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TRANSCENDENCE IN THE ANIMAL: GUANTÁNAMO'S REGIME OF  
INDEFINITE DETENTION AND *THE OPEN IN THE CAGE*

JOSEPH PUGLIESE\*

**I**N the closing pages of an essay in which Penny Pether tracks her unwavering “pursuit of the unspeakable,” she abruptly shifts location from Australia to Charlottesville, Virginia. Visiting Thomas Jefferson’s house, Monticello, she describes a scene that continues to haunt her:

Monticello itself is dwarfed by the vast underground warren of rooms where slaves worked to keep the house going, its domestic beauty seeming like a lovely poisoned fungus feeding on hidden corruption. The enslaved African-American butler stood behind a panel in an anteroom during the family meals, so not only were the slaves who fed the family from the underground domestic offices out of sight, but the one remaining visible piece of evidence of what literally fuelled the Jeffersonian vision was hidden.<sup>1</sup>

Pether, in one of her characteristically deft maneuvers, ties the haunting of this scene back to her critical analysis of Australian constitutional law, leaving her readers to ponder the choice they are required to make: “The unspeakable and the invisible, or the examined and reflected on . . . .”<sup>2</sup> I want to begin this Essay on the death of Adnan Farhan Abdul Latif in the context of Guantánamo’s regime of indefinite detention by proceeding to assume the burden of this choice: to examine, to reflect, and thus to render to speech what would otherwise continue to remain unspeakable and invisible.

Adnan Latif was one of the detainees captured in Afghanistan in the early roundups of “suspects” soon after the 9/11 attacks. Latif repeatedly stressed his innocence to no avail. He described how he had gone to Afghanistan in order to seek charitable medical treatment for a head injury he had received in a car accident in Yemen. The dubious processes by which detainees were screened and evaluated have been graphically exposed by Colonel Lawrence B. Wilkerson (Ret.), a key official of the State

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\* Professor Joseph Pugliese is Research Director of the Department of Media, Music, Communication and Cultural Studies, Macquarie University. This Essay is dedicated to the memory of Penny Pether—in gratitude for her friendship, brilliant scholarship, and her unwavering commitment to social justice. I also wish to thank Constance Owen for her invaluable and enduring research assistance.

1. Penelope Pether, *Pursuing the Unspeakable: Toward a Critical Theory of Power, Ethics, and the Interpreting Subject in Australian Constitutional Law*, 20 ADEL. L. REV. 17, 27–28 (1998) [hereinafter Pether, *Pursuing the Unspeakable*].

2. *Id.* at 28.

Department from 2002 to 2005, in a coruscating declaration in which he places on the record the systemic failings that he witnessed, including

that many of the prisoners detained at Guantánamo had been taken into custody without regard to whether they were truly enemy combatants, or in fact whether many of them were enemies at all. . . . [M]any of the detainees were, in fact, victims of incompetent battlefield vetting. There was no meaningful way to determine whether they were terrorists, Taliban, or simply innocent civilians picked up on a very confused battlefield or in the territory of another state such as Pakistan.<sup>3</sup>

Wilkerson's observations have since been supported by the release of the Senate Select Committee on Intelligence Committee Study of the Central Intelligence Agency's Detention and Interrogation Program. The Study, which focuses exclusively on the CIA's detention and interrogation program, found that:

While the CIA acknowledged to the House Permanent Select Committee on Intelligence (HPSCI) in February 2006 that it had wrongfully detained five individuals throughout the course of its detention program, a review of CIA records indicates that at least 21 additional individuals, or a total of 26 of the 119 (22 percent) CIA detainees identified in this Study, did not meet the MON [Memorandum of Notification Authorizing the CIA to Capture and Detain a Specific Category of Individuals] standard for detention. This is a conservative calculation and includes only CIA detainees whom the CIA itself determined did not meet the standard for detention.<sup>4</sup>

Wilkerson proceeds to evidence the key role that the United States bounty system played in the capture of "suspects":

[W]e relied upon Afghans, such as General Dostum's forces, and upon Pakistanis, to hand over prisoners whom they had apprehended, or who had been turned over to them for bounties, sometimes as much as \$5,000 per head. Such practices meant that the likelihood was high that some of the Guantánamo detainees had been turned in to U.S. forces in order to settle local scores, for tribal reasons, or just as a method of making money. I recall conversations with serving military officers at the time, who

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3. Declaration of Colonel Lawrence B. Wilkerson (Ret.) at 4, *Hamad v. Bush*, 2008 U.S. App. LEXIS 18669 (D.D.C. 2008), (05-cv-1009) [hereinafter *Wilkerson Declaration*], *dismissed as moot* by 700 F. Supp. 2d 119 (D.D.C. 2010), *available at* <http://www.truth-out.org/files/wilkerson-sworn-declaration.pdf>.

4. U.S. SSCI, COMM. STUDY ON CIA DETENTION AND INTERROGATION PROGRAM 15–16 (Dec. 3, 2014) [hereinafter *SSCI STUDY*] (footnotes omitted), *available at* [http://www.intelligence.senate.gov/sites/default/files/press/executive-summary\\_0.pdf](http://www.intelligence.senate.gov/sites/default/files/press/executive-summary_0.pdf).

told me that many detainees were turned over for the wrong reasons, particularly for bounties and other incentives.<sup>5</sup>

Wilkerson's declaration concludes on a revealing note: "I also understood that the deliberate choice to send detainees to Guantánamo was an attempt to place them outside the jurisdiction of the U.S. legal system."<sup>6</sup> He writes that: "It was also becoming more and more clear that many of the men were innocent, or at a minimum their guilt was impossible to determine let alone prove in any court of law, civilian or military."<sup>7</sup> Wilkerson's observation on the innocence of the majority of Guantánamo's detainees is not anecdotal; according to one report, over the last decade "[n]early 600 have been released without being charged."<sup>8</sup> In order to set the record straight in terms of his complicity within this system of institutionalized violence, abuse, and injustice, Wilkerson states:

I have made a personal choice to come forward and discuss the abuses that occurred because knowledge that I served in an Administration that tortured and abused those it detained at the facilities at Guantánamo Bay and elsewhere and indefinitely detained the innocent for political reasons has marked a low point in my professional career and I wish to make the record clear on what occurred.<sup>9</sup>

Wilkerson's indictment of Guantánamo echoes the words of one of its inmates. In one of the letters to his attorneys, Adnan Latif writes: "This is a prison that does not know humanity, and does not know [anything] except the language of power, oppression and humiliation for whoever enters it. It does not differentiate between a criminal and the innocent . . ."<sup>10</sup>

5. Wilkerson Declaration, *supra* note 3, at 4.

6. *Id.* at 5.

7. *Id.*

8. Palina Prasadouk, *Playing Pieces in Political Football: Bergdahl and Guantánamo Prisoners*, TRUTH OUT (June 11, 2014, 11:51 AM), <http://www.truth-out.org/speak-out/item/24292-playing-pieces-in-political-football-bergdahl-and-guantanamo-prisoners/>. Prasadouk's report also confirms another of Wilkerson's contentions:

More than 85 percent of detainees at Guantanamo Bay were arrested, not on the Afghanistan battlefield by US forces, but by the Northern Alliance fighting . . . in Afghanistan and in Pakistan, at a time when rewards of up to US\$5,000 [sic] (the equivalent of a quarter of million rupees, enough to take care of your family) were paid for every "terrorist" turned over to the United States.

*Id.*

9. Wilkerson Declaration, *supra* note 3, at 9.

10. Andy Worthington, *Another Desperate Letter from Guantánamo by Adnan Latif: "With All My Pains, I Say Goodbye to You,"* ANDY WORTHINGTON (Feb. 20, 2011), <http://www.andyworthington.co.uk/2011/02/20/another-desperate-letter-from-guantanamo-by-adnan-latif-with-all-my-pains-i-say-goodbye-to-you/> (alteration in original) (quoting Adnan Latif).

Wilkerson's declaration works effectively to establish a series of key coordinates that orient and frame Latif's case. The indiscriminate and homogenizing sweep of detainees driven by the United States' bounty system; the lack of adequate screening practices; and finally, but most importantly, the virtual impossibility of rendering justice to Guantánamo's detainees through any court system, civilian or military, because, "[i]f there were any evidence, the chain protecting it had been completely ignored."<sup>11</sup> One can add, to Wilkerson's catalogue of grave concerns with regard to the structural impossibility of delivering justice to Guantánamo's detainees, the fact that the Court of Appeals for the District of Columbia Circuit recently dismissed claims that the detainees' ongoing detention "post-Combat Status Review Tribunals clearance" for release, and their "allegations of torture, religious desecration, etc., that occurred during the post-clearance period[,] . . . fail to support the conclusion that the defendants acted outside the scope of their employment."<sup>12</sup> In other words, the fact that (1) the detainees continue to languish in indefinite detention at Guantánamo despite having been cleared for release, and (2) the detainees' "allegations" that they continue to experience torture and other traumatic acts in their post-clearance phase—are both neutralized and dismissed by the court as they are accommodated under the "scope" of the appellees' "employment." The rationale for this decision is telling:

Indeed, the treatment of the detainees in this case appears to be standard for all those similarly situated. Authorized or not, the conduct was certainly foreseeable because maintaining peace, security, and safety at a place like Guantanamo Bay is a stern and difficult business. We are therefore hard-pressed to conclude the actions leading to the plaintiffs' treatment were not "a direct outgrowth of the [defendants'] instructions or job assignment."<sup>13</sup>

Even as the exhaustively documented and decried practices of torture perpetrated at Guantánamo are dismissed as mere "allegations" (as cited above, Wilkerson unequivocally declares that he "served in an Administration that tortured and abused those it detained at the facilities at Guantá-

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11. Wilkerson Declaration, *supra* note 3, at 5. Again, Wilkerson's observations are supported by a number of reports, including one that concludes:

[I]t is telling that after over a dozen years of detention, the government has managed to charge, try and convict only a handful—fewer than 10—of the 779 men it brought to the base. Five were convicted of minor charges (some that were not even crimes at the time of their detention) and have been released. One of the convictions was overturned on appeal; other appeals remain pending. This is not a record of ringing prosecutorial success.

Frank Goldsmith, *I Helped Free the Taliban from Guantánamo Bay*, TIME (June 6, 2014), <http://www.time.com/2838946/i-helped-free-the-taliban-from-guantana-mo-bay/>.

12. *Allaithi v. Rumsfeld*, 753 F.3d 1327, 1330 (D.C. Cir. 2014).

13. *Id.* at 1333 (alteration in original) (citations omitted) (quoting Penn. Cent. Transp. Co. v. Reddick, 398 A.2d 27, 32 (D.C. Cir. 1979)).

namo Bay”), the fact that this type of violent treatment “appears to be standard for all those similarly situated” renders it normative and thus unexceptional. Regardless of the fact that these violent practices might be “[a]uthorized or not,” they are rendered legitimate as naturalized “out-growth[s]” of Guantánamo’s everyday “job assignment[s].”<sup>14</sup> In the face of the institutional, routinized, and quotidian violence that I proceed to document below with specific reference to Adnan Latif’s case, the “stern and difficult business” of “maintaining peace, security, and safety at a place like Guantánamo Bay” emerges as a scandalous understatement.

Marc Falkoff, one of Latif’s habeas lawyers since 2004, describes the nightmare situation that Latif was plunged into once he entered Guantánamo’s military prison: “Adnan was brought to Guantanamo in January 2002 on suspicion of being associated in some manner with enemy forces in Afghanistan. It’s hard to say exactly what the U.S. military thought Adnan had done. Over the years, the government made allegations and then abandoned them.”<sup>15</sup> Falkoff proceeds to unfold a legal narrative inscribed with multiple unsubstantiated allegations against Latif, a narrative that appears to shift, change, collapse, and resurrect itself in the face of a clear lack of evidence against Latif:

At one point, the government accused Adnan of “associating” with Al Qaeda. But the military never produced any credible evidence to sustain the charge, so the government dropped it. More recently, the government argued that it was lawful to detain Adnan for 10 years or more at Guantanamo because it believed he had served as a Taliban foot soldier for a few weeks before the U.S. began bombing Afghanistan.

But even this diminished allegation could not be proved, as U.S. District Judge Henry H. Kennedy Jr. determined in 2010.<sup>16</sup>

Judge Henry Kennedy Jr. ordered the release of Latif, yet he continued to be detained. Falkoff underscores what he considers to be the “grimmiest fact about Adnan’s death”:

that since early in his detention, no one really thought he should be at Guantanamo at all. During the Bush administration, the military recommended Adnan for transfer at least three times—in 2004, 2006 and 2008.

Then in 2009, when President Obama came into office, a task force reviewed all the evidence in Adnan’s case and again recommended him for repatriation to Yemen.<sup>17</sup>

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14. *Id.*

15. Marc Falkoff, Op-Ed., *A Death at Gitmo*, L.A. TIMES, Sept. 20, 2012, <http://articles.latimes.com/2012/sep/20/opinion/la-oe-falkoff-gitmo-detainee-death-20120920> [hereinafter Falkoff, *A Death at Gitmo*].

16. *Id.*

17. *Id.*

Despite this recommendation, “Obama chose to appeal the district court’s order to release a prisoner whom his own task force had (privately) already designated for transfer home.”<sup>18</sup> “Why the appeal?” asks Falkoff. “To all appearances,” he writes, “the new administration, like the old one, was chiefly concerned with limiting the power of the courts in wartime.”<sup>19</sup> Falkoff describes the consequences of this appeal:

The result was that last year [2012] the appeals court, in a widely criticized 2-1 ruling, vacated Kennedy’s order and remanded the case for a do-over. The dissenting judge criticized the majority for “moving the goal posts” in the government’s favor.

This June, the Supreme Court refused to review that ruling. Eight years after we first filed a habeas petition on Adnan’s behalf, we were back to square one. And that may have been more than Adnan could bear.<sup>20</sup>

On September 8, 2012, Adnan Latif was found dead in his cell in Guantánamo. In what follows, I want to examine the circumstances that led to Latif’s death. In order to expose the violent forces that were constitutive of Latif’s death, my analysis will be informed by Pether’s observations on the politico-materiality of the “corporeal hexis” and how it works to bring into critical focus a “certain durable organization of one’s body and of its deployment in the world.”<sup>21</sup> I will track the process of the disintegration of Latif’s corporeal and psychic hexis in the context of Guantánamo in order to fulfill Pether’s exhortation to materialize the “complex of disciplinary institutions, discourses and practices, through which the national [U.S.] culture is reproduced and in the name of which violence is done on and through the bodies of the subjects it forms.”<sup>22</sup>

In the course of materializing the necropolitical dimensions of this carceral complex, I also want to mark the heterotopic spaces and heterological practices produced by Guantánamo’s detainees in the context of their insular prison. These heterotopic spaces and heterological practices, I suggest, articulate what I will call “the Open in the cage.” This is the tenuous double-space that enables a range of practices that are deemed outlaw in this most extra-judicial of all spaces.

18. *Id.*

19. *Id.*

20. *Id.*

21. Penny Pether, *On Foreign Ground: Grand Narratives, Situated Specificities, and the Praxis of Critical Theory and Law*, 10 *LAW & CRITIQUE* 211, 233 (1999) [hereinafter Pether, *On Foreign Ground*] (quoting John P. Thompson, *Editor’s Introduction to PIERRE BOURDIEU, LANGUAGE AND SYMBOLIC POWER* 1, 12–13 (John B. Thompson ed., Gino Raymond & Matthew Adamson trans., 1991)).

22. *Id.* at 224.

I. "ON FOREIGN GROUND": DISINTEGRATING ADNAN LATIF'S  
CORPOREAL HEXIS

In the context of an essay in which Pether examines the mechanisms and practices that enable the maintenance and reproduction of the status quo in the teaching of law in the "legal academy of the U.S.A.," Pether discloses a series of "institutional norms" that only become visible to her because of her "foreign eyes."<sup>23</sup> The essay is, tellingly, titled *On Foreign Ground*. The subtext that inscribes the body of the essay speaks to Pether's acute sense of displacement following her move from Australia to the United States. She names this sense of displacement: "This is an article written from diverse margins and in the middle of multiple transitions."<sup>24</sup> The multiple transitions work to unsettle both her intellectual and affective framework. She works to make sense of what is personally at stake in the wake of this profound process of unsettling, even as she attempts to grasp the larger, productive possibilities that are offered to her by this same process. This process of unsettling effectively works to fuel her "forensic impulse to work out what is going on when and where this happens" in the rule of law; "the rule of law," she immediately adds, "is often invoked as a species of last refuge of the scoundrel."<sup>25</sup>

What is at stake for Pether at the personal level and at the larger institutional level of law is the body. Pether's commitment to fleshing out the politics of embodiment is inscribed across the entirety of her scholarly corpus. The personal and the institutional are never, for her, seen as disjunctive categories. On the contrary, she always works to unravel the chiasmic lines that cross one over to the other. She painstakingly delineates the lines of force and power that traverse and constitute diverse bodies of flesh, text, and law into assemblages that are either legitimated as normative subjects, and are thereby enabled and empowered institutionally and otherwise, or, on the contrary, that are branded as dysfunctional, aberrant, and criminal.<sup>26</sup> It is to these violent processes of legal disenfranchisement and marginalization that Pether repeatedly turns her attention in her critical work. She terms the loci inscribed by these violent processes sites of "saturation"—of bodies, law, and institutionalized violence.<sup>27</sup>

In one passage from *On Foreign Ground*, by mobilizing her "alien's eyes," she casts light on one of these sites of saturation, inscribed by multiple points of intersection and layered levels of embedding between bodies of flesh, institutional bodies, and bodies of law:

23. *Id.* at 217.

