnesty International, 15 August 2001 (MDE/14/008/2001); 'Iraq: Systematic torture, execution and punitive surgery', Amnesty International, 15 August 2001 (MDE 14/010/2001); Peter Finn, 'Shedding light on a symbol of Iraqi terror', *Washington Post* 6 October 2003.

⁷⁸ See, for example, the remarks made by Senator James Inhofe (R – OK) at the Senate Armed Services Committee hearings on Abu Ghraib: '[I am] more outraged by the outrage than ... the treatment [of these prisoners],' he declared. 'I would guess that these prisoners wake up every morning thanking Allah that Saddam Hussein is not in charge': Senate Armed Services Committee, Transcript, Federal News Service, 11 May 2004.

of the ‘war on terror’, which assumes that any opposition to the violence of sovereign power is baseless. Even then, the possibilities for intelligence gathering were circumscribed by the President’s acknowledgement that, in contrast to Afghanistan and Guantánamo, the Geneva Conventions would be applied to prisoners in Iraq. On the other side, therefore, the rapidly improvised detention regime in Iraq exerted extraordinary pressure on the provisions of international law. There were two crucial questions: How far was it possible to ‘enhance’ interrogation methods in Iraq without violating the letter of the law, and – if this provided insufficient ‘latitude’ – was it possible to transfer prisoners out of Iraq to other sites under the control of the United States or its allies and accomplices? I treat these considerations in turn. I begin by plotting the spiral of insurgency and counter-insurgency in Iraq, and then I turn to the architecture of an emerging carceral archipelago (what some commentators have called ‘an archipelago of exception’).⁷⁹

Between these two parametric geogra-

phies lies the hideous intimacy of the torture chamber, and it is at this vanishing point that I end.

Insurgency and counter-insurgency

The war on Iraq can be read in many ways, but no matter what other modalities are invoked it was plainly shaped by a colonial apparatus of power and knowledge. The United States and Britain (together with France, Germany and Russia) have a long history of meddling in the region, including Britain’s fabrication of Iraq from three provinces of the shattered Ottoman Empire, and the war activated a clutch of Orientalist and colonial dispositions that had long been in play throughout the ‘Middle East’.⁸⁰ It is scarcely surprising that so many Iraqis, together with Arabs and Muslims and millions of others throughout the world, should have understood the war in these terms and opposed the occupation for these reasons.

The insurgency in Iraq has many roots and takes many forms, and its com-

⁷⁹ ‘Archipelago of exception: sovereignties of extraterritoriality’, Centre de Cultura Contemporània de Barcelona, November 2005; cf. Oliver Klemens, Jesko Fezer, Kim Forster, Sabine Horlitz, ‘Extra-territorial spaces and camps: judicial and political spaces in the “war on terrorism”’, in Anselm Franke, Rafi Segal, Eyal Weizman (eds) *Territories: Islands, camps and other states of utopia* (Berlin: KW – Institute for Contemporary Art, 2003) pp. 22-28 [originally in *An Architektur* 2 (2003)] .

⁸⁰ Gregory, Colonial present *op. cit.*

plex, adaptive geography cannot be reduced to a single map. The failure of the occupying powers to comprehend the scale of dislocation and distress brought about by the combination of Saddam, sanctions and war was a major cause. Millions of Iraqis had suffered terribly under Saddam and rejoiced at the downfall of his regime, but thousands had also died as a direct result of sanctions and two US-led wars, and there was scarcely a family that had not been touched by America's wings of death too. Shortages of electricity, water, and medical supplies, the breakdown of public order, the economic dislocation and the enforced privatization of the economy all heightened a common sense of grievance, especially in the central and southern regions of the country. Then there were the thousand and one daily humiliations of occupation: the ceaseless surveillance, the armoured patrols, the checkpoints, the body searches, the midnight raids, the sheer inability or unwillingness to understand. Time and time again American troops fired on unarmed demonstrators calling

for an end to the occupation; civilians were seriously injured or killed when troops opened fire during raids on houses and markets; countless others were humiliated, beaten and even killed at checkpoints. Excuses were offered as explanations; apologies were rare, investigations perfunctory. These were all landmarks of occupation that were agonizingly familiar from the Israeli occupation of Palestine.⁸¹

President Bush declared the end of major combat operations in May 2003, but by the summer it was difficult to distinguish war from occupation. In Baghdad there were daily, often deadly attacks against troops patrolling the streets, and in the so-called 'Sunni Triangle' rocket-propelled grenades and mortars were used to ambush convoys and attack checkpoints. The coalition launched ever more aggressive military operations in June and July, involving thousands of troops backed by tanks, helicopter gunships and aircraft. These massive deployments resulted in the deaths of over 300 Iraqis – who were often celebrated as martyrs in

⁸¹ Gregory, Colonial present *op. cit.*, pp. 225-247; see also Zaki Chehab, *Inside the resistance: the Iraqi insurgency and the future of the Middle East* (New York: Nation Books, 2005) pp.129-147.

their hometowns and villages – and the detention of thousands more, all of which increased popular resentment of the occupation.⁸² The opposition was many-stranded, at once spontaneous and organized, non-violent and militarized. As the summer wore on, demonstrations and riots spread across the Shi'a south, with thousands marching in Basra, Najaf and other cities to demand an end to the occupation. There was the real possibility of the opposition turning into a national resistance movement in which Sunni and Shi'ites would fight side by side. While the Americans were slow to realize this, others were not. Iraq is part of the heartland of Islam, and the US occupation turned it into a new field of struggle for political Islam. Jordanian Abu Mos'ab al Zarqawi, leader of a Salafi terrorist group with a base in northern Iraq, chose this moment to launch an armed jihad against both the coalition forces ('the far enemy') and the Shi'a ('the near enemy') in order to nullify the prospect of a unified, nationalist and above all secular resistance. In August his group were responsible for two spectacularly deadly attacks: a massive truck bomb exploded at the United Na-

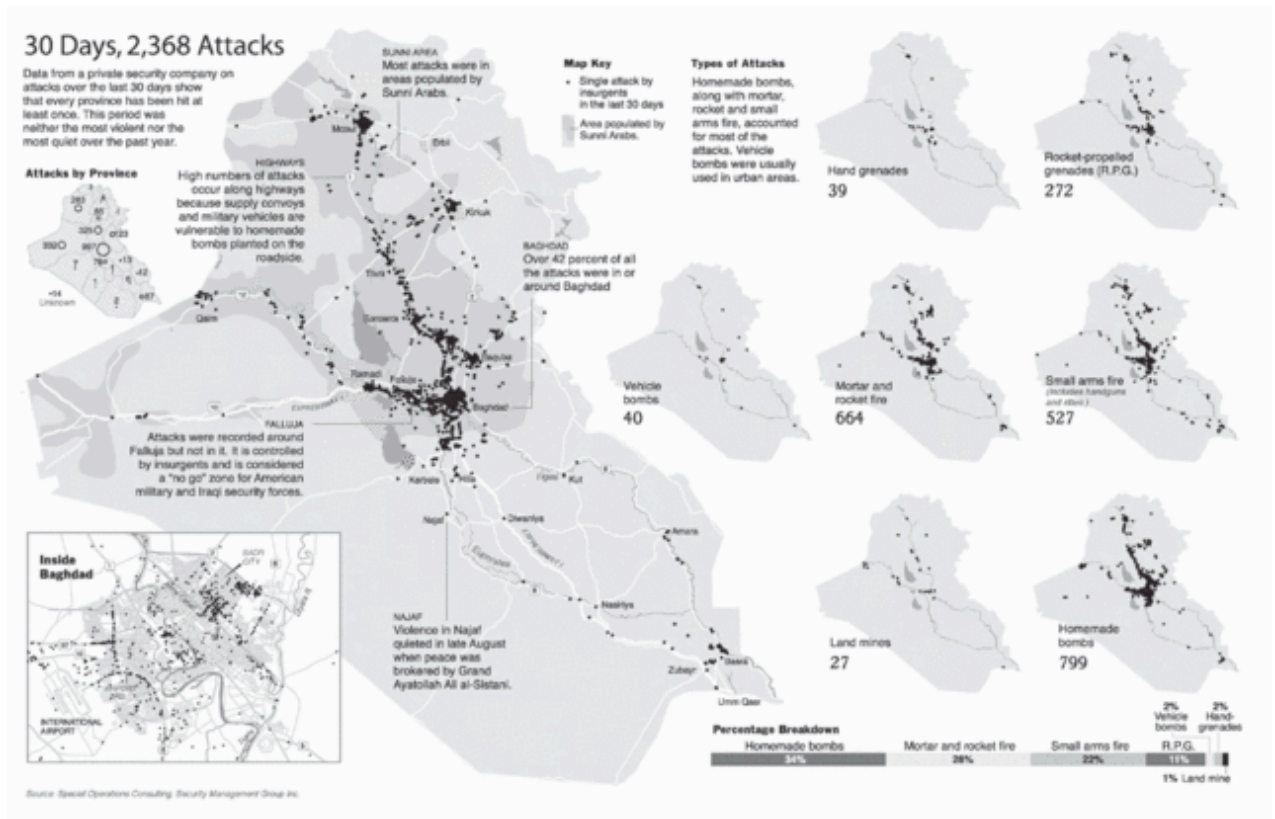
tions mission, murdering the head of the delegation and more than twenty other people, and at the end of the month a car packed with explosives crashed into the Imam Ali mosque in Najaf, murdering more than 100 Shi'ites, including the Ayatollah Mohammed Baqir al-Hakim, the spiritual leader of the Supreme Council of the Islamic Revolution.