24. *Id.* at 215.

25. *Id.* at 225.

26. The title of Pether's planned, but unfinished, book succinctly encapsulates this understanding: "PERVERTS," "TERRORISTS," AND BUSINESS AS USUAL: COMPARATIVE INDEFINITE DETENTION BEFORE AND AFTER 9/11.

27. See Pether, *On Foreign Ground*, *supra* note 21, at 223.



I will turn to a place where that saturation is starkly visible to my alien's eyes: a particular legacy of the history of legalized enslavement of Afro-Americans. This legacy is inscribed in embodied subjects, insistently present in the dearth of equal opportunity in places including law schools, and written into the substance of the land itself, if often repressed in the letter of the contemporary law.<sup>28</sup>

The body, the letter of law, and the intextuated substance of the land itself—as all inscribed and saturated by violence—constitute the toponym “Guantánamo,” its carceral habitus and its caged inmates. It is in the locus of this site of saturated violence that I want to trace the life and death of Adnan Latif by drawing on Pether's work on the corporeal hexis. In fleshing out this figure, Pether cites Vicky Kirby's analysis of Pierre Bourdieu:

The habitus also provides individuals with a sense of how to act and respond in the course of their daily lives. It ‘orients’ their actions without strictly determining them. It gives them . . . a sense of what is appropriate in the circumstances and what is not, a ‘practical sense’. [sic] The practical sense is not so much a state of mind as a state of the body, a state of being. It is because the body has become a repository of ingrained dispositions that certain actions, certain ways of behaving and responding, seem altogether natural. Bourdieu speaks here of a . . . corporeal ‘hexis’, [sic] by which he means a certain durable organization of one's body and of its deployment in the world. . . . The body is the site of incorporated history.<sup>29</sup>

It is the final line that closes this extended quotation that I want to use as my point of departure in my discussion of the force and violence of law and the life and death of Adnan Latif in Guantánamo. On the one hand, I want to trace the multiple relations of force and violence that inscribe Latif's body as a site of incorporated history; on the other, I want to track the manner in which these same relations of force and violence worked systematically toward the effective disintegration of Latif's corporeal hexis. I will negotiate this twofold analysis through the materiality of a testimonial text, specifically, a letter from Latif to his attorneys, David Remes and Marc Falkoff.

Latif opens his letter thus: “Here I am drowning in my blood and you are still looking for justice and seeking hearings. Meanwhile they are leading me to death.”<sup>30</sup> Latif here marks a double scene that is at once disjunctive and yet indissociably joined. In the hellish context of

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28. *Id.*

29. *Id.* at 233 (first and third alterations in original) (quoting Thompson, *supra* note 21).

30. Letter from Adnan Latif to Attorneys David Remes and Marc Falkoff (May 28, 2010) [hereinafter Letter from Adnan Latif], *available at* <https://www.docu>

Guantánamo, Latif is struggling to survive. In his graphic terms, he is “drowning in his own blood.” The endlessly deferred realization of justice through the institution of law appears remote and disconnected from the very real effects of the law of indefinite detention, a law that keeps him captive and that relentlessly works to violate his body.

Latif continues: “Everything has a price except human life. It became cheap. In their view, life became less than refuse to be thrown in a garbage can.”<sup>31</sup> Latif here names his own subject position as a disposable life that, in necropolitical terms, can be “let to die” as mere refuse in the biopolitical hierarchy of life that governs Guantánamo’s habitus. The necropolitical forces at work in this penal site of indefinite detention function to constitute the practices of Latif’s everyday life. They thoroughly inscribe the “state of his body,” the “state of his being”—as what became structurally oriented toward death: “I am being pushed towards death every moment. The way they deal with me proves to me that they want to get rid of me but in a way that they cannot be accused of causing it.”<sup>32</sup> These are not the ravings of a paranoid psychotic. Rather, in the context of a locus saturated by a violence that is, aporetically, at once legal and extra-judicial—a violence, in other words, that fulfills Agamben’s double schema of the “(in)execution of law”<sup>33</sup>—in this context, Latif evidences the forces that are systematically driving him to the point of breakdown and collapse, to that point of self-annihilation that will exempt the state from the charge of homicide. Latif is here writing in the register of the future anterior: in the future, he contends, they will have killed me already through the deployment of lethal practices that will exculpate them from the charge of murder, even as I [Latif] persist in naming it as such, that is, as murder.

In the following paragraph of his letter, Latif begins to unpack the specificity of the forces that will lead to his death: “I don’t think anyone believes me but this is the truth to be found by people who investigate what is happening to me especially these days.”<sup>34</sup> Latif is aware here that he cannot speak truth to power precisely because he has been classified as “mad” and “deranged.” His medical file reads: “Guantánamo Bay Joint Medical Group (JMG) doctors diagnosed ISN156 [Latif’s inmate-number] with Bipolar Disorder and Borderline Personality Disorder with antisocial traits. His most recent episode was characterized as manic with psychotic features, possibly affected by Traumatic Brain Injury (TBI), a cognitive disorder, or personality changes secondary to TBI.”<sup>35</sup> In this attempt to write

mentcloud.org/documents/536275-adnan-latifs-may-28-2010-letter-to-attorneys.html.

31. *Id.*

32. *Id.*

33. GIORGIO AGAMBEN, STATE OF EXCEPTION 50 (Kevin Attell trans., 2005).

34. Letter from Adnan Latif, *supra* note 30.

35. (UNCLASSIFIED) AR 15-6 INVESTIGATION: (UNCLASSIFIED) REP. ON FACTS AND CIRCUMSTANCES SURROUNDING (UNCLASSIFIED) 8 SEPTEMBER 2012 DEATH OF DETAINEE (UNCLASSIFIED) ADNAN FARHAN ABD LATIF (UNCLASSIFIED) (ISN US9YM-000156DP) (UNCLASSIFIED) AT JOINT TASK FORCE-GUANTANAMO (JTF-GTMO) 3

on Latif's case, I find myself repeatedly drawing on the figure of the double and on the trope of the aporia. Even as he is represented by the legal apparatus of the United States as a terrorist, the same state diagnoses him as mentally ill and unstable. Andy Worthington, who has written on Latif's case, underscores this aporetic (a)logic:

Although it was clear that Latif was not well, the authorities initially regarded him as someone trained to deceive interrogators. At his tribunal hearing, his Personal Representative (a military officer assigned in place of a lawyer) noted that he "[r]ambles for long periods and does not answer questions" and "[h]as clearly been taught to ramble as a resistance technique."

In fact, Latif's rambling was because of his mental health problems.<sup>36</sup>

We are here in the same doublespeak realm where, in Guantánamo, hunger strikes and suicides are branded as either a "good PR move" by detainees in order "to draw attention" to themselves<sup>37</sup> or as "act[s] of asymmetrical warfare waged against us."<sup>38</sup> In this instance, mental illness is a "resistance technique" cunningly deployed by Latif in order to stymie the authorities.

In the sentence that immediately follows Latif's appeal to the veridictional status of his enunciations, he writes: "I have been isolated in Alpha block, camp five, in a cell that resembles a lion's cage."<sup>39</sup> Alpha block is the high-security, isolation prison in Guantánamo. As Latif proceeds to unfold, Alpha block is a site saturated by physical and psychic violence:

I was hurt badly by the IRF [Immediate Reaction Force] teams. Imagine that one night, from sunset until six in the morning, they entered my cell fifteen times. During those times, they tied me to a stretcher and carried me to the clinic in camp five then returned me back to my cell. They repeated that fifteen

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(Nov. 8, 2012) [hereinafter AR 15-6 INVESTIGATION] (footnotes omitted), available at <http://www.southcom.mil/foia/Documents/ISN%20156%20-%20AR%2015-6%20Mr%20%20Adnan%20Farhan%20ABD%20Latif%20Investigation.pdf>.

36. Andy Worthington, *Obama, the Courts and Congress Are All Responsible for the Latest Death at Guantánamo*, ANDY WORTHINGTON (Sept. 15, 2012) (alteration in original), <http://www.andyworthington.co.uk/2012/09/15/obama-the-courts-and-congress-are-all-responsible-for-the-latest-death-at-guantanamo/>.

37. Michael Rowland, *US Official Calls Guantanamo Suicides a PR Tactic*, WORLD TODAY (June 13, 2006), <http://www.abc.net.au/worldtoday/content/2006/s1661866.htm>.

38. James Risen & Tim Golden, *3 Prisoners Commit Suicide at Guantánamo*, N.Y. TIMES, June 11, 2006, <http://www.nytimes.com/2006/06/11/us/11gitmo.html> (internal quotation marks omitted) (quoting Rear Adm. Harry B. Harris Jr., commander of detention camp at Guantánamo).

39. Letter from Adnan Latif, *supra* note 30.

times until I lost my mind; they broke my bones and made me bleed.<sup>40</sup>

The IRF teams are Guantánamo's infamous terror squads. Appeared in full riot gear, they burst into cells and unleash the full force of their violence on their unarmed inmates. The violent repetition, from sunset until morning, of physical assault and psychic displacement that Latif is compelled to endure, results in the disintegration of both his corporeal and psychic hexis. The forces unleashed in this locus of saturated violence work to implode the subject, destroying all the cognitive faculties constitutive of the unitary and rational human subject.

The violence that Latif is compelled to endure is repeated the very next day:

This also happened on the second day when they entered my cell ten times hitting my head against the wall and dragging me on the floor and leaving me there in the middle of the cell which was full of water, urine and feces. I was left in this dirty mixture all day with my hands tied firmly behind by back.<sup>41</sup>

Shackled as a mere animal in his "lion's cage," Latif is left to stew in the cesspit of his cell. Latif names here the operation of the biopolitical caesura on his person, his body, and on his subjectivity. As I have written extensively elsewhere, the biopolitical caesura works to produce the decisive cut that divides the human from the non-human animal.<sup>42</sup> Categorized as non-human animal, the designated subject is stripped of the subject's human-rights-bearing status and is thereby rendered into an object that can be tortured or killed with impunity. The decisive cut of the biopolitical caesura is not negotiable within those loci of saturated violence and torture. Terry Holdbrooks, one of the former guards at Guantánamo, underscores the doctrinal implementation of the biopolitical caesura: "Our interaction with the detainees was such that we were told not to talk to them, not to treat them as humans, to not engage in conversation with them whatsoever. . . . So the instructions I was given were simple—don't interact, don't talk, they are not humans."<sup>43</sup> The non-negotiability of the biopolitical division between human and animal is further underscored by Army Specialist Alyssa Peterson who, before she committed suicide, vocally "opposed the interrogation techniques being

40. *Id.*

41. *Id.*

42. See JOSEPH PUGLIESE, STATE VIOLENCE AND THE EXECUTION OF LAW 32–46 (2013).

43. *Don't Interact, Don't Talk, They Are Not Humans' – Gitmo Guard's Basic Orders*, RT (May 22, 2013), <http://rt.com/news/guantanamo-guard-islam-torture-608/> (quoting Terry Holdbrooks, former guard at Guantánamo).

used by U.S. forces . . . .”<sup>44</sup> The official report notes “that she had been ‘reprimanded’ for showing ‘empathy’ to the detainees.”<sup>45</sup> Before her death, Peterson spelled out that she could not work to maintain the violence of the biopolitical caesura: “[Peterson] said she did not know how to be two people; she . . . could not be one person in the cage and another outside the wire.”<sup>46</sup> In the cage, Peterson was compelled to confront her animalized detainees and mechanically inflict upon them a daily regimen of torture, while outside the wire she was expected to assume the subject position of an empathetic and civil person amongst her fellow humans.

In the context of Guantánamo, or the CIA’s “black site” prisons, the detainee who is marked by the biopolitical caesura becomes exposed to the sort of violent and fatal assault that effectively resignifies him as nothing more than mere animal carcass. As I documented in the fatal case of Gul Rahman, after he had been tortured to death in the CIA Salt Pit black site prison, his body-carcass was simply dispatched to an unknown burial site and it has never been recovered. Not one of the CIA officers who was responsible for Rahman’s death was ever charged or held liable. On the contrary, they were successfully promoted up the career ladder.<sup>47</sup> The release of the Senate Select Committee on Intelligence Committee Study of the Central Intelligence Agency’s Detention and Interrogation Program offers further evidence of the transmutation of the detainees into animals:

One senior interrogator, [redacted], told the CIA OIG that “literally, a detainee could go for days or weeks without anyone looking at him,” and that his team found one detainee who, “‘as far as we could determine,’ had been chained to the wall in a standing position for 17 days.” According to the CIA interrogator, some of the CIA detainees at DETENTION SITE COBALT “‘literally looked like a dog that had been kenneled.’ When the doors to their cells were opened, ‘they cowered.’”<sup>48</sup>

Latif experienced the violent cut of the biopolitical caesura on his very entry into Guantánamo, where he was immediately dispatched to its infamous animal pens: “Latif spent his first weeks at Camp X-Ray in an open-air cage, exposed to the tropical sun, without shade or shelter from the wind that buffeted him with sand and pebbles. His only amenities were a bucket for water and another for urine and feces.”<sup>49</sup>

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44. CONSTITUTION PROJECT, REP. OF THE CONSTITUTION PROJECT’S TASK FORCE ON DETAINEE TREATMENT 278 (2013), *available at* <http://detainee-taskforce.org/read/>.

45. *Id.*

46. *Id.* (alterations in original) (internal quotation marks omitted).

47. See PUGLIESE, *supra* note 42, at 161–72.

48. SSCI STUDY, *supra* note 4, at 50 n.240.

49. Marc Falkoff, *Poems from Guantanamo*, AMNESTY INT’L MAG. (Dec. 12, 2007), <http://www.amnestyusa.org/news/news-item/poems-from-guantanamo>.

Latif, in his letter, unfolds a stratified process of what I will term “administrative torture.” Administrative torture, in contradistinction to outright torture practices, is constituted by the deployment of micro practices of deprivation, humiliation, and degradation. “Furthermore,” Latif writes,

and to make you believe that they want me to die and to kill me; they prevented me from having anything that can help me live normally. They don’t give me books, a blanket, soap, medical supplies that I need for my hearing, eye glasses, tooth paste, medical shoes or a neck pillow.<sup>50</sup>

The withholding of these quotidian objects—such as soap, a blanket, toothpaste, and eyeglasses—works to compound Latif’s sense of deprivation and humiliation. These practices of administrative torture constitute yet another substratum of the torture regime Latif is compelled to endure. They overlay and exacerbate the multiform practices of torture—physical assault, repeated dislocation, and cellular isolation—that he is already exposed to in the course of his daily survival. Cumulatively, as they dovetail with the direct application of torture practices on Latif’s person, they work to enhance the regime of pain and trauma so as to leave him little quarter for reprieve.

If Latif were already mentally unstable due to his head injury, then this combination of physical and administrative mental torture worked further to destabilize him and to push him towards suicidal thoughts and practices. He writes:

A day or two later, they threw some coins after an occurrence of pressure on me. This made me swallow the coins along with other things. This caused complete blockage of my throat and death was a step away. I was taken outside the camp to a hospital where they operated on me for two hours. But instead of extracting the items, or making a small opening in my throat to get them out, they pushed them down to my stomach. I was unconscious for five hours after the operation. When I woke up, I was unable to speak because of what they did in my throat. The items stayed in my stomach hurting me; these things might lead to my death. I asked them to contact you [his attorneys] by phone by [sic] they didn’t approve it.<sup>51</sup>


Latif’s cell emerges in this description as a type of enclosed theatre of the mad, where Guantánamo’s keepers amuse themselves with the bedlam antics of their inmates. For a lark, they toss coins to the animals confined to their cages—indifferent to the potentially fatal results that these throwaway gestures might provoke. A series of declassified JTF-GTMO slide presentations demonstrates how guards should best deal with detain-

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50. Letter from Adnan Latif, *supra* note 30.


51. *Id.*

ees and exposes the ethos that enables these taunting, potentially fatal practices. One slide (Figure 1) describes the detainees' experiences of "mental anguish, inhumane detention conditions, medical mistreatment, abuse" as forms of adversarial "tactics" cunningly deployed by the detainees in order to "discredit the U.S. Government." The slides effectively stage an extraordinary series of nefarious inversions, so that the positions of abuser and victim are reversed.



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## Adversary within the camps




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**Tactics used by detainees to discredit the U.S. Government**

**Information Operations:**

Use of media, lawyers and int'l organizations to spread a false message of:

- Mental anguish
- Inhumane detention conditions
- Medical mistreatment
- Abuse



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LEOPOLD/SC 13-144 (13-004 and 13-141)/SOUTHCOM/000044

FIGURE 1: JOINT TASK FORCE GUANTÁNAMO, JTF-GTMO BRIEFING.<sup>52</sup>

In the context of the slides, the detainee is invested with an inordinate power and agency that positions him as a calculating and duplicitous subject that has the "adversarial" power to damage the United States Government. Everything that has been so painstakingly documented in terms of the abject and violent conditions at Guantánamo—the mental anguish, the inhumane detention conditions, the medical mistreatment and abuse—all of this is reduced to nothing more than propagandistic lies disseminated by the detainees in order to damage the United States government. One of the most disturbing aspects of these slides includes the framing of "self-harm acts" as "offensive tactics by detainees" (Figure 2). In this inverted schema, the acute pain of practicing self-harm is expropri-


52. JOINT TASK FORCE GUANTÁNAMO, JTF-GTMO BRIEFING (2012), *available at* <http://america.aljazeera.com/articles/2014/6/27/revealed-guantanamobriefing-slides.html>.

ated from the detainee and transposed to the United States government—that now emerges as the real victim of this violent drama. As discussed above, these systems of violent inversion are all of a piece with the various official statements issued to the media by the camp’s key players.




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## Adversary within the camps



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**Tactics used by detainees to discredit the U.S. Government**



**Offensive tactics by detainees:**

- Physical / verbal assaults
- Assaults with bodily fluids
- Hunger strikes
- Mass disturbances
- Self-harm acts
- Meal / medical / recreation refusals

**Defensive tactics by guard force:**

- Intelligence collecting / sharing
- Guard Surveillance / C2
- Operational security (OPSEC)
- Adherence to SOPs

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LEOPOLD/SC 13-144 (13-004 and 13-141)/SOUTHCOM/000043

FIGURE 2: JOINT TASK FORCE GUANTÁNAMO, JTF-GTMO BRIEFING.<sup>53</sup>

I draw particular attention to these slides as their relation to the death of Adnan Latif is not tangential. The investigative journalist Jason Leopold managed to get the slides declassified through a Freedom of Information Act request. Leopold writes that: “The slides, which appear to date back to 2012, were used by military investigators to help write a report about the circumstances behind the September 2012 death of a severely mentally ill Yemeni detainee named Adnan Latif.”<sup>54</sup> The lies propagated by the slides include the gross misrepresentation of all the detainees as “‘terrorist trainers, terrorist financiers, bomb makers, Bin Laden bodyguards’ and ‘recruiters and facilitators.’”<sup>55</sup> “This[,]” Leopold underscores, “despite the fact that more than half have been cleared for release.”<sup>56</sup>

53. *Id.*

54. Jason Leopold, *GITMO Briefing Slides: Prisoners ‘Use’ Media, Lawyers to Discredit US*, ALJAZEERA AM. (June 27, 2014, 5:00 AM), <http://america.aljazeera.com/articles/2014/6/27/revealed-guantanamobriefingslides.html>.

55. *Id.*

56. *Id.*



Examining these slides in the context of Adnan Latif's case, I am compelled to confront the travesty of scripting the detainees' mental anguish and abuse as "adversarial tactics" deployed to "discredit the U.S. Government." An obituary for Latif written by Emad Hassan, a fellow detainee, offers another glimpse of the personal anguish that Latif endured in the course of his unjust imprisonment. Hassan describes Latif as

a quiet man who yearned to be home. He thought continually of his son, pronouncing his son's name over and over again to himself, working slowly through all the syllables of his name as if thinking hard about the word would bring him closer.

I think of the many occasions when I pretended to be asleep to give him the space to cry without worrying that he was being watched.<sup>57</sup>

In the confines of Latif's cell, the only way to connect back to his absent son is through the articulation of his name. The incantatory practice of slowly speaking each syllable emerges as a desperate attempt to conjure his son's presence in this site of maximum isolation. It is as though the performative ritual of verbal repetition can institute what would otherwise remain absent. It is as though the material enunciation of each syllable will work to dispel absence, overcome distance, and deliver the figure of his beloved son in the space of the prison. Latif's purposive mode of address tenderly renders each syllable of his son's name as a way of recreating his body from the letters that constitute his name. The slow, palpable pronunciation of each syllable of his son's name becomes a sort of prayer, an invocation to corporealise his absent son through the embodied materiality of language: the physiology of respiration, tongue, and vocal chords work to embody through the word the figure of the absent son. The very articulation of the son's name sets in train the chiasmic crossing of word and flesh; it enables Latif to project his son's presence into his cell, precisely because it resonates within his own embodied locus of enunciation, fleshing out his son's absence through the modulated fusion of the father's words with his own corporeality. This moving ritual of conjuration fails, however, to bring Latif's son into his cell. Latif's speech can only stand in lieu of his son. The structural logic of language is predicated on the very absence of the material referent.

In this case, language's deficit is insurmountable: the marked interval between syllables emblemizes a distance that cannot be bridged and an absence that cannot be filled, even as Latif attempts to bind one syllable to the other in the process of deliberative recitation. The gap between a name and the corporeality of the invoked subject is abyssal, as anyone who has lost a loved one knows. The consolation of uttering an absent loved one's name is radically circumscribed by the ineluctable fact of this gap.

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57. Emad Hassan, *An Obituary for My Friend, Adnan Abdul Latif*, VICE (Nov. 10, 2014), <http://www.vice.com/read/adnan-abdul-latif-obit-emad-hassan-gtmo-056>.

This failure expresses itself in Latif's tears. His fellow inmate, Emad Hassan, respectfully proceeds to feign sleep in order to give Latif the space to cry.

## II. THE INEXTINGUISHABLE FIRE AND NO-END TORTURE

In Latif's description of his medical maltreatment, the medical staff emerges as an adjunct to the larger regime of administrative torture. In the context of this administrative torture regime, everything works in a cumulative manner, layering physical and mental torture practices, one on top of the other, one practice amplifying the pain and trauma of the other. Death, for Latif, emerges as a certainty in the face of a world of violent dislocation, physical and psychological torture, deprivation, and isolation. He writes: "Here I am in the big hospital of the camp where death is certain."<sup>58</sup> Latif names here his trajectory towards death. This is not a trajectory that he has chosen out of his own volition. On the contrary, in the course of his detailed testimony, he has repeatedly marked the structural, necro-teleological forces that drive him toward death. The hospital, a medical site that should be bound by an ethics of care, becomes for Latif another locus of humiliation, degradation, and psychological torture. "They insist," he says, "while I am in this condition, on looking at my private parts and then letting me urinate and defecate in my bed while my hands and legs are bound. I am not allowed to go to the bathroom and not allowed to pray."<sup>59</sup> As I have discussed in detail elsewhere, the practice of leaving Guantánamo's detainees bound and denying them access to a bathroom has been documented across the testimonies of both detainees and FBI interrogators.<sup>60</sup> Binding Latif to his own feces and urine ensures that his person becomes coextensive with waste. It signals the manner in which Guantánamo's torture apparatus works toward the production of this equation: detainee = waste.

The transmutation of the detainee into waste and excrement is graphically exemplified by the incident in which the officer in charge of one detainee, Omar Deghayes, "came into the cell with the feces of another prisoners [sic] and smeared it onto Omar's face."<sup>61</sup> Once the detainee is imprisoned in this gulag, he is rendered into a disposable biological substance that is largely undifferentiated from excrement. The detainees know this full well. In their moments of despair, they have been documented as smearing their cells with their own waste. One report on the conditions at Guantánamo documents the case of the following detainee:

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58. Letter from Adnan Latif, *supra* note 30.

59. *Id.*

60. See PUGLIESE, *supra* note 42, at 110–11.

61. Jeremy Scahill, *Guantanamo's Immediate Reaction Force Still Terrorizing Detainees*, WIKILEAKS (May 15, 2009), [https://wikileaks.org/wiki/Guantanamo%27s\\_Immediate\\_Reaction\\_Force\\_still\\_terrorizing\\_detainees](https://wikileaks.org/wiki/Guantanamo%27s_Immediate_Reaction_Force_still_terrorizing_detainees) (alteration in original).

Mr. Khan Tumani's condition has rapidly continued to deteriorate over the past few months. In late January 2009, he began smearing excrement on the walls of his cell again. When Mr. Khan Tumani did not clean up the excrement, a large IRF team of ten guards was ordered to his cell and beat him severely. The guards sprayed so much tear gas or other noxious substance after the beating that it made at least one of the guards vomit. Mr. Khan Tumani's skin was still red and burning from the gas days later. . . . In a state of complete agony and distress following the assault, he started pounding his head against the walls of his cell until he began bleeding. After his beating, he was placed in his bare cell with the walls covered in excrement, in only a smock, for at least three days.<sup>62</sup>

In this penal colony of unbounded violence, the line between the subject's interiority and exteriority collapses. Subject becomes object. The human subject is institutionally transmuted into disposable biological waste. In besmirching their cells with their own excreta, the detainees dramatize the dissolution of all the borders that constitute the continent human subject. In the context of their besmeared cells, the detainees evidence a being that has been so violently torn and violated that the fragile borders that uphold the continent subject, precisely as a unitary subject, dissolve. Dehiscence is the order of the day: rupture and ruin, both physical and psychological, are inescapable in this site of saturated violence.

In my many years of writing on Guantánamo, I have tried to understand the corporeal economies of this prison. Reflecting on these corporeal economies, one thing clearly emerges—an obsessive desire to control the detainees' orifices: the detainees' genital cavities are scrutinized for contraband goods before they are allowed to see their attorneys; the mouths of the hunger-strikers are pried open in order to be forcefully engorged with liquid nutrients that are designed to instrumentalize them into quasi-living subjects that will not be allowed to die; their eyes are blinded by blackened goggles; their ears are rendered deaf by sound-blocking muffs; they are often compelled to wear diapers; and, in the process of extraordinary rendition, they have also had their anuses plugged. It is as though the detainee's sensorium, as precisely that which gives the detainee access and relation to the world, has to be blocked off and truncated. It is not enough that the detainee is confined to a carceral cage; the detainee is further compelled to be isolated from the world by being imprisoned within his own body through the disabling of his sensorium. The detainees respond, in the face of this obsessive control over their bodies and their orifices, with the production of excremental waste. Through

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62. EQUIPO NIZKOR & DERECHOS HUMAN RIGHTS, REP. ON CONDITIONS OF CONFINEMENT AT GUANTÁNAMO (OCT. 18, 2012), *available at* <http://www.derechos.org/nizkor/excep/gtmo28.html>.

the corporeal script of their own excreta, the detainees emblazon an unequivocal message: everywhere in Guantánamo, there is only shit.

As a distinct fecal genre of prisoner protest, the use of excrement as political protest was, in the context of this American gulag, perhaps most powerfully manifested in the conduct of what was termed Guantánamo's "waste war," in which "an undisclosed number of captives had been smearing their own excrement into the ventilation grates of their single-occupancy cells, causing it to waft through the cellblocks."<sup>63</sup> Guantánamo's waste war signals the detainees' desperate attempt to speak truth to power and to name the utterly abject reality of their imprisonment. I would paraphrase their excremental semiotic thus:

Shit inscribes everything in this place. I am my own and your waste. As you so often leave me to stew in my own excreta, there is no contradistinction between myself and my own waste: here is my fetid body of evidence. As it wafts through the ventilation shafts, it permeates, in cellular fashion, everything—and, as your guards and IRF teams are complicit in the reproduction of this execrable regime, you too are contaminated by the very waste that your penal regime produces through the daily exercise of its standard operating procedures.

Having drawn attention to the intolerable manner in which he has been left to lie in his own waste, Latif immediately adds: "Real justice for me is to die instead of being tortured."<sup>64</sup>

From this point onwards, as I will discuss in some detail below with regard to the official AR 15-6 Investigation and Report on his death, death becomes for Latif the frame of reference through which he relates to his unlivable situation in Guantánamo. In the penultimate paragraph of his letter, Latif writes: "It seems that I might have to send you my body parts and flesh to make you believe me and to believe to what degree of misery I have reached."<sup>65</sup> Latif here re-articulates his sense of fragmentation and corporeal and psychic dissolution in the face of the regime of violence that is relentlessly visited upon his person. In the context of the gulag that is Guantánamo, Latif can only occupy a necropolitical habitus. Following Pether's work on the corporeal hexis, the deadly habitus that Latif inhabits works, in a "practical sense," to orient the "state of the body, a state of being"<sup>66</sup> toward death. In speaking of the "body parts and flesh" he will send in order to evidence his pain, Latif is not speaking in a hyperbolic register. David Remes, one of Latif's attorneys, describes what he was com-

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63. Carol Rosenberg, *Stinky Prison Camp Standoff Over*, MIAMI HERALD, Sept. 21, 2011, <http://www.miamiherald.com/2011/09/21/2418206/stinky-prison-camp-standoff-over.html>.

64. Letter from Adnan Latif, *supra* note 30.

65. *Id.*

66. Pether, *On Foreign Ground*, *supra* note 21, at 233 (quoting Thomas, *supra* note 21).

pelled to confront and document whenever he met up with Latif to discuss his case:

Few detainees were more roughly handled or severely punished. Few felt the kicks and punches of IRF teams more often. And it showed. At the start of each meeting, Adnan would remove his shirt and roll up his trousers, and I would examine him from the crown of his head to the souls [sic] of his feet, as a physician might, recording his bruises, bumps, scrapes, open wounds, and rashes.<sup>67</sup>

The catalogue of traumata that Remes documents, and that scores the entirety of Latif's body, evidences the violent forces contributing to the dehisence of his hexis: the unitary frame of his personhood is what is at risk of rupture because of the multiple wounds that lacerate his body.

Facing his own ruin and dissolution, the material fragments of his violated and shattered body become the only evidence he believes he can present in order to empirically verify his trauma and despair. In the line that follows in the penultimate paragraph of his letter, Latif says: "I am happy to die just to get away from a non-extinguishable fire and no-end torture."<sup>68</sup> These searing lines materialize the inexorable regime of "no-end torture" he is forced to endure. Caught in the inescapable vise of this non-extinguishable fire and no-end torture, Latif calls on death as his only possible exit. We have here, in the textual remnants that Latif has left us, evidence of the fusion between language and corporeality: the distress of his body is conveyed, indissociably, through the physical distress of language. The non-extinguishable fire has, in fact, reduced Latif to little more than ashes and dust. Yet, his language, in its predication on the very death of the subject, is what remains post his death. It continues to embody his suffering and to enunciate his call for justice—recursively, with each reading, regardless of his mortal absence. He writes in the closing lines of his letter:

Marc and David: In the end, I am a human being.

Adnan Farhan Abdulatif Al-Yemeni

Friday 5/28/2010

Blessed is he who can rescue a human being from his ordeal.<sup>69</sup>

In his final appeal, Latif challenges his dispatch to the necropolitical domain of the non-human animal—where torture, violence, and murder can be exercised with impunity. In the end, he says, I am the very thing you have denied me. Ontologically, despite you, he emphasizes, I continue to claim the status of the very human subject you structurally pre-

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67. David Remes, *The Death of Adnan Latif*, PUB. REC. (July 20, 2013), <http://pubrecord.org/special-to-the-public-record/109000/the-death-of-adnan-latif/>.

68. Letter from Adnan Latif, *supra* note 30.

69. *Id.*

clude me from embodying. Latif here does not ask to be conferred human subjecthood. In a final gesture of defiance, he articulates an unequivocal declarative statement: “I am a human being.” As I will discuss below, the categorical denial of human subjecthood to Latif, and his defiant assumption of this very same denegated category, needs to be situated within the violent regime of the biopolitical caesura, its subjugating hierarchies, its economies of strategic reversals, and contingent recalibrations. Latif’s declarative statement cannot be made sense of outside the logics of this biopolitical economy.