In August there were an average of 12 attacks a day on American forces. This rose to 15 in early September; by the beginning of October there were more than 25 a day, and at the end of that month 33 a day. Large areas of Baghdad were declared 'hostile', and the guerilla war expanded beyond the Sunni heartland into the north and the Shi'a south. In November the CIA chief of station in Baghdad – the largest station in the history of the agency – reported to Washington exactly what the White House and the Pentagon were unprepared to hear: the insurgency was becoming so successful and so many Iraqis were concluding that the US-led coalition could be defeated, that the situation was rapidly sliding out of control.

⁸² Carl Conetta, *Vicious circle: the dynamics of occupation and resistance in Iraq. Part One: Patterns of Popular Discontent* (Cambridge MA: Project on Defense Alternatives, Commonwealth Institute, 2005); see also Alis-tair Finlan, 'Trapped in the dead ground: US counter-insurgency strategy in Iraq', *Small wars and insurgencies* 16 (1) (2005) pp. 1-21.

All of this bears directly on Abu Ghraib, which has been portrayed as a place of chaos outside the ‘normal’ order. By the winter of 2003-4 more than 8,000 prisoners were crammed inside its compounds. Facilities were poor, and over-

the inmates). In short, it was made to appear as a sort of twilight zone where the boundary between order and disorder was constantly slipping away, patrolled by exhausted and jumpy reservists, outnumbered and ill-prepared for their duties, who laboured under inadequate resources



crowding increased the pressures; the detainees seethed with resentment, and riots and escapes were common. Military investigations and the media reported that Abu Ghraib was seen by those who worked there as ‘the forgotten outpost’, poorly defended and constantly rocked by mortar attacks. It was variously described as ‘a prison on the brink’, a howling chaos, a ‘hellish place’ (for the guards not

and ineffective supervision. Beyond the perimeter and its watchtowers, however, the rest of Iraq was descending into chaos too. In response, the level of military violence was ratcheted up and, in order for this to be effective, ‘pressure increased to obtain operational intelligence on the enemy’s identity, support systems, locations, leadership, intelligence sources, weapons and ammunition caches, and centers of

gravity.’ It was decided that a more ‘aggressive’ structure of human intelligence collection and analysis was imperative.⁸³ And so Abu Ghraib was not exceptional at

all; in May 2003 it was selected as the Central Correctional Facility and in September it was designated a Joint Interrogation and Detention Centre. It was the very

⁸³ Doug Saunders, ‘US citizen-soldiers terrified, overwhelmed by chaotic Iraqi prison’, *Globe & Mail*, 8 May 2004; Scott Higham, Josh White, Christian Davenport, ‘A prison on the brink’, *Washington Post*, 9 May 2004; Douglas Jehl, Eric Schmitt, ‘In abuse, a portrait of ill-prepared, overwhelmed GIs’, *New York Times*, 9 May 2004; Fay-Jones Report, p. 998.

gravity of the situation *outside* Abu Ghraib that was used to license the horrors *inside* Abu Ghraib: not because the prison was 'out of place', removed from the surveillant eyes of a high command preoccupied with the armed resistance beyond its perimeter, *but because the US military folded the prison into its counter-*

*insurgency operations.*⁸⁴ This is extremely important, I think, because attempts to treat Abu Ghraib as exceptional have the effect of allowing the violence of torture to obscure the violence of invasion, incarceration and occupation. As our eyes are drawn to the hideous images

from Abu Ghraib they are drawn away from the atrocities committed by the US military in Fallujah. As other forms of military violence are marginalized by the ‘exceptional’ violence of torture, so the politico-military project of domination

⁸⁴ Scot Wilson, Sewell Chan, ‘As insurgency grew, so did prison abuse’, *Washington Post*, 10 May 2004. Elsewhere I have provided a reading of the ‘hooded man’ that follows directly from this argument. For me, the image conjured up Walter Benjamin’s meditation on Klee’s *Angelus Novus*, ‘The Angel of History’:

‘His face is turned toward the past. Where a chain of events appears before us, *he* sees one single catastrophe, which keeps piling wreckage upon wreckage and hurls it at his feet. The angel would like to stay, awaken the dead, and make whole what has been smashed. But a storm is blowing from Paradise, and it has got caught in his wings; it is so strong that the angel can no longer close them. The storm drives him irresistibly into the future, to which his back is turned, while the pile of debris before him grows toward the sky. What we call progress is *this* storm.’⁸⁴

This can be read as a metaphor for the American occupation. ‘Paradise’ is how the White House sees the United States; ‘the pile of debris’ is formed by the bodies of its prisoners grovelling on the floor of Abu Ghraib and the thousands more victims of its sanctions and its furious military violence; and ‘progress’ is how President Bush and other members of his administration routinely describe every sign of resistance to their occupation and dispossession of Iraq. But the man subjected to these brutalities is no metaphor. He was the former mayor of a Baghdad suburb who, after the invasion, found work as an administrator at a local mosque. He was arrested in mid-October 2003 and subjected to an increasingly brutal series of assaults and indignities during his incarceration and interrogation at Abu Ghraib, including being stripped, hung by his handcuffs from a hook on the ceiling, and repeatedly doused with cold water. Then he was moved into Cellblock 1-A, where the torture continued until it culminated in his being forced to stand on the box and endure repeated electrical shocks: ‘My eyes felt like fire, my whole body shook; I lost feeling in my tongue and bit it. I fell down; my tongue was bleeding. They took the hood from my face and a doctor came to me. He opened my mouth with his foot and put some water in my mouth and said, “He is OK. Shock him some more.”’ He was released in January 2004 and told that it had all been ‘a mistake’. He now works for the Association of the Victims of American Occupation Prisons. See Phil D’Onofrio, ‘American freedom – an interview with former Iraqi Abu Ghraib prisoner’, at <http://sumoud.tao.ca>, 25 August 2005; Paola Coppola, ‘The man beneath the hood speaks out’, *Guardian* 21 September 2005; Donovan Webster, ‘The man in the hood’, *Vanity Fair*, February 2005. He was not the only prisoner to be tortured in this way; there is at least one other deposition in the published file that describes identical treatment: ‘Translation of statement provided by Detainee # 18470’, in Greenberg and Dratel, p. 526. There is no deposition in the file from the hooded man shown in the photograph, who was given the number 151716; he was released before the investigation.

becomes contorted into the image of ‘liberation’.

The carceral archipelago

In May 2003, the Department of Defense sent a team to Iraq to assess its police, judicial and detention systems. Abu Ghraib had been virtually emptied

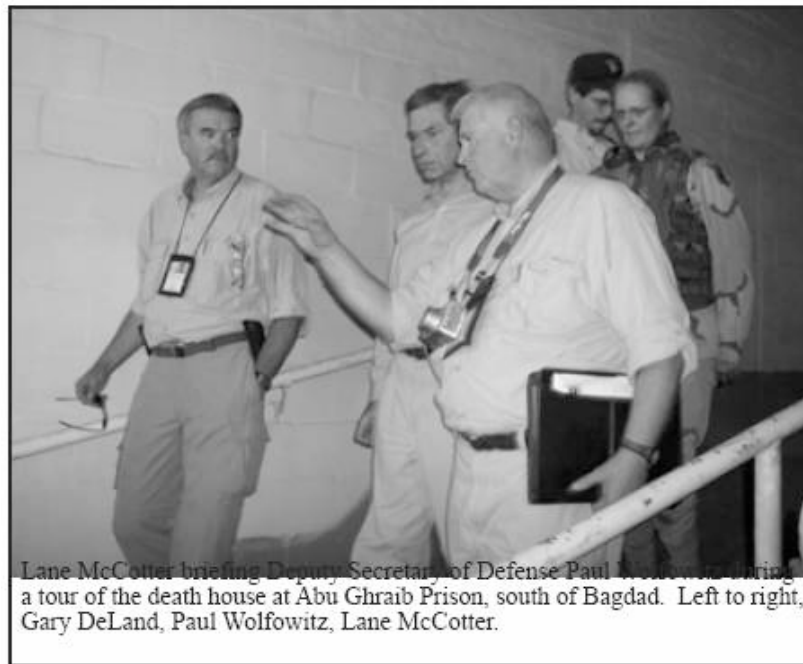
when

Saddam issued a general amnesty in October 2002, and after the war – like most other