### III. GUANTÁNAMO’S NON-PERSONS

The political valency of Latif’s defiant statement, “I am a human being,” cannot, once situated in the context of Guantánamo, be underestimated. As I argued above, the biopolitical and necropolitical forces that traverse and constitute this penal colony work effectively to preclude detainees from embodying the category of the human—and the attendant rights that accrue to this legal figure. I can perhaps best evidence this in light of the recent attempt by the detainees’ attorneys “to ensure that their religious freedoms are recognised.”<sup>70</sup> The attorneys at Reprieve drew attention to this issue, in their submission to the United States District Court for the District of Columbia, by noting that the “Supreme Court ruled that [the corporation] Hobby Lobby was legally a ‘person’ entitled to religious freedom under the RFRA [Religious Freedom Restoration Act]”<sup>71</sup> and that the detainees should be granted the same religious freedom to practice—specifically, the right “to pray communally during Ramadan.”<sup>72</sup> The Guantánamo detainees were denied this right on the following grounds:

[T]he current binding Circuit precedent, which holds that Guantanamo detainees, as nonresident aliens outside the United States sovereign territory, are not protected “person[s]” within the meaning and scope of RFRA. In *Hobby Lobby*, the Supreme Court held RFRA rights extend to forprofit closely held corporations, reasoning in part that the Dictionary Act, 1 U.S.C. § 1 defines a “person” to include “corporations.” That case did not involve or resolve any other question regarding the meaning of “person” under RFRA. As a result, that opinion cannot be read as extending RFRA rights to Petitioners: simply put, the Supreme Court never addressed whether unprivileged enemy belligerents

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70. Press Release, *Obama Lawyers: Guantanamo Detainees ‘Not Persons’ Like Hobby Lobby*, REPRIEVE US (July 8, 2014), <http://www.reprieve.org/obama-lawyers-guantanamo-detainees-are-not-persons-like-hobby-lobby-court-filings.html>.

71. *Id.*

72. Respondents’ Opposition to Petitioners’ Emergency Application for TRO Prohibiting Respondents from Depriving Petitioners of the Right to Pray Communally During the Month of Ramadan at 4, 27, *Hassan v. Obama*, 2014 U.S. Dist. LEXIS 105104 (D.D.C. 2014) (Nos. 04-CV-1194 (UNA) & 05-CV-1607 (RCL), 2014 U.S. Dist. Ct. Briefs LEXIS 258, at \*1–2 [hereinafter Respondents’ Opposition].

detained overseas during a period of ongoing hostilities are “persons” to whom RFRA applies.<sup>73</sup>

Putting aside the fact that the majority of Guantánamo’s detainees have been cleared for release after having been formally found not to be enemy belligerents, what is of interest here is the intersection of state and juridical power in the policing of the category of the human-rights-bearing subject. In this case, a disembodied for-profit corporation, Hobby Lobby, is constituted as qualifying to embody the rights-bearing category of a “person.” In contradistinction, the detainees, precisely as embodied human “persons,” are denied this right. The violent asymmetries of power that are operative in this case become more glaring when the detainees’ submission is fully contextualized: they are lodging their request for the right to pray communally during Ramadan because this very practice is being precluded by the violent practices of enforced feeding of those detainees participating in hunger strikes—as a form of protest against their indefinite detention. Agreeing with the brief filed on behalf of President Obama, the court, under the rubric of “Facts,” dismissed their request on the following grounds:

In both of their applications, they merely incorporate (1) the cites regarding the tradition of communal prayer during Ramadan taken from their initial applications for a preliminary injunction concerning various alleged aspects of enteral feeding, and (2) allegations by another detainee that detainees who were being enterally fed were not permitted to pray communally during Ramadan in 2013.<sup>74</sup>

Here, the force-feeding of the detainees is glossed by the neutralizing term “enteral feeding,” thereby effacing what, as I have discussed in detail elsewhere, is yet another practice of torture inflicted on the hunger strikers at Guantánamo.<sup>75</sup> Under the rubric of “Facts,” the brutal flesh-and-blood facticity of the force feeding of the hunger strikers is rendered in terms of a mere “allegation” of “aspects of enteral feeding.” This neutralizing legal logic is all of a piece with the systemic discursive maneuvers that effectively disembody the detainees of their very flesh and blood status—precisely as human subjects: “Petitioners argue that inclusion of the term ‘individuals’ within the Dictionary Act’s definition of ‘person’ necessarily means that ‘person’ includes all ‘flesh-and-blood human beings,’ including noncitizens, regardless of circumstance or whether they are in or resident in the United States.”<sup>76</sup> According to the brief filed on behalf of President Obama, this apparently cogent argument fails on a number of counts: “this Court cannot go so far as to conclude that ‘person’ under

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73. *Id.* at \*2–3 (alteration in original) (citations omitted).

74. *Id.* at \*4 (footnote omitted).

75. See PUGLIESE, *supra* note 42, at 155–60.

76. Respondents’ Opposition, *supra* note 72, at \*28.

RFRA now includes any individual, even if a nonresident, noncitizen held in military detention outside the United States.”<sup>77</sup> Furthermore, the brief proceeds to cite that “Congress had legislated against a backdrop of decisions ‘establishing that nonresident aliens were not among the “person[s]” protected by the Fifth Amendment, and were not among “the people” protected by the Fourth Amendment.’”<sup>78</sup> The position of the Obama Administration, and that ultimately adopted by the court, is unequivocal: the detainees do not qualify as “persons.” Faced with this judgment, I am reminded of Pether’s striking condemnation of those moments when “law becomes complicit in and compounds th[e] moral failing of the dominant national culture when due process is no more than what Cover calls ‘surreal epistemology.’”<sup>79</sup>

I can think of no better term to deploy than “surreal epistemology” in my attempt to make sense of how a court can, through a series of linguistic ruses and sleights of hand, transmute a human person into a non-person. The epistemology here is predicated on a concept of national belonging that structurally precludes the “alien” from embodying the locus of the “person.” The epistemology is “surreal” because it violates facticity (the detainees are persons) through a process of legal maneuvers that are at once bizarre, fantastic, and inverted: this is a legal universe in which a non-human entity—specifically, a for-profit corporation—is designated as a person, but a human being is not. The administration’s use of the double negatives—“nonresident, noncitizen”—effectively works to nullify the detainees’ claim to embody the status of “flesh-and-blood” human personhood. Guantánamo’s detainees are thereby dispatched to the “locus of the ‘non,’” to borrow a term from Anthony Wilden’s work on paradoxical systems and structures.<sup>80</sup> Incarnating the locus of the non, the detainee is the figure inscribed in a “nonlocus in which an infinite number of sign-substitutions c[o]me into play”<sup>81</sup>: nonresident, noncitizen, nonlawful, and, significantly, nonhuman. The power of law’s virulently abstracting violence is here made fully manifest. It clinically empowers itself to disarticulate flesh-and-blood from the embodied figure of the detainee in order to interdict him from occupying the locus of the human-person—even as it procedurally confers this same negated category to a for-profit corporation. In the process, the detainee is rendered as mere corpus nullius, that is, an abstract category disembodied of its human, flesh-and-blood attributes. Shaker Aamer, another of Guantánamo’s “forever prisoners,” testified:

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77. *Id.* at \*29.

78. *Id.* at \*30 (alteration in original) (quoting *Rasul v. Myers*, 563 F.3d 527, 533 (D.C. Cir. 2009)).

79. Penny Pether, *The Prose and the Passion*, 66 *MEANJIN* 43, 45 (2007).

80. See ANTHONY WILDEN, *SYSTEM AND STRUCTURE: ESSAYS IN COMMUNICATION AND EXCHANGE* 185 (2d ed. 1980).

81. JACQUES DERRIDA, *WRITING AND DIFFERENCE* 280 (Alan Bass trans., 1978).



[T]hey [the guards] referred to me as a “package” when they moved me from my cell. This is nothing new. I have been a package for 12 years now. I am a package when en route to Camp Echo, the solitary confinement wing. I am a package en route to a legal call. “The package has been picked up . . . the package has been delivered.”

It is not enough that we are called packages. At best, we are numbers. I worry that when I come home that my children will call for “Daddy”,<sup>[sic]</sup> and I will sit unmoving. I am 239. I even refer to myself as 239 these days. I am not sure when I will ever be anything else. It is much easier to deny human rights to those who are not deemed to be “human”. <sup>[sic]</sup><sup>82</sup>

The rendering of the detainee as a mere package only individuated by an assigned number works to transmute the human subject into a fungible, serial commodity. The framing of the detainees as “packages” operates to void them of the right to even own the memories of the torture that they were forcibly compelled to endure in the confines of Guantánamo and other offshore detention sites. I am referring here to the American Civil Liberties Union (ACLU) Motion for Public Access to the Proceedings and Records of the Military Commissions Trial at Guantánamo. The ACLU has challenged the U.S. government’s move

to censor defendants’ statements based on a chillingly Orwellian claim: because a defendant was “detained and interrogated in the CIA program” of secret detention, torture, and abuse, he was “exposed to classified sources, methods, and activities” and must be gagged lest he reveal his knowledge of what the government did to him.<sup>83</sup>

What is operative through this gagging order is the legalized dispossession of the memories of torture and violence that the detainee embodies as his form of survivor testimony. As a mere “package” denied the legal status of personhood, the detainee is positioned as a type of property that fails to possess both the rights and agentic attributes of the “human.” Viewed as little more than just another type of state-owned property, even the most intimate and embodied memories, as the very things that categorically work to define the detainee’s unique identity as human subject, can be legally expropriated and rendered null by the state. The ACLU’s motion underscores what is at stake here:

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82. Shaker Aamer, *In Guantánamo, ‘National Security’ Rides Roughshod over Human Rights*, GUARDIAN (Jan. 5, 2014, 10:00 AM), <http://www.theguardian.com/commentisfree/2014/jan/05/guantanamo-national-security-human-rights-us-military-constitution> (second alteration in original).

83. Motion of the ACLU for Public Access to Proceedings and Records at 19, *United States v. Mohammed*, Military Commissions Trial Judiciary, Guantanamo Bay, Cuba (2012), *available at* [https://www.aclu.org/files/assets/aclu\\_motion\\_for\\_public\\_access\\_5\\_2\\_12.pdf](https://www.aclu.org/files/assets/aclu_motion_for_public_access_5_2_12.pdf) (alterations in original).

The Executive Order's threshold requirement for classification, that national security information be "owned by . . . or [be] under the control of the United States Government," simply may not be categorically extended to *human beings* under the government's control, let alone to individuals who were "exposed" to classified information by virtue of having it forcibly imposed on them by the government. Exec. Order 13,526, § 1.1.(a) (2).<sup>84</sup>

That the ACLU is compelled to italicize *human beings* underscores the way in which this very category is seen not to be applicable to Guantánamo's detainees. Situated in the context of both Guantánamo's institutionalized practices of violent nullification and the juridical negation of the detainee's claim to embody the category of human-rights-bearing person, Latif's declaration—"I am a human being"—resounds with an extraordinary sense of urgency and defiance, even as, as I discuss below, it proceeds to reproduce the very hierarchized and binarized biopolitical categories of what Agamben calls the "anthropological machine" and all of its attendant violent and exterminatory effects.

#### IV. THE ANIMAL IN THE CAGE

Following Latif's death, the Department of Defense compiled an AR 15-6 Investigation and Report dated November 8, 2012. It was only publicly released due to a Freedom of Information Request lodged by Jeffrey Kaye, an investigative journalist. Both Kaye and Remes, Latif's attorney, have staged detailed and trenchant critiques of this investigation and report. As Kaye remarks,

The tenor of the report is captured in the fact that after the report's first page, Latif is almost never referred to by name but only as a number: ISN156. Additionally, the stressors of indefinite detention, "forceful cell extractions" (beatings), isolation, and other forms of abuse and torture are practically never mentioned, while camp medical authorities are quick to label the young traumatic brain injury victim [as] someone who is personality disordered and antisocial.<sup>85</sup>

As both Kay and Remes stage detailed analyses of the report, exposing in the process the untenability of the report's key finding—specifically, that Latif managed to hoard a stash of medications and overdose on the ingested drugs—I will not replicate their analyses. Rather, my focus in the discussion that follows will be on certain incidents that are documented in the report, but that are relegated to a marginal status through the use of such textual apparatuses as the footnote. As a scholar trained in the disci-

84. *Id.* (alterations in original).

85. Jeff Kaye, *New DoD Report Details Nightmare Leading to Gitmo Detainee's Death*, FIREDOGLAKE (June 29, 2013, 8:23 PM), <http://dissenter.firedoglake.com/2013/06/29/new-dod-report-details-nightmare-leading-to-gitmo-detainees-death/>.

pline of textual analysis, I am interested in the textual politics that accrue precisely around the disposition of text and what gets relegated to the marginal status of footnotes.

Reading the military's AR 15-6 Investigation and Report on the death of Latif, I was struck, at point 42 of the report, by a perplexing instance of redaction. I reproduce here the fragmented syntax of this redacted text:

42. (U//~~FOUO~~) At approximately 1740 25 July 2012, while in the BHU Recreation Yard 1, ISN156 [redacted]. ISN156 was able to [redacted].<sup>86</sup>

The nature of Latif's redacted activity in the recreation yard is, despite the redaction, clarified by footnote 40:

(U//~~FOUO~~) The issue of passing food at the recreation areas is linked to the issue of detainees feeding wildlife at GTMO, as detainees at Camp V, Camp VI, the BHU, and the DH encounter wildlife while in the recreation yards. The JDG Wildlife and Pest Control SOP, and instances of the SOP not being enforced, are included later in the report. [redacted] (Exhibits 5, 17, 18, 31, 35, 109).<sup>87</sup>

I cannot fathom the logic of staging this redaction in the first place, when the footnote proceeds to evidence what the redacted activity is: Latif is feeding the animals in the recreation yard. The situation with regard to the relations between the detainees and Guantánamo's other "wildlife" is addressed in full, in the AR 15-6 Report, under the rubric: JDG Procedure #22: Wildlife and Pest Control at points 153 and 154. I quote these sections as they are critical to the argument and analysis that follow:

153. (U//~~FOUO~~) JDG Procedure #22 addresses Wildlife and Pest Control. . . . Commanders and subordinates shall ensure that camp leadership and guard force personnel are trained and "are aware of their responsibilities with respect to wildlife and pest control." (Exhibit 109).<sup>88</sup>

The "responsibilities with respect to wildlife" extend to the nonhuman animals that inhabit the camp, even as these same "responsibilities" concerned with "pest control" can be read against the grain as what is captured in the SOPs that govern the management of the camp's human detainees. Mohammed al-Qahtani documents how he was "forced to bark like a dog, wear a leash like a dog . . . and pick up piles of trash with his hands cuffed while being called 'a pig.'"<sup>89</sup> Adnan Latif had first-hand ex-

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86. AR 15-6 INVESTIGATION, *supra* note 35, at 10.

87. *Id.* at 11 n.40.

88. *Id.* at 43.

89. CTR. FOR CONSTITUTIONAL RIGHTS, FACES OF GUANTÁNAMO: TORTURE 12 (Jan. 1, 2012), available at [http://ccrjustice.org/files/FOG\\_torture.pdf](http://ccrjustice.org/files/FOG_torture.pdf).

perience of trying to survive his quartering in an animal cage. As I mentioned above, Marc Falkoff, Latif's attorney, writes: "Latif spent his first weeks at Camp X-Ray in an open-air cage, exposed to the tropical sun, without shade or shelter from the wind that buffeted him with sand and pebbles. His only amenities were a bucket for water and another for urine and feces."<sup>90</sup> Murat Kurnaz, imprisoned for five years in Guantánamo only to be found innocent and eventually released, writes: "An animal has more space in its cage in a zoo and is given more to eat. I can hardly put into words what that actually means."<sup>91</sup>

This series of inversions, enabled by the violent logic of the biopolitical caesura, is perhaps most graphically evidenced by the fact that while the detainees at Guantánamo are denied basic legal rights, the iguanas that inhabit the camp are protected by United States law under the Endangered Species Act. As a technology of power predicated on the hierarchization of life, the biopolitical caesura recalibrates and assigns its subjects along this hierarchy according to the exigencies of the regime that deploys it. In this case, the United States government has deemed Guantánamo's detainees to be lower forms of life than the reptiles that inhabit the island. Mahvish Rukhsana Khan, a lawyer who volunteered to translate for the prisoners, remarks: "The prisoners at Guantánamo are entitled to fewer protections than an iguana."<sup>92</sup> Shaker Aamer, one of Guantánamo's so-called "forever prisoners," states: "[Y]ou cannot walk even half a metre without being chained. Is that a human being? That's the treatment of an animal". [sic]<sup>93</sup> During the interrogation sessions at Camp X-Ray, interrogators invoke the biopolitical caesura in order to underscore the detainee's exclusion from the category of "the human":

0100: Detainee began to cry during pride and ego down. . . . He was reminded that he was less than human and that animals had more freedom and love than he does. He was taken outside to see a family of banana rats. The banana rats were moving around freely, playing, eating, showing concern for one another. Detainee was compared to the family of banana rats and reinforced that they had more love, freedom, and concern than he had. Detainee began to cry during this comparison.<sup>94</sup>

Throughout the course of this interrogation log, al-Qahtani is repeatedly "reminded of the fact that his standard of living is less than a Banana

90. Falkoff, *supra* note 49.

91. MURAT KURNAZ, *FIVE YEARS OF MY LIFE: AN INNOCENT MAN IN GUANTANAMO BAY* 99 (2007).

92. MAHVISH RUKHSANA KHAN, *MY GUANTÁNAMO DIARY: THE DETAINEES AND THE STORIES THEY TOLD ME* 40 (2009).

93. *Guantanamo Detainee Heard Speaking from Inside the Prison*, REPRIEVE (Nov. 18, 2013), [www.reprive.org.uk/press/2013\\_11\\_18\\_pub\\_shaker\\_aamer\\_heard\\_from\\_prison\\_cell/](http://www.reprive.org.uk/press/2013_11_18_pub_shaker_aamer_heard_from_prison_cell/) (internal quotation marks omitted).