Iraqi prisons – it was heavily damaged and extensively looted. The detention assessment team was led by Lane McCotter, a former military and civilian prison official, who was director of business development for Management and Training Corporation, a private corrections company based in Utah.⁸⁵ The McCotter team

could find only three prisons that were operational, with a combined capacity of just 500 prisoners. By then, more than 5,000 Iraqis were being held in American custody, in makeshift barbed-wire compounds, converted warehouses and tent encampments. The largest detention centre was improvised at Camp Cropper at Baghdad International Airport. It was

originally intended to be the core holding area for all those taken prisoner in Baghdad and central Iraq, but the damage to Iraq’s prisons was



Lane McCotter briefing Deputy Secretary of Defense Paul Wolfowitz during a tour of the death house at Abu Ghraib Prison, south of Baghdad. Left to right, Gary DeLand, Paul Wolfowitz, Lane McCotter.

so extensive that transfers were unworkable and some 2,000 prisoners were confined behind razor-wire in large tents. At Abu Ghraib two compounds had been totally destroyed and all the others were badly damaged, but the McCotter team identified two cellblocks that were suit-

⁸⁵ Controversy had followed McCotter from post to post, and at the time of his appointment to the Iraq mission, Management and Training Corporation was under investigation by the Department of Justice for unsafe conditions and lack of medical care at its jail in Santa Fe.

able for immediate renovation. Out of the 21 sites they visited, they considered Abu Ghraib ‘closest to an American prison’. They not only attached a priority to its reconstruction; they also supervised the work.

L. Paul Bremer (for the Coalition Provisional Authority) and Lieutenant-General Sanchez (for Joint Task Force 7) designated Abu Ghraib as the new Baghdad Central Correctional Facility and, correspondingly, decided that it was to have both civilian and military sections. It was intended to be a prison for criminal prisoners (‘Iraqi-on-Iraqi crimes’) until a new Iraqi government took office and a new prison was established elsewhere. These prisoners began to arrive in June and were confined in tent-blocks rimmed with razor-wire and sandbags. Abu Ghraib was also to serve as the primary place of de-

tention for the US Army’s ‘security detainees’. It was too dangerous to transfer such prisoners to the ‘more remote and secure



Camp Bucca’ near Umm Qasr, an eight-hour drive south from Baghdad, because of the risk of insurgent attacks. These prisoners began to arrive as soon as the renovations of the cellblocks were completed in August.⁸⁶

It was not long before anxious Iraqis gathered at the gates of the prison seeking information about the thousands of men and women who had been arrested by the military. Most met with little success, often callous indifference, and the petitioners and prisoners became lost in an administrative labyrinth. By then, according to journalist Seymour Hersh, de-

⁸⁶ The McCotter team was also involved in training Iraqi corrections officers to work in the criminal sections of the new prison. Although they did not train military personnel at Abu Ghraib, many of the elements of American ‘prison culture’ were none the less transferred to the military section through the Army’s reliance on former corrections officers. See below, pp. 00-00.

cisions to align detention and interrogation operations in Iraq with those elsewhere in the ‘war on terror’ had been made at the highest reaches of the administration. The White House (notably the Vice-President) subcontracted execution to the Secretary of Defense who had the system engineered by his Under Secretary of Defense for Intelligence Stephen Cambone. Rumsfeld’s capacity for micro-management is well-known – ‘the 8,000 mile screwdriver’ – but it is extraordinarily difficult to trace the torque. When high-ranking military officers and Department of Defense officials testified before the Senate Hearings in May 2004 their answers to crucial questions about responsibility were either numbingly inar-

ticulate or adroitly incomprehensible. The official investigations that have been made public contain much huffing and puffing about the problems of information flowing up the chain of command – ‘how were they to know?’ – but provide no rigorous examination of the ways in which reverse flows helped set the conditions for what happened at Abu Ghraib and elsewhere. Those flows include memoranda, directives and orders, together with more informal understandings, but they also include speeches from the White House and the Pentagon that consistently described America’s enemies as outlaws, barbarians and monsters. Is it any wonder that American forces subjected their Iraqi captives to brutal and dehumanising

treatment? They had been told repeatedly that this was a war against Evil incarnate, so that they were not fighting enemies so much as casting out demons. The fate of those imprisoned at Abu Ghraib was not decided by a few 'rotten apples' at the bottom of the barrel: it was the fruit of a vast poison orchard assiduously cultivated by

the President and his under-gardeners.⁸⁷

The central strategy for interrogation and intelligence that they devised had three elements. The first was the designation of prisoners. Although President

Bush had accepted that the Geneva Conventions would apply in Iraq, their provisions were stretched to the very limit by designating most of the prisoners held after the nominal end of hostilities as ‘security detainees’ or ‘security internees’ (the

⁸⁷ Seymour Hersh, *Chain of command: the road from 9/11 to Abu Ghraib* (New York: HarperCollins, 2004) pp. 59-60. The official reports to which I refer in what follows have often been redacted; these public versions are listed below (pagination in Greenberg and Dratel (eds) *Torture Papers op. cit.*):

(1) ‘Report of the International Committee of the Red Cross on the treatment by coalition forces of prisoners of war and other [persons protected] by the Geneva Conventions in Iraq during arrest, internment and interrogation’, February 2004 [hereafter ICRC Report] (pp. 383-404).

(2) ‘Article 15-6 Investigation of the 800th Military Police Brigade’, March 2004 [hereafter Taguba Report] (pp. 405-65). Two weeks after the US Army’s Criminal Investigation Command began an investigation into specific allegations of abuse, on 13 January 2004, Lieutenant-General Sanchez requested a ‘comprehensive and all-encompassing inquiry’; in response on 31 January Major-General Antonio Taguba was directed to conduct ‘an informal investigation’.

(3) ‘Detainee Operations Inspection’, by the Department of the Army Inspector General, July 2004 [hereafter Mikolashek Report] (pp. 630-907). This inspection report was a response to a directive from the Acting Secretary of the Army on 10 February 2004.

(4) ‘Investigation of intelligence activities at Abu Ghraib’, August 2004 [hereafter Fay-Jones Report] (pp. 987-1131). Major-General George Fay was appointed to conduct this investigation on 15 April, and in June Lieutenant-General Anthony Jones was appointed over him to conduct interview with officers above Jones’s rank.

(5) ‘Final Report of the Independent Panel to review DoD detention operations’, August 2004 [hereafter Schlesinger Report] (pp. 908-975). This committee was appointed by the Secretary of Defense on 12 May.

terms were interchangeable) rather than Prisoners of War. Of the 5,000 prisoners in its custody in May 2003, the United States recognised only 500 as Prisoners of War. Several other terms were in use: ‘Persons Under Control’, which was invented in Afghanistan to replace ‘Prisoners of War’, was commonly used by combat forces in Iraq at the point of capture. But ‘security detainee’ was a technical term of particular significance for subsequent detention and interrogation, because it allowed the full protection of the Geneva Conventions to be withdrawn from such prisoners for the duration of the armed conflict where ‘absolute military security so requires’.⁸⁸ This determination was invoked in a letter dated 24 December 2003, which was drafted by the Office of the Staff Judge Advocate and

signed by Brigadier-General Janice Karpinski, the officer commanding the 800th Military Police Brigade at Abu Ghraib, in reply to serious concerns about detention and interrogation operations contained in interim reports from the ICRC: ‘While the armed conflict continues, and where “absolute military security so requires”, security internees will not obtain full G[eneva] C[onvention] protection.’⁸⁹

This provision is contained within Article 5 of the Fourth Geneva Convention. But in its commentary the ICRC makes it clear that this can only be applied ‘in *individual* cases of an *exceptional* nature, when the *existence of specific charges* makes it almost certain that penal proceedings will follow’, and only to

⁸⁸ This determination was elaborated in an Order issued by the Coalition Provisional Authority in June 2003, which established that the detention of anyone by coalition forces ‘for imperative reasons of security’ should be reviewed within six months. The Order contained several amendments to the Iraqi Penal Code that were deemed necessary because ‘the former regime used certain provisions of the penal code as a tool of repression in violation of internationally recognized human rights standards’: Coalition Provisional Authority, Order #7, 18 June 2003. The irony of the explanation needs no emphasis. These provisions were superseded one year later by the requirement for security internees to have their continued detention reviewed within seven days, and then again within six months; any detentions beyond 18 months required the approval of the Joint Detention Committee. If detainees were subsequently transferred to an Iraqi Court, however, ‘a failure to comply with these procedures shall not constitute grounds for any legal remedy’: Coalition Provisional Authority, Memorial #3, 27 June 2004.

⁸⁹ The ‘Karpinski’ letter is available at http://www.abc.bet.au/4_corners/content/2004/s1143841.htm, 7 June 2004.

those who can be shown to be a continuing threat to security. It is not a catchall clause to allow the prolonged detention of thousands of people for endless interrogation.⁹⁰ Yet the letter under Karpinski's signature insisted on the 'military necessity' of holding security detainees for their 'significant intelligence value', and senior officers regularly repeated the same objectives. In the course of his inspection of detention and corrections operations in

Iraq in November 2003, however, Major-General Donald Ryder, the Provost Marshal General, had found that 117 Prisoners of War, 101 'high value detainees' and 3,400 security detainees were still in US custody, and he cited numerous cases 'where Iraqis at most expressed displeasure or ill-will' at the occupation 'and have been held for several months.' The intensifying counter-insurgency rapidly boosted the number of security detainees, even

⁹⁰ 'Convention IV relative to the protection of civilian persons in time of war', Geneva, 12 August 1949 [full text and commentaries] (my emphases), at <http://www.icrc.org>; see also Fay-Jones Report, pp. 1026-7.

though it was reliably estimated that 85-90 per cent of those held were in the wrong place at the wrong time and ‘were of no intelligence value’. Perversely, this increased their vulnerability: their very innocence ‘made them more likely to be abused, because investigators refused to believe they could have been picked up on such arbitrary grounds.’ By the spring of 2004, there were 7,800 security detainees in US custody – 95 per cent of the prison

population – which prompted the chair of the UN Commission on Human Rights to express serious concern at the ‘uncertainty of the legal status’ of these detainees, most of whom had been arrested during public demonstrations, at checkpoints and in house raids.⁹¹ The ICRC describes Article 5 as a ‘regrettable concession to state expediency’, but the Bush administration consistently reduces law to expediency on a grand scale. The ICRC notes that ‘what

⁹¹ Report on Detention and Corrections Operations in Iraq’, Office of the Provost Marshal General of the Army, 5 November 2003 [the Ryder Report], pp. 27, 54; Bill Gertz, ‘Most prisoners in Iraq jails called “threat to security”’, *Washington Times* 6 May 2004; Julian Borger, “‘Cooks and drivers were working as interrogators’”, *Guardian* 7 May 2004; Douglas Jehl, ‘US disputed protected status of Iraq inmates’, *New York Times* 23 May 2004. Brigadier-General Mark Kimmitt egregiously misrepresented the situation when he claimed that all such detainees were ‘deemed to be a threat to security by a judge through multiple sources of evidence’ and that ‘if they were innocent, they wouldn’t be in Abu Ghraib’: Douglas Jehl, Kate Zernike, ‘Scant evidence cited in long detention of Iraqis’, *New York Times* 30 May 2004.

is most to be feared is that widespread application of the Article [5] may eventually lead to the existence of a category of civilian internees who do not receive the normal treatment laid down by the Convention but are detained under conditions which are almost impossible to check.’⁹²

The second element in the strategy was to ‘enhance’ methods of interrogation. The Geneva Conventions stipulate that security detainees ‘shall nevertheless be treated with humanity’, but those held at Camp Cropper had al-

ready been subjected to systematic ill treatment. They were denied access to lawyers or their families, and there were consistent, credible reports of physical assaults, sleep deprivation, and of prisoners being made to kneel in the afternoon sun for hours at a time as a punishment. ‘What they’re doing is completely illegal,’

one official from the ICRC confided to a reporter, ‘and they know it.’⁹³ These abuses may have been informal and low-

level, but in September 2003, one month after the first security detainees were transferred to

... a central laboratory
in the war on terror...

⁹² ‘Convention IV’ *op. cit.*, commentary. These provisions have long been exploited in similar ways by Israel: see, for example, ‘Without status or protection: Lebanese detainees in Israel’, Human Rights Watch, October 1997. In its draft Joint Doctrine for Detainee Operations, published on 23 March 2005, the Pentagon outlined two classification systems. One derived directly from the Geneva Conventions (‘Enemy Prisoner of War; Civilian Internees; Retained Persons; Other Detainees’) while the other elaborated an ‘additional classification’ of a further class of ‘Enemy Combatants’: Low Level Enemy Combatants, ‘who are not a threat beyond the immediate battlefield or that do not have high operational or strategic intelligence or law enforcement value’; High Value Detainees, ‘who possess extensive/and or high level information of value to operational commanders, strategic intelligence or law enforcement agencies’; Criminal Detainees, who are ‘reasonably suspected of having committed a crime against local nationals or their property’; High Value Criminals, who are ‘reasonably suspected of having committed crimes against humanity or committed atrocities’; and Security Detainees, who are ‘interned during a conflict or occupation for his or her own protection’: Joint Doctrine, pp. I-9-13. ‘Low Level Enemy Combatants’ presumably replaced the original definition of security detainees, since the thousands of Iraqis held by the United States at Abu Ghraib and elsewhere were hardly imprisoned ‘for their own protection’. But such a re-designation would place them in the category which, following Bush’s Memorandum, ensures that ‘they are not entitled to [any of] the privileges and protections of the Geneva Conventions.’ Following adverse reactions from human rights organizations and the press, the document was withdrawn from the Department of Defense website.

⁹³ Rod Nordland, ‘Rough justice’, *Newsweek* 18 August 2003. Camp Cropper remains the detention centre for High Value Detainees.

Abu Ghraib, a 30-member military team arrived in Iraq to conduct an assessment



of ‘counter-terrorism interrogation and detention operations.’ With the encouragement and support of the Department of Defense, and Under Secretary Cambone in particular, the team was led by Major General Geoffrey Miller, Commander of JTF Guantánamo. Only the executive summary of his report has been made available to the public. Written in the language of a management science that elevates abstraction to the ultimate power (in more ways than one), the report recommended an immediate transition from ‘tactical’ to ‘strategic’ interrogation with a focus on the ‘rapid exploitation’ of prison-