94. INTERROGATION LOG: DETAINEE 063 (Nov. 23, 2002), *available at* <http://content.time.com/time/2006/log/log.pdf>.

rat.”<sup>95</sup> As a captive subject, al-Qahtani is transmuted into an object-thing as he is compelled to embody the combined effects of racio-speciesism: Arabo-Islamophobia is augmented and amplified by a virulent anthropocentrism. In this speciesist schema, the exercise of power can only achieve its cultural intelligibility and devastating lived effects by reproducing a series of biopolitical divisions (human/animal/vegetable) that govern the hierarchical distribution of life (dog > banana rat > detainee), its consequent assignation of value (“dogs know right from wrong,” “banana rats have more love than a detainee”) and, crucially, the right to torture or exterminate with impunity those subjects designated as lesser forms of life. This speciesist schema achieves its cultural intelligibility and power effects through the following violent predication: “Power over the animal is the essence of the ‘I’ or the ‘person,’ the essence of the human . . . .”<sup>96</sup> The dense history of anthropocentric metaphysics proceeds to animate al-Qahtani’s embodied figuration of the violence of racio-speciesism. Glossing the anthropocentric metaphysics that found and constitute the Kantian subject, Derrida discloses its axiomatic predication on the animal other:

The subject that is [hu]man is a person, “one and the same person [*die selbe Person*],” therefore, who will be the subject of reason, morality, and the law. What exists in opposition to this person? Well, the thing . . . . The person is an entirely different being (*ganz verschiedenes Wesen*), in rank and dignity (*durch Rang und Würde*), from these things (*Sachen*), which are irrational animals . . . .”<sup>97</sup>

The power/knowledge effects that flow from this violent predication are borne out in Guantánamo: “One has power and authority (*walten*) over these irrational animals because they are things. One can use them and lord over them as one pleases . . . .”<sup>98</sup>

The biopolitical hierarchy that governs the life and death of detainees at Guantánamo extends vertically along a line of descent that positions the captives beyond the threshold of the animal. Looking back at the biopolitical infrastructure of the Nazi state, one can clearly see the imbrication of ecology, the regime of animal rights and the racio-speciesist branding of Jews as collectively exemplifying the dangers of seeking more “authentic” articulations of animals and humans that are predicated on the biopolitical division and its capacity for inversions and recalibrations while leaving the violent order of the biopolitical regime intact. The Nazis effectively called for a more “authentic” relation to nature (“blood and soil”) that was buttressed by animal rights (Reich Animal Protection laws) and the rights

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95. *Id.*

96. JACQUES DERRIDA, *THE ANIMAL THAT THEREFORE I AM* 93 (Marie-Louise Mallet ed., David Wills trans., 2008).

97. *Id.* at 92–93 (second alteration in original).

98. *Id.* at 93.

of nature (Reich Law on the Protection of Nature).<sup>99</sup> Animals and nature were thereby recalibrated up the specieist scale at the expense of Jews. Deploying the violence of racio-speciesism, the Nazis animalized Jews as “rats,” “vermin,” and other low-life forms, situated them at the bottom of the biopolitical hierarchy, and then proceeded to enact the very cruelty and exterminatory violence (cattle car transport, herding in camps replicating stockyards, and the industrialized killing procedures of animal slaughterhouses) that they had outlawed against animals. The Nazi state also exemplifies the manner in which the regime of (animal) rights can be perfectly accommodated within the most genocidal forms of state violence. This is so precisely because the prior concept of human rights is always already founded on the human/animal biopolitical caesura and its asymmetry of power—otherwise the very categories of “human” and “animal” rights would fail to achieve cultural intelligibility. The paternal distribution of rights to non-human animals still pivots on this asymmetrical *a priori*. Even as it extends its seemingly benevolent regime of rights and protections to animals, rights discourse, by disavowing this violent *a priori*, merely reproduces the species war by other means.

#### V. TRANSCENDENCE IN THE ANIMAL

The complex human-animal relations that are framed by the Joint Detention Group (JDG) standard operating procedures (SOPs) with regard to “wildlife and pest control” are inscribed by a series of inversions and prohibitions:

154. (U/FOUO) The SOP notes that iguanas “can and will become aggressive once they have been domesticated through feeding by humans.” Accordingly, guards are instructed to not attempt to “feed, capture, or harm an iguana.” “At no time will a detainee be allowed to feed an iguana.” Similarly, noting that banana rats will bite if fed by guards or detainees, “at no time will a banana rat be fed.” . . . Finally, because of the number of human diseases that pigeons carry, “[d]etainees that feed and give water to the birds should be discouraged from doing so. At no time should a detainee touch or pet these birds.” (Exhibit 109)<sup>100</sup>

Here, law’s colonizing aspirations are clearly evidenced. Law desires to inscribe anything that comes within its purview and assign it a taxonomic category designed to render it both intelligible and controllable within the continuum of the camp’s standard operating procedures. Yet,

99. For a discussion of the raft of animal and nature protection laws passed by the Nazi regime, see BORJA SAX, *ANIMALS IN THE THIRD REICH: PETS, SCAPEGOATS, AND THE HOLOCAUST* 110–23 (2009).

100. AR 15-6 Investigation, *supra* note 35, at 43–44 (second alteration in original) (footnote omitted).

as with all systems driven by the desire for totalizing control, Guantánamo's standard operating procedures are fractured by instances of structural failure. The animals intrepidly overcome the hyper-security mechanisms of the prison, enter the field of the detainees' recreation yard, and proceed to establish the possibility of the Open. The Open is the space that they work to bring into being in concert with the detainees through acts of solicitation, promise, gifting, and intercorporeal communication. All of these illicit activities breach Guantánamo's SOPs, even as they trace the contours of an Open within which, temporarily, other forms of being come into play. In the space of the Open in the cage, the wildlife and the detainees manage to "enter into . . . a responsive relationship."<sup>101</sup> The responsive dimensions of these otherwise interdicted relations are evidenced in both points 155 and 156 of the report.

155. (U//FOUO) On numerous occasions, the Investigative Team observed stray cats, iguanas, and pigeons lined up at the BHU/DH recreation yards.<sup>102</sup>

The line up of this motley crew—stray cats, iguanas, and pigeons—cuts across the camp's series of blocks and interdictions designed to govern entry into the camp. This transgressive line up of animals interpenetrates the layers of security fences that constitute Guantánamo's security regime and, agentially, the animals, in illicit relation with the detainees, establish fragile and transitory communities of interdependence and responsiveness. The non-human animals, in fact, proceed to give the detainees the very intimate contact that is denied to them at every level of their isolating and indefinite detention:

156. (U//FOUO) Several guards and medical personnel spoke of detainees regularly feeding wildlife. A nurse at the BHU/DH [redacted], for example, noted that one of the things that stuck out in her mind about ISN156 was that he was allowed to leave food out for the iguanas at the BHU/DH recreation yards. She noted that stray cats, iguanas, and banana rats sometimes line up outside of the recreation yards, waiting for food. She also noted that one detainee, [redacted], has pigeons regularly come and sit on his shoulder. (Exhibit 35)<sup>103</sup>

In the soul-destroying context of Guantánamo's cage, there emerges, in these instances of illicit human-animal contact, moments of intercorporeal communication and touch. The fragile materialization of the Open that the detainees and animals bring into being, even though it is circumscribed by the bars of the cage, works momentarily to hollow out the rules and the very steel bars of imprisonment in order to establish a

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101. DONNA J. HARAWAY, *WHEN SPECIES MEET* 25 (2007).

102. AR 15-6 INVESTIGATION, *supra* note 35, at 44.

103. *Id.*

type of ephemeral heterotopic locus. Rather than following either Heideggerian or Agambenian understandings of the Open<sup>104</sup>—as the space for the disclosure of being and so on—I want to draw on their term in order to resignify it. Indeed, my reading stands in contradistinction to Martin Heidegger’s strictly anthropocentric theorisation of the Open. In his theorisation, Heidegger posits language, as a solely human attribute, as what is actually constitutive of the Open:

But language is not only and not primarily an audible and written expression of what is to be communicated. It not only puts forth in words and statements what is overtly or covertly intended to be communicated; language alone brings what is, as something that is, into the Open for the first time. Where there is no language, as in the being of stone, plant, and animal, there is also no openness of what is, and consequently no openness of that which is not and of the empty.<sup>105</sup>

Predicating his thesis on the Open on the most reductive and scientifically untenable conceptualisation of language, Heidegger precludes animals from accessing the Open. In my reading, it is animals that work to bring the Open into being for Guantánamo’s detainees. In the context of Guantánamo, the Open in the cage establishes the heterotopic<sup>106</sup> contours of a moment of intimate contact between one, the animal, and the other, the non-human, animal detainee. The Open is a heterotopic space precisely because it temporarily coexists within the very carceral locus of the most violent and confining of prisons: Guantánamo. The cats, iguanas, and banana rats ferret their way through the bars and series of cages and emerge in the space of the detainees’ recreation enclosure. In the context of this other cage, they proceed to construct the possibility of the Open: a creature of free movement enters the cage and beckons and solicits the prisoner for food, practices of haptic exchange and complex, indeterminate relations of affect. Rainer Maria Rilke, in one of his *Duino Elegies*, eloquently articulates the possibility of envisaging this heterotopic space and its possibilities for freedom. He writes:

With all its eyes the animal world  
beholds the Open. Only ours

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104. See GIORGIO AGAMBEN, *THE OPEN: MAN AND ANIMAL* 57–62 (Werner Hamacher ed., Kevin Attell trans., 2004); MARTIN HEIDEGGER, *THE FUNDAMENTAL CONCEPTS OF METAPHYSICS* 249–61 (John Sallis et al. eds., William McNeill & Nicholas Walker trans., 1995).

105. MARTIN HEIDEGGER, *POETRY, LANGUAGE, THOUGHT* 73 (Albert Hofstadter trans., Harper & Row 1971).

106. For a discussion of heterotopic spaces, see Michel Foucault, *Of Other Spaces*, 16 *DIACRITICS* 22, 22–27 (1986).



are as if inverted and set all around it like traps at the doors to freedom.<sup>107</sup>

Even as it is couched in the language of *poiesis*, this is not an instance of mystic speech. Rather, Rilke's lines work toward the demystification of the blindness and structural oclusions so insistently reproduced by anthropocentric language-thought. Guantánamo's other animal residents—its rats, cats, and birds—see the Open precisely in the most impossible of loci: the cage. They stage their infractions of Guantánamo's rules and agentially navigate its fences, razor wire, and guard towers in order to enter the cage and to assert the possibility of freedom in the face of its total denial by the forces of the military-security-gulag. What is established in the space of the Open in the cage is, indeed, a "difficult freedom"<sup>108</sup> that is at once transitory and material.

The Open in the cage that Guantánamo's animals create in concert with its inmates defies the punitive geometry of the cage, the brutalizing logic of shackles, and the violent practices of enforced isolation and sensory deprivation. Guantánamo's animals temporarily unloose the shackles and release the traps set at the door of freedom. Their agentic acts, precisely as interlopers that evade and defy the circumscriptions of the cage, cause the bars, the shackles, and the razor wire to be held, for the briefest of moments, in suspensive animation—all of these penal technologies of punishment and unfreedom become, on the entry of the animals, evanescent and quasi-invisible as the detainees lose sight of their own harrowing conditions of imprisonment. For a moment, "[t]here is a transcendence in the animal!"<sup>109</sup>—to draw on a memorable Levinasian phrase. In the recreation enclosure of Guantánamo, there is a transcendence in these transgressive animal entities that establishes the possibility for detainees to experience another space, the Open, within the violent circumscription of the cage. This is not, let me stress, transcendence in the animal through theological acts of sacrifice or commodifying acts of possession or domestication. This is transcendence "as thought by divergence [*pensée d'écart*], not possession of the object . . ." <sup>110</sup> It is the encounter with animal alterity that establishes the conditions of possibility to be enveloped by the transient space of the Open and to be elevated, momentarily, beyond the binding shackles of the cage. This is transcendence, to couch it in Levina-

107. RAINER MARIA RILKE, *THE POETRY OF RILKE* 327 (Edward Snow ed., trans., Bilingual ed. 2009).

108. I borrow this term from the title of EMMANUEL LEVINAS, *DIFFICULT FREEDOM: ESSAYS ON JUDAISM* (Seán Hand trans., Johns Hopkins Univ. Press 1990) [hereinafter LEVINAS, *DIFFICULT FREEDOM*].

109. *Id.* at 152. I use the problematic definite article here under conditions of erasure. For a trenchant critique of the use of the definite article to describe "the animal," and the biopolitical consequences of this use see DERRIDA, *supra* note 96, at 40–41; PUGLIESE, *supra* note 42, at 33–34.

110. MAURICE MERLEAU-PONTY, *THE VISIBLE AND THE INVISIBLE* 198 (Claude Lefort ed., Northwestern Univ. Press 1997) (alteration in original).

sian terms, through the height of the animal: the animal arrives and leaves on its own terms, outside those assimilative frames that would ensnare into the “imperialism of the same.”<sup>111</sup> Through their volitional departures and returns, the animals set in train for the detainees discontinuous states of being between the violence of the cage and the fragile calm (as I discuss below) of the Open. Even as the animals establish relations of proximity with the detainees, they continue to maintain their own agency and alterity in the space of the Open. Cutting across the Heideggerian grain, the very captivations and deficits that Heidegger ascribes to animals are what Guantánamo’s animals transgress, evade, and exceed.<sup>112</sup> And I note here, as I discuss elsewhere, the problematic use of the definite article that attends discussions of “the animal.” The use of the definite articles works to reduce animals into undifferentiated, generic, and anonymous entities that are denied the status of individuated subjects.<sup>113</sup>

In the space of the Open in the cage, the grace of a bird landing on a detainee’s shoulder speaks otherwise to him of his plight: it establishes intercorporeal relations inflected by a lightness of touch and by the warmth of a body that is not there to inflict violence and demand subjugation. As a material manifestation of the other, the bird comes from the outside and embodies everything that Guantánamo violently negates and prohibits. In the utter impossibility of experiencing that emblematic sign of freedom and futurity, the exterior horizon, the Open in the cage establishes the possibility to access the glancing reprieve of an interior horizon that offers the detainees some hope in the face of all the institutional forces mobilized to ensure its foreclosure. On the wing, the bird works to open the possibility of a horizon: in the wake of its flight, it traces the unseen and interdicted external horizon and, in a transversal arc and swoop, overrides the bars of the cage to bring this gift to the detainee.

This is why the space of the Open must be viewed as heterotopic: it works to constitute the very sort of face-to-face ethical encounter that is otherwise everywhere denied in the gulag that is Guantánamo. It is ethical because the one is there, in proximity without subjugating relations, for the other. In the space of this ethical encounter, the detainee, who is often literally riveted by shackles to the very ground of the detainee’s being, momentarily experiences what Levinas would term an “ex-cendence”<sup>114</sup> or escape from that unrelenting subjection that constitutes the ontological reality within the prison. This ex-cendence transpires precisely because of the detainee’s relation to the animal other: it is the animal that establishes the conditions of possibility for the detainee to experience a rupture from the brutal rivetedness of the detainee’s incarcer-

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111. EMMANUEL LEVINAS, *TOTALITY AND INFINITY: AN ESSAY ON EXTERIORITY* 39 (Alphonso Lingis trans., Duquesne Univ. Press 1969).