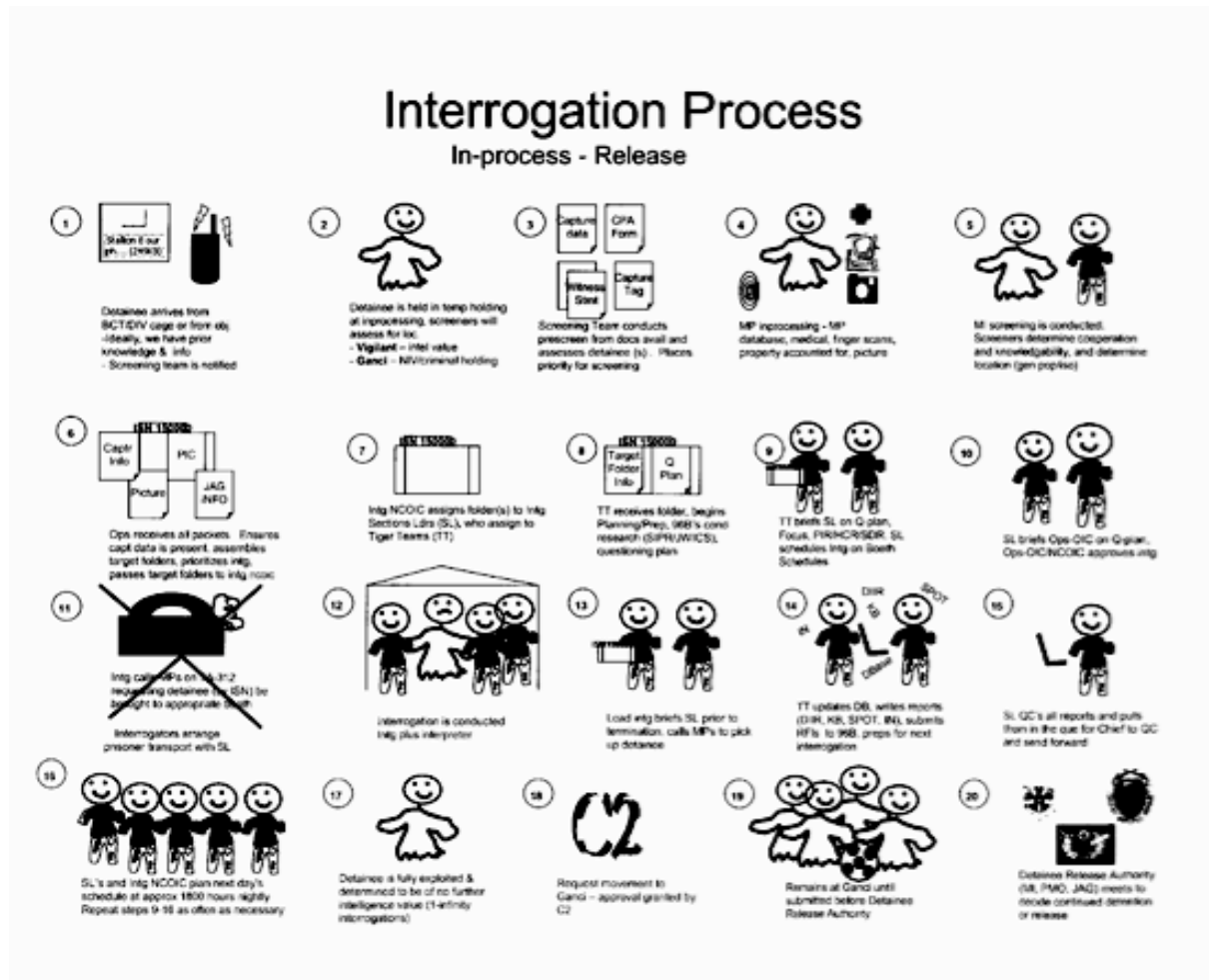
ers for ‘actionable intelligence.’ As at Guantánamo, detention and interrogation were to be integrated so that the one would ‘set conditions’ for the other: ‘It is essential that the guard force be actively engaged in setting the conditions for successful exploitation of the internees.’ Miller recommended the introduction of ‘new approaches and operational art’ developed at Guantánamo, which elsewhere he called a central ‘laboratory for the war on terror’, and he provided details of the training programmes and standard operating procedures that had been instituted there. The ‘resiliency and global reach of GWOT [Global War On Terror] targets’ required close cooperation with the ‘national intelligence community’, he concluded, so that a key objective was the production of a centralized data-base to allow ‘near-real time data mining, information visualization and intelligence exploitation to combat [sic] the GWOT.’ An expert team from Guantánamo worked at Abu Ghraib from October through December ‘to assist in the implementation of the recommendations’ and by November ‘the real changes began to show.’⁹⁴

By that stage rumours of renewed abuse and torture at the prison were circu-

⁹⁴ Miller’s Executive Summary is available as Annex 20 of the Taguba Report: 451-9; Fay-Jones: 1062-1066.

lating widely in Iraq. Reports of serious breaches of human rights were also made to the US Army, the Pentagon and the highest reaches of the US administration by Amnesty International, Human Rights Watch and the ICRC. Since April the

gates had seen enough to protest that the methods of physical and psychological coercion, ‘that in some cases might amount to torture’, formed a ‘standard operating procedure’ – a systematic apparatus of abuse – that included beating, strip-



ICRC had made a number of oral and written reports to the coalition complaining of consistent ill-treatment of prisoners and serious violations of international humanitarian law. After 29 visits to 14 internment facilities in Iraq between between March and November, ICRC dele-

ping and hooding prisoners, the use of prolonged stress positions, photographing prisoners naked, and having them humiliated still further by female guards. Several officers admitted that ‘it was part of the military intelligence process’ to hold prisoners ‘naked in a completely dark and

empty cell for a prolonged period [and] to use inhumane and degrading treatment, including physical and psychological coercion' to 'secure their cooperation.' In January 2004, Major-General Antonio Taguba confirmed 'numerous acts of sadistic, blatant and wanton criminal abuse' so pervasive and repetitive that they were 'systemic'.⁹⁵

Hersh concludes that 'Abu Ghraib had become, in effect, another Guantánamo'.⁹⁶ According to subsequent investigations, however, the procedures recommended by Miller were intended to be no more than 'starting-points', and Miller and other senior officers claimed that it was clearly understood that they could not be implemented without modification 'because, unlike Afghanistan and Guantánamo, the Geneva Conventions applied in the Iraq theater'. The categori-

zation of most prisoners as 'security detainees' considerably closed that gap between the permissible procedures, however, and the connections established between the two carceral regimes through Miller's report and the expert team contracted the distance still further. In fact, by September 2003 JTF-7 had decided that the latitude provided for the treatment of 'security detainees' was insufficient. Reverting to the designation of prisoners seized in Afghanistan, Sanchez argued that 'unlawful combatants' were present in Iraq too and that, in accordance with the President's Memorandum of 7 February 2002, they were not entitled to *any* of the protections of the Geneva Conventions. He then authorized 29 interrogation techniques, of which twelve went beyond those described in Army Field Manual 34-52, and five of those exceeded the techniques approved for Guantánamo.

⁹⁵ ICRC Report, pp. 391-2; Taguba Report, p. 416..

⁹⁶ Hersh, Chain of command *op. cit.*, p. 41.

CENTCOM viewed these additional methods as ‘unacceptably aggressive’, and in mid-October Sanchez rescinded his directive ‘and disseminated methods only slightly stronger than those in Field Manual 34-52.’ Even so, his new memorandum remained as close as possible to the Guantánamo template provided by Miller. Interrogation operations were to be ‘conducted in close cooperation with the detaining units’ and interrogators had to have ‘reasonable latitude’ (again) to vary their techniques depending on both the prisoner and ‘the urgency with which information must be obtained.’⁹⁷ In March 2004 Miller was transferred from Guantánamo to assume command of US prison operations in Iraq.⁹⁸

The circuits connecting Afghanistan, Guantánamo and Iraq were more

than words and paper. Interrogators circulated and interrogation techniques ‘migrated’ from one theatre to another. It gradually became clear that similar abuses were widespread in both Afghanistan and Iraq. The ICRC reported a consistent pattern of brutality during arrest and transfer in Iraq, and this was subsequently shown to have extended throughout the detention system – ‘the use of cigarettes to burn prisoners, aggressive dogs, electric shocks, sexual humiliation and beatings’ – and was more or less coincident with the torture at Abu Ghraib. One officer and two NCOs testified that ‘the torture of detainees took place almost daily’ throughout their deployment at FOB Mercury, 20 kilometres east of Fallujah, from September 2003 through April 2004. Many of those most closely involved had been attached to Special Services in Afghanistan,

⁹⁷ Schlesinger Report, p. 912; Fay-Jones Report, pp. 1035-1038. There was also a channel from Afghanistan: Ryder reported that a ‘template’ had been established there whereby ‘military police actively set favourable conditions for subsequent interviews [interrogations]’ (p. 27) and Jones found that ‘concepts for the non-doctrinal, non-field manual approaches and practices [at Abu Ghraib] clearly came from documents and personnel in Afghanistan and Guantánamo’ (p. 1037).

⁹⁸ The published file includes one request for exemption from the new policy for a specific prisoner, to include throwing furniture and ‘invading his personal space’, hooding, strip-searching, the use of barking dogs, prolonged isolation, prolonged interrogation and stress positions. In January 2006 Major-General Miller invoked his constitutional right not to incriminate himself in court-martial proceedings against two soldiers accused of using dogs to intimidate captives at Abu Ghraib.

where they had witnessed CIA interrogations, and they brought knowledge of those techniques with them to Iraq. These revelations were particularly significant because they showed that torture was not the product of a small number of ill-trained, undisciplined support troops but extended to front-line regiments, including ‘some of the best-trained, most decorated and highly respected units in the US Army.’ Neither was the recording of all this confined to the video-sadists of Abu Ghraib. Photographs were also taken at FOB Mercury, and a video from another regiment, ‘Ramadi Madness’, was hastily destroyed by those responsible in January 2004 when an investigation was started.⁹⁹

These practices were plunged deeper into the shadows by the use of private contractors. The US occupation of Iraq would have been impossible without

20,000 private contractors undertaking tasks that were once the preserve of the military. Private contractors were intimately involved in the preparation and execution of the US invasion – Peter Singer calls them ‘the coalition of the billing’ – and the demand for their services soared as the occupation wore on. Thirty contractors were hired for interrogations at Abu Ghraib: the Titan Corporation (San Diego) supplied interpreters and CACI International (Arlington) supplied interrogators. This strategy was more than a matter of outsourcing and profiteering, though there has been no shortage of both in occupied Iraq, because it enabled the actions of private contractors to be removed from any public ledger where they could be called to account. As Singer points out, they are ‘not quite civilians, not quite soldiers’, and in consequence the privatized military industry is largely out-

⁹⁹ Neil Lewis, ‘ACLU presents accusations of serious abuse of Iraqi civilians’, *New York Times* 25 January 2005; ‘Newly released Army documents detail ongoing abuse of detainees by US forces’, American Civil Liberties Union, 4 March 2005; *Leadership Failure: Firsthand accounts of torture of Iraqi detainees by the US Army’s 82nd Airborne Division*, Human Rights Watch, September 2005.

side the domain of existing legal regimes. In Iraq private contractors were not part of the military chain of command and so were not subject to military justice; the Coalition Provisional Authority also explicitly excluded them from the provisions of Iraqi law. Indeed, no contractors operating anywhere in Iraq have been indicted, prosecuted or punished for anything; the only corporate inquiry into the events at Abu Ghraib was conducted by CACI which, as Singer says, ‘unsurprisingly found that CACI had done no wrong.’ In short, private contractors were – and remain – free to operate in a zone of absolute indistinction between the legal and the extra-legal.¹⁰⁰

The third element of the interrogation and intelligence strategy was to radicalize outsourcing on a global scale. Abu

Ghraib was wired to a global network of prisons and detention centres run by the US military, the CIA and allied intelligence services.¹⁰¹ In March 2004 the White House wanted to know if it could forcibly transfer prisoners from Iraq so that they could be held indefinitely and subjected to even more extreme methods of interrogation. Forcible transfers are explicitly proscribed by the Geneva Conventions, whose architects had before them the policies of mass deportation and the enforced disappearance of individuals into the *Nacht und Nebel* programmes carried out by the Nazis. But this did not deter the legal cartographers in the Department of Justice. Their counter-argument included appeals to Roman law – though not to *homo sacer* – and, in a surreal flourish, to Iraq’s own immigration law which, unlike virtually every other law on Iraq’s statute books, apparently could not be re-

¹⁰⁰ Peter Singer, ‘Beyond the law’, *Guardian*, 3 May 2004; Julian Borger, ‘The danger of market forces’, *Guardian*, 6 May 2004; Deborah Avant, ‘What are those contractors doing in Iraq?’ *Washington Post*, 9 May 2004. See also Peter Singer, *Corporate warriors: the rise of the privatized military industry* (New York: Cornell University Press, 2003); idem, ‘War, profits and the vacuum of law: privatized military firms and international law’, *Columbia journal of transnational law* 42 (2) (2004) pp. 521-549; idem, ‘Outsourcing war’, *Foreign Affairs* 84 (2) (2005) pp. 119-32. The use of proxies for state violence – mercenaries and private military firms – is a common strategy of distancing the state from the perpetrators of its crimes: see Ruth Jamieson and Kieran McEvoy, ‘State crime by proxy and juridical othering’, *British journal of criminology* 45 (2005) pp. 504-27: 512-514,

¹⁰¹ Dana Priest and Joe Stephens, ‘Secret world of US interrogation,’ *Washington Post* 11 May 2004.

pealed or suspended by the occupying power. According to Iraqi law, anyone entering the country illegally (the ‘foreign fighters’ who had joined the insurgency, not the thousands in US Army uniforms) was liable to imprisonment or deportation. It seems unlikely that the drafters of the original law entertained the prospect that these measures could be coincident, but Guantánamo and its replicant sites made it possible for the United States to deport and imprison in a single measure.¹⁰²

This programme dovetailed with a system of extraordinary renditions organised by the CIA.

The Clinton administration had authorized the clandestine programme after the



bomb attacks on the World Trade Center in 1993. In concert with foreign intelligence agencies, the CIA launched covert operations to abduct suspected terrorists from Croatia and Albania to Egypt, and at

least 70 people had been rendered by 9/11. There were nominal safeguards attached to the process. Every abductee was supposed to have been convicted in absentia or to have been charged with a criminal offence that would lead to a judicial trial; each rendition required individual review and approval. But the Bush administration dramatically expanded the programme after 9/11 and removed most of those requirements. The central objective was to shackle indefinite detention to extreme interrogation. According to Jane Mayer, what started as a programme aimed at a small, discrete set of suspects was thus widened to include a larger and

looser target population of ‘unlawful combatants’ for whom any pretence of judicial process was abandoned. The objective was to put such people

‘outside the protection of the law’ altogether and place them ‘completely in the power of their captors.’¹⁰³ It is estimated that 100-150 people have been ren-

¹⁰² ‘Permissibility of relocating certain “protected persons” from occupied Iraq,’ Draft memorandum for Alberto Gonzales, Counsel to the President, from Jack I. Goldsmith III, US Department of Justice, 19 March 2004; in Greenberg and Dratel (eds) *Torture Papers op. cit.*, pp. 360-80: 373-4.

¹⁰³ *The United States’ “Disappeared”: the CIA’s long-term “ghost detainees”*, Human Rights Watch, October 2004; *Rendition and secure detention: a global system of human rights violations*, Amnesty International, January 2006 (POL 30/003/2006); see also *Ending Secret Detentions*, Human Rights First, June 2004; Ian Cobain, ‘Seized, held, tortured: six tell same tale’, *Guardian* 6 December 2005.

dered under the revised programme and taken to jails in Egypt, Jordan, Libya, Morocco, Saudi Arabia, Syria and Uzbekistan: all of which have been criticized by the State Department for gross violations of human rights. Equally cynically, the

programme uses the law to violate the law. Renditions are carried out using civilian

rather than military aircraft to take advantage of the Chicago Convention on International Civil Aviation (1944), which makes it unnecessary for non-scheduled, non-commercial civil aircraft to seek permission to pass through the airspace of other states or to land at civilian airports. The aircraft belong to a number of shell companies, which takes advantage of commercial law: 'You can set them up quickly,' one former CIA agent explained, and 'dismantle them when they are ex-



posed.' These slippery manoeuvres are necessary because enforced disappearances are expressly prohibited under international law, which further imposes on all states an absolute and unconditional ban on transferring people to states where

they risk torture. The token gesture of compliance made by the United States is

really a sign of utter contempt: it claims to seek assurances about the treatment of those subject to rendition, and US diplomats are nominally in charge of monitoring compliance. But the Director of the CIA, Porter Goss, openly admits that 'Once they are out of our control, there's only so much we can do...': which is of course precisely the point.¹⁰⁴

Some prisoners remain firmly under US control, however, because the CIA

¹⁰⁴ Stephen Grey, 'US accused of torture flights', *Sunday Times* 14 November 2004; Dana Priest, 'Jet is open secret in terror war', *Washington Post* 27 December 2004; Jane Mayer, 'Outsourcing torture', *New Yorker* 14 February 2005; Michael Hirsh, Mark Hosenball, John Barry, 'Aboard Air CIA', *Newsweek* 28 February 2005; Douglas Jehl, David Johnston, 'Rule change lets CIA freely send suspects abroad to jails', *New York Times* 6 March 2005; Dana Priest, 'CIA's assurances on transferred suspects doubted', *Washington Post* 17 March 2005; Scott Shane, Stephen Grey, Margot Williams, 'CIA expanding terror battle under guise of charter flights', *New York Times* 31 May 2005.

also has its own covert prison system that was also authorized by President Bush after 9/11. These so-called ‘black sites’ open and close at different times, and prisoners are regularly flown from one to another for interrogation that exceeds the boundaries of federal and international law. At Abu Ghraib there was a formalized Memorandum of Understanding with the military over the CIA’s ‘ghost detainees’ who were held in isolation on Tier 1A of the Hard Site. They were not identified by name or registered and they were moved around the prison to hide them from ICRC delegations. At least one prisoner died in CIA custody at Abu Ghraib.

¹⁰⁵ Other black sites have been identified in Afghanistan and Pakistan; in Qatar and Yemen; on the British Indian Ocean Territory of Diego Garcia; in Thailand (which was closed in 2003); at Guantánamo (which was closed in 2004 when federal courts began to exercise jurisdiction over

prisoners there); and in the Czech Republic, Poland and Romania (which were all closed in November 2005 following widespread outrage in Europe). All these sites are under direct US control where, to take Goss at his weasel word, there is plainly a great deal that the United States can do.

¹⁰⁶

The Bush administration constantly claims that prisoners subject to prolonged isolation and extreme interrogation are ‘the worst of the worst’. Even if this were true it would not entitle the United States to treat them in these ways. But there have been an increasing number of cases of ‘erroneous’ renditions – the CIA Inspector General is allegedly investigating as many as 36 – that gives the lie to this outrageous defence. The testimonies of the victims who have survived also reveal, contrary to the administration’s disingenuous protestations, the extensive

¹⁰⁵ Josh White, ‘Army, CIA agreed on “Ghost” Prisoners’, *Washington Post* 11 March 2005; Jane Mayer, ‘A deadly interrogation’, *New Yorker* 14 November 2005.