112. See HEIDEGGER, *supra* note 105, at 236–39.

113. See PUGLIESE, *supra* note 42, at 33–34.

114. EMMANUEL LEVINAS, *ON ESCAPE* 54 (Bettina Bergo trans., Stanford Univ. Press 2003) [hereinafter LEVINAS, *ON ESCAPE*] (footnote omitted).

ated being and, momentarily, to transcend, through the Open in the cage, the detainee's state of utter subjection.

In the roosting of a pigeon on a detainee's shoulder, relations of trust and, even more importantly, practices of "acknowledgement"<sup>115</sup> between animal and human are established. Acts of intimate communication are inscribed in these practices of acknowledgement. Guantánamo's violent regime of prohibitions, negations, and arbitrary and retributive punishments is here temporally held in abeyance. The locus of the Open invokes and produces what is elsewhere interdicted in this prison: intimacy, responsiveness, and acknowledgement. And the positive effects of this on the detainees cannot be overestimated. Section 157 in the report on Latif's death underscores this:

157. (~~U//FOUO~~) The OIC for the BHU/DH and Camp Iguana [redacted] indicated he understood that although generally not allowed, certain detainees were allowed to interact with the wildlife. [redacted] indicated that [redacted] had [redacted]. He also noted that ISN156 was "usually allowed to feed animals on doctor's orders because it helped keep him calm." (Exhibit 18)<sup>116</sup>

Adnan Latif, only ever referred to by his identificatory and anonymizing number ISN156, reaches out to the animals in the space of the Open in the cage. In the context of Guantánamo, what unfolds in the space of the Open are provisional inter-species encounters that briefly punctuate the carceral continuum that constitutes virtually the entirety of his existence. These provisional inter-species encounters are, on the one hand, little more than transient rifts that disrupt the killing time of indefinite detention; on the other hand, they establish life-enhancing moments of reprieve in the face of the violence that bookends Latif's penal existence. As moments of excendence, they exemplify the "need to get out of oneself, that is, *to break that most radical and unalterably binding of chains, the fact that I [moi] is oneself [soi-même]*."<sup>117</sup> For the detainees, the binding of chains is at once symbolic and brutally literal in the context of a site where one's existence is defined entirely by an apparatus of wholesale subjection; yet, the ephemeral creation of the Open in the cage enables the momentary loosening of the chains. The Open in the cage gifts to the detainees a passing experience of de-riveting and excendence from the violent continuum of the gulag.

This inter-species scene of communication and acknowledgement recalls another similar human-animal encounter: that between Emmanuel

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115. For a discussion of inter-species acknowledgement, see HARAWAY, *supra* note 101, at 25.

116. AR 15-6 INVESTIGATION, *supra* note 35, at 44 (footnote omitted).

117. LEVINAS, ON ESCAPE, *supra* note 114, at 55 (alterations in original).

Levinas, a Nazi prisoner of war, and the dog Bobby, who greeted him everyday on his trudge to and from the camp.

The French uniform still protected us from Hitlerian violence. But the other men, called free, who had dealings with us or gave us work or orders or even a smile—and the children and women who passed by and sometimes raised their eyes—stripped us of our human skin. We were subhuman, a gang of apes. A small inner murmur, the strength and wretchedness of persecuted people, reminded us of our essence as thinking creatures, but we were no longer part of the world.<sup>118</sup>

For Guantánamo's detainees, there is no protection in their uniform; on the contrary, their orange uniform works to expose them to unlimited violence. Levinas's "small inner murmur" sometimes, as in Latif's extraordinary and courageous declamation, "I am a human being," erupts into a shout—in defiance of the realization that he is "no longer part of the world." "Racism . . . [,]" Levinas continues, "shuts people away in a class, deprives them of expression and condemns them to being 'signifiers without a signified' . . ." <sup>119</sup> Adnan Latif embodies the lived effects of the racio-speciesism that reduces his existence to a mere numeric signifier evacuated of a human signified: he has become, in the necropolitical context of Guantánamo, a non-human animal that can be killed with impunity.

In the face of the penal existence that denies Levinas's human-subjecthood, "a wandering dog" enters the scene and proceeds daily to meet and greet "in delight" the existence of "this rabble."<sup>120</sup> "For him," concludes Levinas, "there was no doubt that we were men."<sup>121</sup> Regardless of this desperate need to be validated as "men," Bobby the dog offers Levinas something altogether more important and yet intangible, something that breaches and overflows the insistent anthropocentrism that still inscribes this scene. Bobby offers the very Levinasian gift of giving without reciprocity or even hope of exchange. He gives acknowledgement, unbounded responsiveness, and "delight" at the very humble fact of their existence. Here is a sense of gifting that is, in fact, absolutely true to the Levinasian spirit of the gift, as it escapes economies of calculation, categorical nomination (are you human or dog, as this will decide my actions?), and reciprocal demands (what will you give in return for my gift?). Bobby the dog manages, in this Levinasian passage, momentarily to render inoperative the violence of what Agamben terms "[t]he anthropological machine,"<sup>122</sup> with its inexorable reproduction of the biopolitical caesura, its hierarchies,

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118. LEVINAS, *DIFFICULT FREEDOM*, *supra* note 108, at 152–53.

119. *Id.* at 153.

120. *Id.*

121. *Id.*

122. AGAMBEN, *supra* note 33, at 83.

and regimes of subjugation and extermination. In Bobby offering his gift without the attendant demand for reciprocity, there is neither the marking of the hierarchical biopolitical categories constitutive of the anthropological machine, nor is there the exercise of a calculative economy where one subsists at the expense of the other. Rather, through the “delight” of the bark, through the joy of acknowledgement, and the kinesthetics of intercorporeal touch, what transpires is an exceeding of the regulative demands of the anthropological machine.

In yet another camp of military internment, a similar scene plays itself out. In the context of World War II, Olivier Messiaen, the French composer, is imprisoned in a prisoner of war camp. In the midst of the pain, suffering, and acute deprivations experienced during his imprisonment in Stalag VIII, Messiaen would listen to the birds that sang their songs, often perched on the very razor wire that marked the boundaries of his prison. In his writings, Messiaen describes his rapture at the singing of the birds. They offer him both the experience of “transcendence in the animal” and the miraculous possibility to create music in the most acutely abject of circumstances through his transcriptions of their songs. Messiaen composes his unforgettable *Quartet for the End of Time* in Stalag VIII. The birds inspire him to compose the movement he terms “Abyss of the Birds.” “The abyss is Time,” writes Messiaen in his Preface to the quartet, “with its dreariness and gloom. The birds are the opposite of Time; they represent our longing for light, for stars, for rainbows, and for jubilant song!”<sup>123</sup> Where the abyss, for Messiaen, signifies suffering, oppression, negation, and death, the birds articulate for him life, joy, flight, and the possibility for transcendence. In the context of his meditation on the need for escape, Levinas writes: “It is not that the sufferings with which life threatens us render it displeasing; rather it is because the ground of suffering consists of the impossibility of interrupting it, and of an acute feeling of being held fast [*rivé*].”<sup>124</sup> For Messiaen, the birds of Stalag VIII embody both the possibility for excedence—the momentary escape from the cage of the prisoner of war camp through the rapture of their songs—and the possibility of offering a gift, their song, with no demand for reciprocity.

## VI. TRANSCENDENCE IN A FLY AND A COMMUNITY OF ANTS

*“We have on this earth what makes life worth living:  
 . . . the hour of sunlight in prison . . .”*<sup>125</sup>

In the five and a half years that Ahmed Errachidi was imprisoned in Guantánamo, he spent four of those years in complete isolation in Camp

123. Olivier Messiaen, *Composer’s Preface*, in REBECCA RISCHIN, FOR THE END OF TIME: THE STORY OF THE MESSIAEN QUARTET app. at 129, 130 (2006).

124. LEVINAS, ON ESCAPE, *supra* note 114, at 52 (alteration in original).

125. MAHMOUD DARWISH, UNFORTUNATELY, IT WAS PARADISE 6 (Munir Akash & Carolyn Forché eds. & trans., Univ. Cal. Press 2013).

Echo—described as the “worst facility” in the entire camp. “I was on my own,” Errachidi writes,

in Echo there was only one cell, one guard . . . I stayed there for almost seven months. . . . That’s where I just broke down because I couldn’t see the sky, couldn’t see sunlight, couldn’t see other prisoners, for many months . . . I didn’t know what I was doing.<sup>126</sup>

In the context of his complete isolation, Errachidi discovers unexpected company:

I became aware that I was not entirely alone when I was in punishment either. Visitors would come in their dozens, three times a day, after every meal. I’d eagerly await them and, after they pitched up, I’d sit with them and enjoy their company. I could spend long hours with them without becoming bored, for they offered me a hint that normal life still existed. Their presence made me smile and it comforted me. I’d watch them sneaking in so as not to alert the soldiers.

I’m talking about ants.<sup>127</sup>

Errachidi describes the comfort, pleasure, and hope that a community of ants brought to him once they managed to infiltrate his cell:

These beautiful creatures would visit me in my metal prison carrying with them hope and life. I’d save food for them. I’d put it in a corner away from the prying eyes of the soldiers: if they saw my visitors they’d either spray them with pesticide or squash them beneath their military boots. If I was caught feeding the ants I knew I’d be punished with either smaller rations or extra days in punishment, but, despite this, I continued to encourage them.<sup>128</sup>

In the blank space of his maximum isolation cell and in the dead time of indefinite detention, this community of ants sets in train the passing of time (“I could spend long hours with them”), even as it enables Errachidi to emplace himself within a fragile agentic position that enables him to offer hospitality and exercise a generosity of spirit towards the ants. What is instantiated by the presence of the ants is a covert, transitory, but real

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126. Ted Conover, *From Gitmo to an American Supermax, the Horrors of Solitary Confinement*, VANITY FAIR (Jan. 2015), available at <http://www.vanityfair.com/news/2015/01/guantanamo-bay-solitary-confinement> (alterations in original) (internal quotation marks omitted).

127. AHMED ERRACHIDI & GILLIAN SLOVO, *THE GENERAL: THE ORDINARY MAN WHO BECAME ONE OF THE BRAVEST PRISONERS IN GUANTANAMO* 126 (Chatto & Windus 2013).

128. *Id.*

redistribution of power in which a prisoner, reduced to a state of utter subjection, is enabled to mobilise agency toward the other:

Sometimes I'd save a peanut, splitting the nut in half and putting each half on the floor, flat side down. The ants would come and eat the halves from the inside, leaving the skin. Such was their delicacy that, unless you turned the nut over, you wouldn't have been able to guess it was empty. . . .

These ants were a rare sign of life, and when they appeared animation would creep into the deadness of my solitary cell and, for that moment, I'd feel optimism rather than despair.<sup>129</sup>

In the deadness of his cell, in the killing solitude of maximum isolation, the entry of ants announces animation and life. In the midst of a cell devoid of all coordinates and stripped of all personal effects, a cell emptied of all living things except for the prisoner, the ants bring to Errachidi the gift of community through inter-species relations. This community of animals, focused on shared labour and nurturing solidarity, establishes for Errachidi the possibility to experience, for a moment, optimism rather than despair, peace rather than violence:

I loved to sit and study them and I learned a lot from them. When they came marching in their rows I saw how they helped each other to transport food. All their activity and organisation was achieved with the finest discipline. Watching them would give me a sense of peace and tranquillity.<sup>130</sup>

This community of ants brings the external world into his cell, delineating in the process the rare configuration of the Open—precisely as that which allows Errachidi both to hope and to imagine an elsewhere not constituted by the existential nothingness and despair of his maximum isolation cell. Through their delicate labours, the ants sculpt a downturned half-peanut into a hollowed shell that keeps intact its morphology, even as it has been emptied of the fruit of the nut. Everything here pivots on the possibility of walking lightly on the earth: the soft fall of ants' feet is coextensive with their adroit ability to eat only what they need and to leave all else intact. This picture stands in stark contradistinction to the bludgeoning violence visited on the detainees by the Immediate Reaction Force (IRF), as described by Errachidi:

When they were ready to attack a prisoner in his cell they'd form a human train, the soldier at the front wielding a large shield, the kind riot police use . . . . The cell door would be opened, another soldier would spray a hot gas known as OC (oleoresin capsicum) spray into the prisoner's face, causing excruciating pain to eyes, skin and throat as well as choking the prisoner and mak-

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129. *Id.* at 126–27.

130. *Id.* at 126.

ing him collapse. Once the prisoner was on the ground, the other soldiers would rush in and beat him.

They used different methods for these beatings. Some would press as hard as they could on the soft point behind our ears. Some would lift our heads off the ground before smashing them down on the metal floor. Some would twist our fingers back hard enough to break them.<sup>131</sup>

In the face of this implacable violence, Errachidi reflects that it is “unimaginable to me how they [the guards] not only withstood our cries for compassion but also continued to live normal lives.”<sup>132</sup> Acutely alert to the violence and destruction that shadows his every move within the cell, Errachidi extends to his community of ants the very thing denied to him: compassion. At the first sign of the guards, a well-aimed breath works to alert the ants to imminent danger, allowing them to flee back to their nests:

But their presence also brought danger—when the soldiers inspected my cell, I was always frightened they’d find the ants. I developed a warning system: if I heard a guard on his way, I’d blow on the ants and they’d scatter back to their homes while I got rid of the food. They soon became accustomed to this warning signal, and each time would run from it. Even so, after the soldiers had searched my cell, the first thing I’d look for were the remains of the ants. When they didn’t find any I’d smile and know they’d escaped.<sup>133</sup>

Attentive to the ever-present threat of violence, Errachidi takes to heart the ants’ exposedness and vulnerability to the possibility of their being crushed by a military boot or to being exterminated by pesticide. If they had been discovered, what would the guards have annulled—mere insect life framed as little more than disposable vermin? Errachidi’s relation with the ants, on the contrary, evidences an affective investment informed by inter-species acknowledgement and relationality. In the micro, ethico-ecology of a prison cell, the ants establish the possibility for mutually constitutive relations:

And they were so intelligent. Whenever I put food in the corner, the first ant to find it would quickly show the others the food. Such a valuable lesson: one ant bringing prosperity to the whole nation. I used to think how beautiful the world would be if human beings behaved in this same way.

The second lesson the ants taught me was that . . . the ants were so varied in their contributions; some carried small pieces

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131. *Id.* at 94.

132. *Id.* at 116.

133. *Id.* at 127.



while others carried pieces bigger than themselves. They were such a great example of the benefits of collective action.<sup>134</sup>

Errachidi is agentially enabled to offer hospitality and nourishment and, in return, the ants establish the Open in the cage, offering him the possibility to experience optimism, tranquillity, and the consolations of philosophical reflection inspired by inter-species relations. This underground community supplies him with entomological lessons on the ecology of a mutually sustainable life. For Errachidi, the ants bring into visibility another world that occupies Guantánamo but that is otherwise entirely effaced from its official texts and practices. This other world inscribes the very foundations of Guantánamo: ants' tunnels, trails, and nests that testify, for Errachidi, to the ongoing existence of an inspirational, eusocial life of coexistence, cooperation, and shared labour aimed toward the mutual benefit of the community. The ants impart, through their diverse practices, a number of entomological lessons configured by the specificity of their own formicidic epistemology. They compel Errachidi to reflect on the violent extinguishment of compassion for the other in his own carceral world and on the absence of a communitarian sociality. He names, in an extraordinary move, the *aesthetic* value of the ants that come into his cell—"These beautiful creatures would visit me in my metal prison carrying with them hope and life."<sup>135</sup> Unsurprisingly, this beauty offers him hope and the sense of a life lived otherwise to the pain and solitude of his prison-bound existence. Who would have thought that aesthetics, ethics, and epistemology could possibly coexist in this site of saturated violence, in this site of maximum isolation and deprivation? And that aesthetics, and a superior entomological epistemology and ethics, could be configured in the humble form of an ant in that hellhole locus whose toponomy is now synonymous with torture, death, and injustice? These questions can be further amplified by yet another account of a Guantánamo detainee: Mohamed Bashmilah.

Mohamed Bashmilah is a victim of extraordinary rendition. Held in a number of secret prisons for nineteen months before being released without charge, the recent release of the Senate Torture Report "listed him as one of 26 prisoners who, based on C.I.A. documents, had been 'wrongfully detained.'"<sup>136</sup> During the time of his imprisonment, Bashmilah was forced to endure the gamut of torture practices.

In the course of an interview in which he documents his harrowing experiences in these black site prisons, he interrupts his torture testimony with this story: "Whenever I saw a fly in my cell, I was filled with joy . . . . Although I would wish for it to slip from under the door so it would not be

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134. *Id.* at 126–27.

135. *Id.* at 126.