¹⁰⁶ Dana Priest, ‘CIA holds terror suspects in secret prisons’, *Washington Post* 2 November 2005; Demetri Sevastopulo, Guy Dinmore, Caroline Daniel, Jan Cieski, ‘Evidence CIA has secret jails in Europe’, *Financial Times* 2 November 2005; Allan Freeman, ‘EU eyes alleged CIA jails’, *Globe and Mail* 4 November 2005; Josh White, ‘Prisoner accounts suggest detention at secret facilities’, *Washington Post* 7 November 2005; Luke Harding, ‘Rice admits US mistakes in war on terror after wave of criticism across Europe’ *Guardian* 7 December 2005; ‘European investigator says US “outsourced” torture’, *Associated Press* 24 January 2006.

use of torture. I only have space for two examples. Maher Arar, a Syrian-born Canadian was detained in New York in September 2002 and flown to Jordan on a private jet and then transferred to Syria where he was held for ten months and repeatedly subjected to physical and psychological torture; he was released after ten months without charge. Khaled Masri, a German citizen born in Lebanon was abducted from police custody in Skopje in January 2003 and flown to Afghanistan on a ‘hunch’ that he was involved in terrorism; he was held for five months and told: ‘You are here in a country where no one knows about you, where there is no law. If you die, we will bury you and no one will know.’¹⁰⁷

The very language of ‘extraordinary rendition’, ‘ghost prisoners’, and ‘black sites’ implies something out of the ordinary, spectral, a twilight zone: a serial space of the exception. But this performative spacing works *through* the law to annul the law; it is not a ‘state’ of exception

that can be counterposed to a rule-governed world of ‘normal’ politics and power. It is, at bottom, a process of *juridical* othering that involves three overlapping mechanisms: the creation of special rules that withdraw legal protections and permit the torture of what Ruth Jamiesson and Kieran McEvoy call ‘juridical others’; the calculated outsourcing of state crimes to regimes known to practice torture; and the exploitation of extra-territorial sites where prisoners are detained and tortured at the pleasure of sovereign power. These strategies are not novel, however, and they did not begin with 9/11. Neither are they exclusively American strategies; the agencies of many other states have been complicit in the process. What is new is the way in which the vanishing points that they so assiduously produce are selectively but deliberately brought into fleeting view – in a calculated gesture of intimidation – and the way in which they reveal the totalizing will to power that lies at the crucial intersections of sovereignty and biopolitics.

¹⁰⁷ See <http://www.maherarar.ca>; Dana Priest, ‘Wrongful imprisonment: anatomy of a CIA mistake’, *Washington Post* 4 December 2005; Leonard Doyle, Tony Paterson, ‘Germany’s victim of extraordinary rendition sues in US courts as Rice is forced on the defensive’, *Independent* 7 December 2005.

¹⁰⁸ In all these ways, as Kaplan concludes, the Bush administration has sought to redraw ‘the borders of the law’ in order ‘to create a world in which Guantánamo is everywhere’ (Figure 8). ¹⁰⁹

In fact, the wheel has turned full circle, and Afghanistan has turned into a major hub in the global system of clandestine detention centres. ‘Prisoner transports criss-cross the country between a proliferating network of detention facilities’; reports have identified at least 20 detention facilities in outlying US compounds and fire bases that feed in to a collection centre at Bagram air force base, and further camps at Asadabad, Gardez, Ghazni, Jalalabad, Orgun Kabul, Kandahar, and Khost. ‘What has been glimpsed in Afghanistan,’ according to two reporters, is ‘a radical plan to replace Guantánamo Bay.’ The intention, so they claim, is to produce a global prison net-

work beyond the reach of American or European judicial process. By the summer of 2005 negotiations were under way to transfer 50-70 per cent of the prisoners under the jurisdiction of the Department of Defense at Guantánamo to Afghanistan, Saudi Arabia and Yemen, where they would be incarcerated in purpose-built jails financed and constructed by the United States. Once again, it was claimed that the State Department would assume responsibility for ‘monitoring agreements to make sure prisoners were not mistreated.’ It beggars belief that occasional diplomatic visits announced in advance could be regarded as effective monitoring when so many officers working inside Abu Ghraib claimed not to have known what was happening day after day under their own command. ¹¹⁰

Torture chambers

¹⁰⁸ Jamieson and McEvoy, ‘State crime by proxy’ *op. cit.*, pp. 515, 521; cf. John Parry, ‘The shape of modern torture: extraordinary rendition and ghost detainees’, *Melbourne journal of international law* 6 (2005) pp. 516-533.

¹⁰⁹ Kaplan, ‘Where is Guantánamo?’ *op. cit.*, p. 854.

¹¹⁰ Tom Engelhardt, ‘Into the shadows’, at <http://www.TomDispatch.com>, 5 April 2004; Dana Priest, Joe Stephens, ‘Abu Ghraib is just the most notorious of a network of detention centers’, *Washington Post* 23 May 2004; Julian Borger, ‘US plans permanent Guantánamo jails’, *Guardian* 3 January 2005; Jonathan Steele, ‘A global gulag to hide the war on terror’s dirty secrets’, *Guardian* 14 January 2005; Douglas Jehl, ‘Pentagon seeks to transfer more detainees from base in Cuba’, *New York Times* 11 March 2005; Adrian Levy, Cathy Scott-Clark, ‘“One huge US jail”’, *Guardian* 19 March 2005; Josh White, Robin Wright, ‘Afghanistan agrees to accept detainees’, *Washington Post* 5 August 2005.

The McCotter team considered Abu Ghraib to be the closest to an American prison, and its renovated cell-blocks ('the Hard Site') set the stage for a convergence between the US war machine and the US prison industry. The United States jails over two million of its citizens, and more than 60 per cent of the prison population is African-American or Latino. Many of those African-American inmates are Muslims; estimates suggest they make up 10-20 per cent of the total prison population. Some of them have converted through the National Islamic Prison Foundation, and many are deeply committed to the Nation of Islam. In myriad ways federal and state prisons have long been sites of crucial encounter between Islam and those versions of America that exclude its Muslim 'other'. In this system, racialized brutality and intramural violence are more or less sanctioned, and humiliation and abuse have become ritualized and routinized.¹¹¹ As Michelle Brown remarks,

prisons are thus 'liminal spaces both inside and outside the boundaries of constitutional law.' Is it so surprising that two of the ringleaders at Abu Ghraib should have been corrections officers back home? This does not excuse their actions, of course, still less the carceral system that makes them possible. Brown's point is that the ideology of crime and punishment and the prosecution of the 'war on terror' are both conducted in a language of retribution that, at the limit, reduces its 'object-other' to a pure embodiment of the force of sovereign power: to bare life.¹¹²

The parallels between the two are indeed close, but the space between them needs to be retained because what happened at Abu Ghraib was more than a foreign replay of the odious domestic regime of incarceration. Abu Ghraib was in the middle of a war zone where the US Army was deploying ever more force and not only failing to suppress the insurgency but

¹¹¹ Rachel Zoll, 'US prisons become Islam battleground', Associated Press 14 July 2005; Markha Valenta describes American prisons as sites 'where two contradictory intentions meet: that of the American commitment to seeking out and encountering the other but only in order all the better to repudiate him. So the logic of the penal encounter is at once one of intimacy and othering, of knowledge and ignorance, or touching and of radical objectification': 'Prison encounters, or The logic of penal democracy'.

¹¹² Michelle Brown, "'Setting the conditions" for Abu Ghraib: the prison nation abroad', *American Quarterly* 57 (2005) pp. 973-997: 989. The interpolation of Agamben is mine not Brown's. Her argument turns on the way in which the Hard Site at Abu Ghraib followed the logic of the self-contained 'supermax' prison in the United States, where exclusion, segregation and isolation – the removal of all ordinary human interaction – are used as managerial strategies under the sign of 'security' (pp. 986-8).

increasing the opposition to its occupation. In contradistinction to the triumphant mastery displayed in the photographs of the first prisoners arriving at Guantánamo, therefore, Allen Feldman reads the images from Abu Ghraib as recording ‘ceremonies of nostalgia’ that betray a longing for the power that was so visibly slipping away. Through these rituals, he argues,

‘The perpetrators re-acquire, if only in an allegorical idiom, their former sense of mastery and command in a situation that is rapidly lurching beyond their grasp.... [The] hooded and faceless bodies that are being manipulated and posed are merely emblems of a collective, recalcitrant Iraqi body politic that has to be dissected as the treacherous social surface of an occupied Iraq.’¹¹³

This reminds us that the torture chamber is a setting for the aggrandisement of power, and that its affirmation is likely to become more frenzied as it is mocked or threatened. Elaine Scary suggests that:

‘The torturer’s questions objectify the fact that he has a world, announce in their feigned urgency the critical importance of that world, a world whose asserted magnitude is confirmed by the cruelty it is able to motivate and justify. Part of what makes his world so huge is its continual juxtaposition with the small and shredded world objectified in the prisoner’s answers... It is only the prisoner’s steadily shrinking ground that wins for the torturer his swelling sense of territory.’¹¹⁴

Conversely, as the vortex of insurgency and counter-insurgency intensified, per-

¹¹³ Allen Feldman, ‘Securocratic wars of public safety: globalized policing as scopic regime’, *Interventions* 63 (2004) pp. 330-350: 340; cf. Butler (fn. 28 above). In much the same way, Joanna Bourke argues that the Abu Ghraib images revealed ‘unembarrassed displays of triumph and joy at the power involved in humiliating adult men’, and at the ability to do so within a community whose existence and experience was confirmed and validated by those very rituals: ‘Sexy snaps’, *Index on Censorship* (2005) pp. 39-45: 43. This jibes with reports of American troops humiliating and abusing their captives as a means of ‘stress relief’: Leadership failure *op. cit*

¹¹⁴ Scary, *Body in pain op. cit.*, p. 36.

haps it seemed to these soldiers and their accomplices that, outside the confines of the cell-block where their command was undisputed, the ground of the US Army was steadily shrinking as the insurgency asserted its own 'swelling sense of territory' (and sovereignty). The degradation, humiliation and sheer cruelty were, in their hideous way, a petty reversal of that greater reversal. That the attempts to engorge their enfeebled sense of power played on an elaborately Orientalized fantasy of feminized Arabs and of political militants as products of a failed heterosexuality enables Jasbir Puar to link torture in a metonymic chain that culminates in a climactic assertion of a heteronormative nationalism. 'The bonding ritual of the carnival of torture – 'discussing it, producing it, getting turned on by it, recording it, disseminating the proof of it, gossiping about it – [becomes] the ultimate performance of patriotism.' No wonder it is the last refuge of the scoundrel.¹¹⁵

Scary makes another suggestion that helps make sense of the larger canvas that was folded in to Abu Ghraib when she notes that the questions and answers in the torture chamber are 'a prolonged comparative display, an unfurling of world maps'. This speaks directly to the project of interrogation and intelligence. Some commentators have sought to explain what happened there by blaming it on ignorance: 'Soldiers were immersed in Islamic culture,' one military psychiatrist wrote, 'a culture that many were encountering for the first time.'¹¹⁶ Yet the scenes that were recorded in the cellblocks revealed a display of knowledge as well as power. They combined many of what Arab cultures see as utterly shameful acts in a montage of incandescent horror: 'the display of naked flesh; the use of dogs and dog-like treatment in human company; the removal of space between people and forced contact, grovelling and prostration;

¹¹⁵ Jasbir Puar, 'On torture: Abu Ghraib', *Radical history review* 93 (2005) pp. 13-38: 28; see also Jasbir Puar and Amit Rai, 'Monster, terrorist, fag: the war on terrorism and the production of docile patriots', *Social text* 72 (2002) pp. 117-148.

¹¹⁶ Colonel Henry Nelson, 'Psychological assessment': Taguba Report, p. 448.

physical and intimate touching by strangers; nudity and sexual exposure before other men; homosexual contacts; the humiliation of men in front of women; filth; enslavement.’¹¹⁷ This was not happenstance. Neither were the techniques invented by the torturers. Written testimony, together with one of the photographs, shows that prisoners’ arms were stretched behind their backs and then shackled to the bars in a high-stress position that is known as a ‘Palestinian hanging’ from its use by the Israeli secret service in the occupied territories; it contributed directly to the death of Manadel al-Jamadi in CIA custody at Abu Ghraib. The crucified position into which the hooded man was forced is called ‘the Vietnam’, an extraordinarily painful method studied by the CIA and used by interrogators in South Africa and South America. It strains credibility to believe that such tableaux of intense humiliation and pain – a theatre of cruelty if ever there was one – were nothing more than the art-

less staging of a handful of reservists from small-town America.¹¹⁸

That said, one has to confront the rictus of delight shown on the faces of those hometown, Homeland soldiers. They were not just triumphant; they were exultant. Michael Taussig makes the sharp point that ‘it is not the victim as animal that gratifies the torturer, but the fact that the victim is human, thus enabling the torturer to become the savage.’ In other words, torture requires its victims to be less than human, so that the degradation can continue – the spectre of ‘the monster’ stalks the torture-chamber – but it also requires them to be human: otherwise sexual gratification is withheld from the torturer. A space that is at once inside and outside the political-judicial order is a space where these doubled subjects can be conjured into being, paraded and subjugated. Here, in the most intimate recesses of the space of the exception, we finally come face to face with the other

¹¹⁷ Doug Saunders, “‘This has disgraced America...’”, *Globe & Mail*, 7 May 2004. This form of Orientalism does not reverse patriarchy and heteronormativity to endorse or permit their reversals but to demonise them. Those tired of the voyeurism of all this should read the first-person testimonies of prisoners released from Abu Ghraib: Ian Fisher, ‘Iraqi recounts hours of abuse by US troops’, *New York Times*, 5 May 2004; Scott Wilson, ‘Ex-detainee tells of anguishing treatment at Iraqi prison’, *Washington Post*, 6 May 2004.

¹¹⁸ Justin Raimondo, ‘The S&M War’, at <http://www.antiwar.com>, 7 May 2004.



spectre that haunts these splattered cell-blocks. For here, in Taussig's vital paraphrase of Benjamin, 'mimesis occurs by a colonial mirroring of otherness that reflects back onto the colonists the barbarity of their own social relations, but as imputed to the savage they yearn to colonize.'¹¹⁹

After words

Iraqis responded to the images from Abu Ghraib with understandable outrage, and much of their anger was focused on the colonial mirroring that Taussig describes: the Janus-face of occupied Iraq,

preaching liberation while practicing degradation. But one of the most telling responses that I have seen comes from the weblog of 'Riverbend', a young Iraqi woman in Baghdad:

'Seeing those naked, helpless, hooded men was like being slapped in the face with an ice cold hand. I felt ashamed to be looking at them – like I was seeing something I shouldn't be seeing and all I could think was, "I might know one of

¹¹⁹ Michael Taussig, *Shamanism, colonialism and the wild man: a study in terror and healing* (Chicago: University of Chicago Press, 1987) pp. 83, 134.

those faceless men...” I might have passed him in the street or worked with him. I might have brought groceries from one of them or sat through a lecture they gave in college... any one of them might be a teacher, gas station attendant or engineer... any one of them might be a father or grandfather... each and every one of them is a son and possibly a brother.’¹²⁰

These are haunting words. The practices at Guantánamo, Abu Ghraib and elsewhere are saturated with a colonial past that is reactivated in our colonial present, and I hope that in making them visible I have helped to undercut the pernicious claim that terror and torture always refer to the actions of others never to ourselves. Seen thus, as Philip Kennicott says, the images from Abu Ghraib are unexceptional: ‘In different forms, they could be pictures of the Dutch brutalizing the Indonesians; the French brutalizing the Algeri-

ans; the Belgians brutalizing the people of the Congo.’ When we look at these images, he concludes, we should see ourselves because they are *ours*: ‘Every errant smart bomb, every dead civilian, ever sodomized prisoner, is ours.’¹²¹ This seems exactly right to me. But Riverbend’s anguish suggests another way to see ourselves in these images: for they are also *us*. There has never been a greater need to untwist the separations between ‘us’ and ‘them’ than the present moment of danger. For as the viral ‘war on terror’ proliferates across the globe, and as regimes around the world invoke ‘national security’ to suppress human rights, we are all, potentially, *homines sacri*. We could all end up on other boxes in other prisons, arms outstretched and wires attached to our trembling bodies.

¹²⁰ Riverbend, ‘Baghdad Burning’, at <http://riverbendblog.blogspot.com>, 30 April 2004.

¹²¹ Philip Kennicott, ‘A wretched new picture of America’, *Washington Post* 5 May 2004; Geoffrey Galt Harpham, ‘Inadmissible evidence: terror, torture and the world today’, *Chronicle of Higher Education* 15 October 2004.