136. Scott Shane, *Amid Details on Torture, Data on 26 Who Were Held in Error*, N.Y. TIMES (Dec. 12, 2014), <http://www.nytimes.com/2014/12/13/us/politics/amid-details-on-torture-data-on-26-held-in-error.html>.

imprisoned itself.’”<sup>137</sup> Bashmilah’s account of the joy that the fly brings him in the context of his cell has Dickinsonian resonances. In the midst of death, the persona in one of Emily Dickinson’s poems articulates the process of settling her accounts: she abruptly says that ‘then it was/ There interposed a Fly –.’<sup>138</sup> At that very moment, when death works towards the final extinguishment of life, a fly enters the room and interposes itself between death and the waning life of the persona, generating a brief but utterly compelling hiatus. In the context of Bashmilah’s prison cell and the traumatic regime of torture he is forced to endure, the interposition of the fly works to stall thoughts of death and to enable a moment of reprieve from the trauma of torture. This is an interposition of the animal that brings joy in a space of acute suffering. There is, for Bashmilah, more than a temporary surcease of pain; there is a life coming to joy that, however fragile, is affirming of his being in the midst of the otherwise torturous negation of the worth of his existence.

In the biopolitical hierarchy of life, the fly is either branded as vermin or entirely dismissed as an insignificant entity. Yet, in Bashmilah’s cell, the fly is at once its own being and also a charged emblem of freedom as it navigates the space of the prison and, through the vectors of its flight, traces the very possibility of experiencing the Open in the cage and its promise of freedom. The fly is the essence of freedom emblematically condensed in entomological form. It is an *embodied emblem* precisely because it at once ontologically enacts freedom even as it succinctly signs the term through the facticity of its unencumbered flight. As a living emblem, it materialises the possibility of freedom up against the carceral walls of Bashmilah’s existence. The interposition of the fly between Bashmilah and his chained confinement works to signify the very thing denied to him: freedom. Furthermore, Bashmilah’s upsurge of joy is underlined by an ethos of ethicality: he wishes the fly to slip under the door of his prison in order to escape. These small, seemingly insignificant moments of transcendence in the animal fail to register in the annals of standard, anthropocentric accounts of imprisonment and torture—as though they are too insignificant in scale, as though rendered immaterial precisely because of their minoritised status. Yet, for the prisoner, they produce life-affirming moments of joy and pleasure in the face of despair. For Bashmilah, the joyous interposition of the fly works to generate a state of reverie that will hold in momentary abeyance the brutal literality of his being pinioned to the walls of his cell.

For the guards and jailers, the fly is quasi-invisible precisely because of its very quotidian status. It is, in Maurice Blanchot’s sense, meaningless and invisible because it merely embodies the everyday. As such, it is little more than a “platitude.” But, Blanchot immediately underscores, “this ba-

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137. *Id.*

138. EMILY DICKINSON, *THE COMPLETE POEMS OF EMILY DICKINSON* 223 (Thomas H. Johnson ed., Faber & Faber 1986).

nality is also what is most important, if it brings us back to existence in its very spontaneity and as it is lived . . . ."<sup>139</sup> Of no significance to the jailers or the guards except as pest or minor irritant, it assumes in the eyes of Bashmilah a significance that defies its minoritized or banal status. It brings him joy as it proffers trajectories of freedom not bound by the violent restraints that keep him chained in the course of the regimen of torture that is daily inflicted upon his body. In the face of pain and the threat of death, it brings Bashmilah back to existence in its very spontaneity and as it is lived—with, crucially, the life-force of joy that he feels upsurge within him as he witnesses this winged spirit that defies walls, doors, and other obstacles in order to materialise an otherwise impossible freedom of movement.

The very contradiction between the free movement of the fly and Bashmilah's immobilisation enables the possibility for a utopic space to open up through the experience of Bashmilah's joy in the presence of the fly. Bashmilah's joy hangs on the openness that this fly brings into a space of complete restraint and enclosure. The seemingly random and arbitrary pathways that the fly traces through the air of the cell spatialise freedom in defiance of the prison's arsenal of constraints. Impossible freedom is here materialised for Bashmilah through the interposition of the fly as it offers him the promise of hope where it otherwise had been obliterated. In this juxtaposition of contraries, fly-freedom/detainee-restraint, there is the production of a relation predicated on yet another opposition: real/virtual. The real freedom of the fly is generative, for Bashmilah, of the possibility of experiencing freedom as virtuality, as imagined flight on the wings of a fly. The anguished certitude of enchained captivity is momentarily loosened and replaced by joy in the free movement of the other and the promissory possibilities that this evokes for Bashmilah: he wishes the fly to escape under the prison door to a world of larger freedom. This is the extraordinary power of a fly: that it can contingently convert despair to joy, transmuting Bashmilah's ontological fixity to the transformative exhilaration of flight.

In the stillness of his cell, the fly introduces new spatio-temporal dimensions to Bashmilah's solitary existence. The fly disrupts the dead time of indefinite detention through its flight around the cell. The fly's flight liberates time through the changing articulations of its positional bearings across the space of the cell. Tracking its aleatory movements across the cell, it materialises for Bashmilah unexpected spatial configurations that resignify his place of confinement. The paradoxical effects that the fly generates in Bashmilah's life hinge on the manner in which it introduces spatio-temporal changes that enable him, through the experience of joy, to transcend, however transiently, the ontological fixity of indefinite imprisonment. One can speak here of the strange meta/physics of the fly: its living physicality is what enables Bashmilah's metaphysics of

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139. Maurice Blanchot, *Everyday Speech*, 73 *YALE FRENCH STUD.* 12, 13 (1987).

transcendence. The fly brings a type of transformative change into this locus of stasis that generates the possibility for Bashmilah to experience his own transcendent hiatus from the otherwise unrelenting sentence of indefinite imprisonment. Emerging from the layered dimensions of this relation, Bashmilah's joy in the fly embodies his moment of excedence despite the chains that rivet him to a form of death-in-life. Through this transcendence in the animal, existence temporarily tears itself away from everything that grounds it in the immanence of captivity and pain. Through the flight of a fly, in the harrowing space of his cell, Bashmilah experiences overflight: he accedes to a different order of existence that allows him, for the briefest of moments, to occupy a utopic plane not constituted by the otherwise inescapable reality of his unjust imprisonment and torture.

I dwell on these extraordinary, yet entirely quotidian, moments of joy and excedence in such sites as Guantánamo, not in order to redeem the enormity of the violence unleashed and reproduced by the racio-speciesist assemblage of the biopolitical state and its attendant regimes of terror; rather, I mark these moments in order to bring into visibility those very fragile and transient acts of agency that reclaim the possibility to experience the affirmation of life through interspecies relations in these sites of terror that are predicated on the obliteration of joy, pleasure, and life. In the context of these sites, these moments of excedence delineate those lines of flight that effectively, if only temporarily, escape the violence of the biopolitical-anthropological machine and its totalising aspirations. In these most abject and life-negating of sites, tender acts of compassion and transient relations of interspecies acknowledgement trace hairline cracks that imperceptibly fissure this same machine.

For Adnan Latif, Guantánamo's animals bring into being the Open in the cage, creating a moment of stillness and a transient excedence from the turbulence and violence that surround him. The Open is the space of calm in the eye of the carceral storm. Away from the Open, removed from his intercorporeal communication with the animals that visit Guantánamo's recreation yard, Latif descends back into the abyss of agitation and suffering:

45. (U//~~FOUO~~) On the night of 31 July 2012, ISN156 was agitated about recent events and was in his cell at the BHU. At one point, ISN156 began jumping around in the cell, from the bed to the sink to the table to the toilet. [redacted], the nurse on duty at the BHU that night, observed ISN156 and asked him to stop what she explained was "very unsafe" behavior. ISN156 would stop once [redacted] spoke to him, but as soon as she left the tier, ISN156 would start jumping again. At one point ISN156 did fall, but not seriously. (Exhibits 24, 35)<sup>140</sup>

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140. AR 15-6 INVESTIGATION, *supra* note 35, at 11 (footnote omitted).

Latif, in a state of agitation, metamorphoses into a bird. He becomes one of the birds he nourished in the heterotopic Open of the recreation enclosure. As a bird, through his staggered attempts at flight, he is attempting to transcend the abyss that threatens to engulf him. On the night of his death, he is described as “still jumping around, now with a towel tied around his neck that he was using as a cape and smearing honey on his face.”<sup>141</sup> Smearred honey and makeshift wings will fail to save Latif. The inexorable weight and drag of Guantánamo’s regime of indefinite detention will ensure that Latif is, despite his broken attempts at flight, brought to ground. The scenes documenting Latif’s final moments delineate the painful contours of a man transmuted into hapless quarry, flapping across the circumscribed space of his cell in a desperate attempt to reach the Open beyond his cage.

The log that describes the events leading to the discovery of his death notes that:

93. (U//~~FOUO~~) Sometime shortly before midnight, ISN156 finally appeared to go to sleep. [redacted] did not recall seeing ISN156 “lift his head or move all night” but did recall seeing ISN156 breathing. [redacted] noted that in his experience, it was “odd” that ISN156 would have slept that long, as he was usually a very active sleeper. [redacted] noted that he had “never seen [ISN156] sleep that much,” pointing out that ISN156 usually slept for only a few hours at a time, and even then, continued to move all over his cell in his sleep. (Exhibits 1, 6, 6-A)<sup>142</sup>

Latif was seen never to have slept so much precisely because he was already dead. He had taken his final plunge into Guantánamo’s abyss.

## VII. CODE YELLOW: DEAD AFTER THE FACT

The circumstances that surround the death of Adnan Latif remain murky, despite the official AR 15-6 Investigation report that was issued following his death. The report states that:

2. (U//~~FOUO~~) The Armed Forces Medical Examiner (AFME) determined the cause of death of ISN156 to be suicide by overdose of paliperidone (Invega). ISN156 had 24 capsules of Invega, an anti-psychotic drug, in his stomach at the time of death. The toxicology examination revealed the presence of paliperidone (Invega), codeine (Tylenol #3), oxycodone (Percocet), quetiapine (Seroquel), mirtazapine (Remeron), and citalopram (Celexa), morphine (by-product of Tylenol #3), oxymorphone (active ingredient in Percocet), and lorazepam (Ativan) were

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141. *Id.* at 22.

142. *Id.* (fourth alteration in original) (footnote omitted).

present in the system of ISN156 at the time of his death. ISN156 also had acute pneumonia.<sup>143</sup>

In addition to the physical restraints that were used to shackle Latif, this extraordinary inventory of drugs that Latif was prescribed suggests that a regime of chemical restraints was also being applied. David Remes, Latif's attorney, observed, in the wake of the release of the Investigative report: "Everyone is to blame and no one is to blame . . . . They turned him into a human pharmacy and then blame him for being challenging."<sup>144</sup> It is unclear how Latif managed both to accumulate and swallow all of the medications that were found in his system when, according to standard operating procedure, it would have been impossible for him to hide the medications or ingest the bulk of them when he was always supposed to be under observation.<sup>145</sup> The Investigative report suggests that "the JDG guard force failed to follow JDG Line of Sight SOP and the JDG Med Pass SOP, and failed to take remedial measures after ISN156 appeared to be sleeping an unusual length of time."<sup>146</sup> Reading the report, it is clear that SOPs were breached up and down the line. What is also clear is that Latif's death remains, in biopolitical terms, as a type of manslaughter, as the necropolitical forces that were arraigned against him all effectively ensured that he would be let to die. As Latif's attorney succinctly put it: perhaps Latif died because of suicide or because of the "cu-

143. *Id.* at i.

144. See Jason Leopold, *Widespread Breakdown of Safeguards at Gitmo*, ALJAZEERA (July 3, 2013), <http://www.aljazeera.com/humanrights/2013/07/20137324426228887.html> [hereinafter Leopold, *Widespread Breakdown*] (quoting David Remes) (internal quotation marks omitted).

145. See Jason Leopold & Jeffrey Kaye, *Latif Letter About Guantánamo Speaks from the Grave: "I Am Being Pushed Toward Death Every Moment,"* TRUTHOUT (Dec. 10, 2012), <http://truth-out.org/news/item/13234-latif-letter-about-guantanamo-speaks-from-the-grave-i-am-being-pushed-toward-death-every-moment>. Leopold and Kaye write:

The Camp Delta SOP also requires the guard force to randomly search prisoners' cells on "day shift and swing shift," at least three times a day and prisoners are also searched, "at a minimum," every time they are removed from a cell. If Latif had successfully managed to hoard his medications, despite visual inspection of his taking the drugs, he would have had to evade all the mandated searches of his cell and his body.

Moreover, the Camp Delta SOP states that prisoners like Latif, who are deemed to be a "self-harm" risk, are supposed to have their activities documented every 15 minutes. Guards are to "conduct a visual search of the cells and prisoners every ten minutes by walking through the block." . . .

Latif had expressed his desire to take his own life and had even attempted suicide several times during the course of his 10-plus years of imprisonment at Guantanamo. But Remes [Latif's attorney] questioned whether he could have eventually succeeded in doing so, at least without assistance, given the tight security measures in place.

*Id.* In their article, Leopold and Kaye unfold all of the unresolved anomalies that inscribe Latif's death. See *id.*

146. AR 15-6 INVESTIGATION, *supra* note 35, at i.

mulative effect[s] of a decade's worth" of surviving the violent conditions at Guantánamo—" [e]ither way, his death was caused by his detention."<sup>147</sup> Moreover, both Latif and a number of other detainees repeatedly made "allegations of what they said were attempts [by the guards] to facilitate their suicide."<sup>148</sup> In what follows, in the closing sections of this Essay, I want to focus on the final moments of Latif's life.

In Guantánamo, "[a] Code Yellow is used to indicate a potentially life-threatening medical condition requiring an immediate response."<sup>149</sup> A Code Yellow was only deployed when, in effect, Latif was already dead to the world:

106. (U//~~FOUO~~) Around 1400 [redacted] knocked on the glass of ISN156's cell, and when he did not receive a response, called a Code Yellow. (Exhibits 10, 15)

107. Once members of the guard team donned their protective gear, they stacked up against the cell door of ISN156 and waited for the other NCOs to arrive. [redacted] called for the door to be opened, central control released the cell door lock, and [redacted] pushed the door open, with the guard team rushing in. [redacted] indicated that when the guard team entered, ISN156 was lying on his right side with his head on a foam pillow, a blanket covering him, and his right arm extended. (Exhibit 3)

108. (U//~~FOUO~~) As [redacted] secured ISN156's head, she saw "chunky vomit" and when she turned ISN156's head to the side, she stated that a large quantity of "yellowish bloody goo" drained out of ISN156's mouth. By this time, [redacted] had secured ISN156's hands with restraints as a safety precaution. [redacted], the corpsman, arrived, took ISN156's pulse, and indicated that there was no pulse. [redacted] told the Watch Commander he thought ISN156 was dead and to call the nurse. (Exhibits 3, 23)<sup>150</sup>

A guard team stacks up against Latif's cell door and then rushes in. Lying on his side, Latif's extended right arm gestures towards the Open: to everything denied to him by his carceral confines, to everything out and beyond his cage. Latif is lying dead on the floor—he is described in the report as lying with his eyes "open at the point, staring blankly at the cell door and ISN156's skin color looked gray"<sup>151</sup>—yet a guard "secures" him in a headlock. As the guard does this, Latif disgorges a corporeal statement to both the guards and Guantánamo: bloody vomit. This is Latif's

147. Falkoff, *A Death at Gitmo*, *supra* note 15.

148. Leopold & Kay, *supra* note 145.

149. AR 15-6 INVESTIGATION, *supra* note 35, at 25 n.90.

150. *Id.* at 25 (footnotes omitted).

151. *Id.* at 65.

last outpouring: visceral, pungent, final. In the muted anguish of his death, Latif can no longer speak or pen his impassioned letters calling for justice. His body, however, continues to communicate, even as it slides into an irreversible process of decomposition. Latif's vomit is the material evidence of this decomposition, of the complete dehiscence of his bodily hexis, and it is also the corporeal text of his poisoned innards. Latif presents his captors with a necrological discourse that issues from death and that overflows the limits of living speech. In death, Latif speaks a visceral speech that is oral but silent; its signifying conditions of enunciation are non-verbal: the semantics of bile and blood coagulated into the syntagm of vomit. 'Yellowish bloody goo' must be read as Latif's final riposte to the violence that governed virtually every aspect of his penal existence. The vomit that issues from the mouth of the dead Latif articulates the burden that underscored so much of his verbal pronouncements on Guantánamo: that the prison works, insistently, to render its inmates into nothing more than biological waste. I am not, here, placing words in Latif's mouth. On the contrary, I am invoking one of the lines from Latif's letters that continues to resound for me. On his entry into Guantánamo, he writes that: "life became less than refuse to be thrown in a garbage can."<sup>152</sup>

As if all of this graphic evidence were not a clear enough signal that Latif no longer presented a threat, with his head still secured in a headlock, the hands of his corpse are tied with restraints. Even in death, the Muslim detainee presents a threat: Inordinate power of the Muslim detainee that his corpse needs to be secured and shackled.

#### VIII. THE POETRY AND THE PASSION

In the course of situating the operations of "The Praxis of Critical Theory and Law" in *On Foreign Ground*, Pether writes that she is principally interested in "the work that critical theory and interdisciplinary interventions in law can be made to do."<sup>153</sup> Across her corpus, Pether deployed the full arsenal of interdisciplinary genres in order to stage her interventions. Poetry, prose, fiction, non-fiction, history, testimony and so on—all were mobilised by Pether in her "pursuit of the unspeakable," in order to disclose what would otherwise have remained unsayable and invisibilized in the operation of law; all were mobilised in order to "reveal a node or pressure point where transformative work in law might be done."<sup>154</sup> In the closing section of this Essay, I want to draw upon the genre of poetry in order to do justice to Pether's interdisciplinary impulse to disclose a node in the narrative of Latif's life that intertwines the body, law, and writing.

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152. Letter from Adnan Latif, *supra* note 30.

153. Pether, *On Foreign Ground*, *supra* note 21, at 225.

154. *Id.*



In the course of the Investigative report, one of the guards records that Latif “had been drafting poetry in one form or another since his arrival at JTF-GTMO in 2002,” and that many of the poems were “dark poems.”<sup>155</sup> Latif’s poems document and give form to the enormity of the violence and injustice he was compelled to endure at Guantánamo. In his “Hunger Strike Poem,” Latif works to expose the system of violent inversions that govern Guantánamo: where illegality is presented as law and where injustice is represented as justice. He writes:

They are criminals, increasing their crimes.  
 They are criminals, claiming to be peace-loving.  
 They are criminals, torturing the hunger strikers.  
 They are artists of torture,  
 They are artists of pain and fatigue,  
 They are artists of insults and humiliation.  
 . . . .  
 They leave us in prison for years, uncharged,  
 Because we are Muslims.  
 Where is the world to save us from torture?<sup>156</sup>

Latif was well aware that he would not leave Guantánamo alive. In a letter to his attorney, he wrote: “To Attorney David Remes who dedicated his efforts to work on my dead case. The case that has been buried by its makers under the wreckage of freedom, justice, and the malicious and cursed politics.”<sup>157</sup> Although almost completely isolated from the world, Latif had a very clear understanding of the cursed politics that were ensuring that he would continue to languish in indefinite detention. As a Yemeni citizen, Latif was branded with the imprimatur of a nationality, Yemeni, that, regardless of his innocence, guaranteed his ongoing imprisonment. Andy Worthington explains the background politics to Latif’s plight:

[T]he Task Force approved 58 of the Yemenis for release (or, to use the careful language of lawyers, approved them for transfer). There was, however, a caveat. 28 were approved for immediate release, but 30 others were designated in a special category of their own, who “should not be transferred to Yemen in the near

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155. AR 15-6 INVESTIGATION, *supra* note 35, at 17 & n.61 (footnote omitted).

156. Andy Worthington, *A Premonition of Death at Guantánamo: Adnan Latif’s Hunger Strike Poem*, ANDY WORTHINGTON (Sept. 13, 2012), <http://www.andyworthington.co.uk/2012/09/13/a-premonition-of-death-at-guantanamo-adnan-latifs-hunger-strike-poem/> [hereinafter Worthington, *Premonition*].

157. Andy Worthington, *Guantánamo Is “A Piece of Hell That Kills Everything”: A Bleak New Year Message from Yemeni Prisoner Adnan Farhan Abdul Latif*, ANDY WORTHINGTON (Jan. 1, 2011), <http://www.andyworthington.co.uk/2011/01/01/guantanamo-is-a-piece-of-hell-that-kills-everything-a-bleak-new-year-message-from-yemeni-prisoner-adnan-farhan-abdul-latif/> [hereinafter Worthington, *Piece of Hell*].

future,” and should be held in “conditional” detention—a novel category of detention—until “the security situation improves.”<sup>158</sup>

The category of “conditional” detention underscores the creative inventiveness of law and its capacity to construct categories that, even as they are designated as “lawful,” stand outside the domain of justice. Worthington continues:

While it could be argued that the “conditional” detention of these 30 men made them political prisoners a year ago, developments on Christmas Day 2009 ensured that the other 28 cleared Yemenis would also be held as political prisoners as well. The trigger for the administration’s refusal to honor the Task Force’s findings regarding these 28 men was the failed plane bomb plot of a young Nigerian, Umar Farouk Abdulmutallab. When it was discovered that he had been recruited in Yemen, President Obama capitulated to a wave of unprincipled hysteria by announcing a moratorium on the release of any more Yemenis from Guantánamo, a moratorium which still stands a year later, which shows no sign of being abandoned, and which, by subjecting the men in question to collective punishment, or guilt by nationality, ensures that all 58 of the cleared Yemenis can legitimately be regarded as political prisoners.<sup>159</sup>

It is only once it is situated in this highly politicized context that Latif’s cry that his “dead case” has “been buried by its makers under the wreckage of freedom, justice, and the malicious and cursed politics” can be fully understood. When, in his poem, Latif names the United States administration and its various operatives as “criminals, increasing their crimes,” as “artists of pain and fatigue,” as “artists of insults and humiliation,” he is not speaking rhetorically, even as he embeds in the language of poetry his cry of pain at the injustice and violence he is forced to endure. Latif is naming here the perverse inventiveness of law to construct a category—“conditional” detention—that occludes the brutal fact that, in this case, “conditional” is actually coextensive with “indefinite.” When Latif writes that the United States administration and its Guantánamo operatives “are criminals, increasing their crimes,” he is naming, in other words, the criminal act of transmuting, through law, innocent men into political prisoners; and he must also be seen as exposing how law works, in the context of his “dead case,” to exercise collective punishment through the arbitrary branding of guilt by nationality. In an opinion piece for the *New York Times*, Ramzi Kassem brings into critical focus the travesty of both law and justice that is operative at Guantánamo:

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158. Andy Worthington, *The Political Prisoners of Guantánamo*, ANDY WORTHINGTON (Jan. 12, 2011), <http://www.andyworthington.co.uk/2011/01/12/the-political-prisoners-of-guantanamo/> [hereinafter Worthington, *Prisoners*].

159. *Id.*

For many [detainees], the difference between liberation and limbo has nothing to do with justice or legality, but just the luck of what nationality a prisoner happens to hold. Because no Guantánamo inmate has been repatriated to Yemen in years, Mr. Alwi said that some inmates are considering relinquishing their Yemeni citizenship in the hope that it might facilitate their resettlement elsewhere.

. . . .

[A] commonly held view among the inmates [is] that the prospects for release from Guantánamo are tied far less to court decisions, threat assessments and the determinations of the military review board, and far more to the politics of the moment.<sup>160</sup>

In the end, the politics of the moment ensured, in Latif's case, a fatal outcome. In a statement by Latif's lawyers issued soon after his death, they state that: "Adnan spent more than ten years in Guantánamo—nearly a third of his life—but, like most Guantánamo detainees, he was never charged with a crime or accused of violating any law."<sup>161</sup> Indeed, in the context of Guantánamo's military commissions, it appears that, perversely, it would have been better for Latif to have been convicted of a war crime than to have been cleared on multiple occasions of any wrongdoing. In a recent review of the outcomes of Guantánamo's military tribunals over the course of more than thirteen years, Morris D. Davis observes that:

Just six detainees have been both convicted and sentenced for war crimes in military commissions since President George W. Bush first authorized them in November 2001.

Charges against three were later dismissed, and five who were convicted were eventually transferred from Guantánamo. Thus we have a legal system where it is more advantageous to be found guilty of a war crime than never to be charged at all and remain imprisoned indefinitely.<sup>162</sup>

In the wake of what Latif terms this "wreckage of freedom, justice, and malicious and cursed politics," the closing lines of his letter to his attorney resound. He writes under the heading "A Testimony of Death":

A testimony against injustice and against the propagandists of freedom, justice and equality.

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160. Ramzi Kassem, *A View from Gitmo*, N.Y. TIMES, June 7, 2014, [http://www.nytimes.com/2014/06/08/opinion/sunday/a-view-from-gitmo.html?\\_r=0](http://www.nytimes.com/2014/06/08/opinion/sunday/a-view-from-gitmo.html?_r=0).

161. Andy Worthington, *Lawyers' Statement on Adnan Latif, the Latest Prisoner to Die at Guantánamo*, CLOSE GUANTÁNAMO (Sept. 14, 2012), <http://www.closeguantanamo.org/Articles/64-Lawyers-Statement-On-Adnan-Latif-the-Latest-Prisoner-to-Die-at-Guantanamo>.

162. Morris D. Davis, *Opinion, Guantánamo's Charade of Justice*, N.Y. TIMES, Mar. 27, 2015, [http://www.nytimes.com/2015/03/28/opinion/guantanamos-charade-of-justice.html?\\_r=0](http://www.nytimes.com/2015/03/28/opinion/guantanamos-charade-of-justice.html?_r=0).

Adnan Farhan Abdulatif while in the throes of death.<sup>163</sup>

What Adnan Latif proleptically announces in this letter is the fact that, in the face of the necropolitical-juridical-military complex that constitutes the everyday operations of Guantánamo, he is, in the very moment that he pens his words, while in the “throes of death,” already a defunct subject; in other words, he foreshadows his death as what, anachronistically, has already happened. The veridictional status of this proleptic announcement, he knew, could not be contested.

#### IX. NAMING THE UNSPEAKABLE

In approaching the conclusion of this Essay, I want to return to that haunting scene with which I opened my analysis of the death of Adnan Latif. Visiting Thomas Jefferson’s house, Monticello, Pether writes:

Monticello itself is dwarfed by the vast underground warren of rooms where slaves worked to keep the house going, its domestic beauty seeming like a lovely poisoned fungus feeding on hidden corruption. The enslaved African-American butler stood behind a panel in an anteroom during the family meals, so not only were the slaves who fed the family from the underground domestic offices out of sight, but the one remaining visible piece of evidence of what literally fuelled the Jeffersonian vision was hidden.<sup>164</sup>

In the wake of the death of Adnan Latif, the United States Capitol, the Department of Justice, and the Office of Legal Counsel, all stand “like a lovely poisoned fungus feeding on hidden corruption.” This is the hidden corruption of law travestied by politics. The grotesque outgrowth generated by law parasitized by politics was made visibly manifest in the infamous Torture Memos. But it encompasses more than those memos. This “poisoned fungus feeding on hidden corruption” is rhizomatically tied to every single innocent United States victim of torture, extraordinary rendition, and unjust imprisonment. It was the institutionalized force and violence unleashed by a regime of politico-legal corruption that ensured the disintegration of Adnan Latif’s corporeal and psychological hexis. The “poisoned fungus feeding on hidden corruption” has yet another synonym: Pether termed it the “America of New Exceptionalism.” The “America of New Exceptionalism,” she reflected, means that “[a]t home and abroad in the name of the rule of law we carve out spaces beyond the rule of law”<sup>165</sup>—even as the politico-military assemblage of the United

163. Worthington, *Piece of Hell*, *supra* note 157.

164. Pether, *Pursuing the Unspeakable*, *supra* note 1, at 27–28.

165. Penelope Pether, *Regarding the Miller Girls: Daisy, Judith, and the Seeming Paradox of In re Grand Jury Subpoena, Judith Miller*, 19 *LAW & LITERATURE* 187, 200 (2007).

States proceeds to declare the opposite. In his Commencement Address at West Point, President Obama intones:

I believe in American exceptionalism with every fiber of my being. But what makes us exceptional is not our ability to flout international norms and the rule of law; it is our willingness to affirm them through our actions. (Applause.)

And that's why I will continue to push to close Gitmo, because American values and legal traditions do not permit the indefinite detention of people beyond our borders. (Applause.)<sup>166</sup>

Everything in this presidential speech reeks of the “poisoned fungus of hidden corruption” that Pether diagnosed as underpinning the dignified and righteous façade of United States power. Everything in this presidential speech is inflected with the double-voiced articulation of violent inversion that Latif so incisively named in his poem: “They are criminals, claiming to be peace-loving. . . . They do not respect the law . . . . They leave us in prison for years, uncharged”; they are “the propagandists of freedom, justice and equality.”<sup>167</sup>

In the course of this Essay, I have attempted to render speakable and visible the arsenal of forces that destroyed Latif. The violent forces that were arraigned against Latif continued to work well past the moment of his solitary death in one of Guantánamo's cells. Following the post-mortem, his body was left in yet another space of indefinite detention: Ramstein Air Base, Germany, where his corpse was “stored” for three months because of political reasons (in this instance, the “Yemeni government officials initially refused to accept it”<sup>168</sup>). Latif was, eventually, dispatched back to his family in Yemen. Jason Leopold describes the scene that awaited Latif's brother, Muhammed Farhan Latif, once Latif's body, encased in a plain aluminum box, was deposited at the police hospital in Sana'a, Yemen's capital:

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166. *Transcript of President Obama's Commencement Address at West Point*, N.Y. TIMES, May 28, 2014, <http://www.nytimes.com/2014/05/29/us/politics/transcript-of-president-obamas-commencement-address-at-west-point.html>.

167. Worthington, *Premonition*, *supra* note 156 (quoting Adnan Latif); Worthington, *Piece of Hell*, *supra* note 157 (quoting Adnan Latif). The recently released report by the United Nations Committee Against Torture, *Concluding Observations on the Third to Fifth Periodic Reports of the United States of America*, draws attention to the “restrictive interpretations” of torture imposed by the Obama administration, that effectively enable torture to be practiced outside of United States territories; and it calls on the United States government to “[c]ease the use of indefinite detention without charge or trial for individuals suspected of terrorism related offences.” See U.N., COMM. AGAINST TORTURE, CONCLUDING OBSERVATIONS ON THIRD TO FIFTH PERIODIC REPORTS OF U.S. 3, 6 (Nov. 20, 2014), *available at* [http://tbinter.net.ohchr.org/Treaties/CAT/Shared%20Documents/USA/INT\\_CAT\\_COC\\_USA\\_18893\\_E.pdf](http://tbinter.net.ohchr.org/Treaties/CAT/Shared%20Documents/USA/INT_CAT_COC_USA_18893_E.pdf).

168. Leopold, *Widespread Breakdown*, *supra* note 144.

At the hospital, Muhammed was led into a room by police investigators and a medical examiner to identify Adnan's remains. The box was opened. Adnan was wrapped in three layers of shroud. "I recognized the body of my brother . . . . But with great difficulty. His eyes were missing and his body was in an advanced stage of disintegration. Still, I could tell it was Adnan."<sup>169</sup>

In the moment in which he lifts the shroud from Adnan Latif's body, his brother is compelled to bear witness to what Pether termed "the spectacle of state power inscribed on the bodies of the enemies of the State."<sup>170</sup> Latif's gouged eyes stare back at his brother: cavernous sockets reflecting the horror he had seen and endured. Latif, who saw only too clearly the lies, corruption, and the violence of the United States government and its juridical apparatus, had, with a violent finality, been rendered blind. What remains? Wounds for eyes that graphically embody a life harrowed by administrative torture to the point of disintegration and an abyssal stare transfixed by the no exit of indefinite detention. Literally voided of his position as eyewitness to Guantánamo's regime of violence, in death Latif's body becomes his corpus of evidence. In death, Latif's cadaver emerges as a site of locution that continues to signify in lieu of speech. The proleptical truth of writing his "testimony against injustice . . . while in the throes of death" now assumes a non-linguistic register. Quartered in his mortuary box, in a final act of disclosure, Latif's body in ruins proceeds to evidence his posthumous *testimony against injustice*. This final testimony needs to be cited without quotation marks, as it is enunciated without speech. From the grave, it can only be read as testimony incarnate in the irreversible process of decomposition.

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169. Jason Leopold, *A Guantánamo Prisoner Is Buried as New Details About His Death Begin to Surface*, TRUTHOUT (Jan. 11, 2013), <http://truth-out.org/news/item/13818-guantanamo-prisoner-buried-new-details-death-surface> (quoting Muhammed Farhan Latif, Adnan's brother) (internal quotation marks omitted).

170. PENELOPE PETHER, "PERVERTS," "TERRORISTS," AND BUSINESS AS USUAL: COMPARATIVE INDEFINITE DETENTION BEFORE AND AFTER 9/11 I (unfinished monograph); see also Penelope Pether, "Perverts," *Terrorists,* and *Business as Usual: Fantasies & Genealogies of U.S. Law*, 33 CARDOZO L. REV. 2547, 2547 (2012).

