

‘Beyond That Which the Victim Suffers in Death Alone’

Pain, Orientalism, and Non-Violence at Guantanamo Bay

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Abstract

I argue that Orientalism continues to construct Arabs as subjects that cannot suffer violence, particularly the violence of torture. Beginning with Edward Said’s observation that Orientalists constructed ‘Arabs’ in the nineteenth-century as inorganic, metallic, and mineralized beings, I trace these themes through various sites in and around Guantanamo Bay. One finds the tropes of Orientalism in the Bybee memo as well as in the diary of Mohamedou Ould Slahi. Through these three distinct but related moments, one finds that Orientalism continues to produce Arabs as inorganic entities beyond death and thereby immune to violence and specifically the violence of torture. Insofar as imperialism has co-opted the language of non-violence by constructing its enemies as inviolable, one must recognize the Orientalized Arab as a receptor of limitless ‘non-violent’ hostilities.

Keywords

orientalism – Edward Said – Guantanamo Bay – torture

In his 2015 book, *Non-Violence: A History Beyond the Myth*, Domenico Losurdo documents the expansion of non-violent ideology brought about in response to the catastrophic world wars of the twentieth century. As Losurdo argues throughout the book, this sea change in the world’s attitude toward violence is accompanied by various mythologies around non-violence wherein violence is repeatedly rationalized and repackaged as ‘non-violence’. Although mantras

of non-violence remain ubiquitous, Losurdo argues that imperialist state violence continues unabated and often feeds off the rhetoric of non-violence.

In this essay, I claim that the so-called ‘war on terror’ continues to construct an object called ‘the Arab’ partly in terms of an infinite receptacle of non-violent action. In other words, the meaning of ‘Arab’ has come to be fixed such that it refers to a being that is not just other, not only outside any legal category or protection, but moreover cannot possibly be the victim of violence. The destruction of all things Arab is, both physically and metaphysically, an act of non-violence.

Non-violent anti-Arab techniques are most apparent at the Guantanamo Bay detention facility. At this **laboratory of pain**, torture is represented through a medico-legal science of pain transforming the violence of torture into a non-violent and even ethical activity. The development of a ‘non-violent’ torture is grounded in an Orientalist representation of Arab pain, which draws from a specific understanding of Orientalism. As Edward Said wrote in Chapter 2 of *Orientalism*, Arabs were originally invented in the nineteenth century as an inorganic people. Ejected from not only the human realm but also the entire organic world, Arabs are cast beyond the poles of life and death. Accordingly, as **John Harfouch as argued**, Arabs cannot be killed because the unliving **is** equally undying (2018). This key aspect of Orientalism is apparent at Guantanamo in both the government’s legal justification of torture and the detainees’ experiences. Insofar as Orientalism manufactures an unkillable and inviolable inorganic Arab subject, Guantanamo Bay should be recognized as a vanguard in **Orientalism** today.

My study evolves along three moments. In parts one and two I argue that the infamous ‘Torture Memos’, authored by lawyers of the Bush administration in the early and mid-2000’s, represent a brand of pain that should be understood as ‘Orientalist’ or ‘Arab’ in the precise historical sense of those words. Specifically, John Yoo, in his August 1, 2002 memorandum for Alberto R. Gonzalez, provides an unprecedented definition of torture, claiming torture applies only to those acts inflicting a pain “beyond that which the victim suffers in death alone” (2009, 58). Although Yoo cites a number of supposed precedents from both international and California state law, the language of a pain beyond death is found nowhere except where it is rejected as a meaningless standard. Yoo effectively invents an impossible pain making torture an impossible act. Insofar as Orientalism, as Edward Said defines that term, invents a realm beyond the organic world and calls that zone ‘Arab’, Yoo’s invention is most accurately understood as an Orientalist pain.

In the third and final section I turn to Guantanamo detainees’ diaries and memoirs to study manifestations of Orientalist pain. In particular, Mohamedou

Ould Slahi describes a torturous pain pushing him beyond the organic world and petrifying him. This condition creates an entity, a 'stone' as Slahi refers to himself, for whom all pain disappears (2015, 267). In this way, Orientalism no longer merely produces a discourse portraying Arabs as inorganic, but rather a laboratory of pain produces that petrification in material reality.

Through these three moments, one discovers Orientalism has evolved into something more nuanced and grotesque than previously imagined. The technologies of war and the ideologies of non-violence have progressed such that to Orientalize is to petrify through the infliction of a pain that carries the subject beyond the organic world. To Orientalize is to create a facility producing Arabs as stones. In this sense, to be 'Arab' in the twenty-first century is to be marked as an infinite receptacle of imperial 'non-violence'.

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In Said's summaries of Orientalist primary sources, one finds many references to Arabs as a dead people. For instance in *The Question of Palestine* one reads that the nineteenth century philologist Friedrich Schlegel used a vocabulary of life and death to differentiate Aryan and Semitic languages. Said writes, "The former he said were creative, regenerative, wifely, and aesthetically pleasing; the latter were mechanical in their operations, unregenerative, passive" (1992, 75). One finds similar observations throughout *Orientalism* (Said 1978, 123, 146, 172, 182, 193, 252) as well as in the sources upon which Said based his study. For instance, François de Chateaubriand, upon visiting Alexandria, Egypt, describes a mostly dead city, "where at least one third is abandoned, where another third is devoted to sepulchers, and of which the living third, between these dead extremes, is a sort of palpitating trunk, that has not even the strength, between the ruins and tombs, to free itself from its chains" (1884, 302). At times, Orientalism certainly describes its mission in terms of reviving a dead world.

Yet, elsewhere Orientalists do not represent Arabs as 'dead' in the sense that they had once been alive. At times Arabs are claimed to inhabit a space not beyond life, but beyond death. For instance, writing in 1844, Alexander William Kinglake represents Arabs in terms of sterility and immortality. Departing the Levant and returning to Europe, Kinglake writes of the boundary separating the two worlds, "My place upon this dividing barrier was a man's puzzling station in eternity, between the birthless past, and the future that has no end. [...] Before me there waited glad bustle and strife [...], a mortal race" (1995, 269–70). In this instance, the division between East and West is drawn along

the axis of the unborn, unliving, and undying East and a “mortal race,” or a people with the capacity for death.

Kinglake’s suggestion that Arabs are not a ‘mortal race’ is hardly an isolated comment. As John Harfouch has highlighted, when Said lays out Orientalism’s “most important technical characteristics” (1978, 131) he highlights the contributions of Ernest Renan. Renan accomplishes something far more than invent the Arab as something other than Caucasian or Aryan. He invents a science of the Arab as an inorganic being transcending the poles of life and death. ‘Arab’ becomes that which is in excess of death. Because the inorganic, the incapacity to die, and ‘beyond death’ are recurring themes at Guantanamo, I develop this aspect of Orientalism below to establish how ‘Arabs’ first came to be identified with this sector transcending that of the dying.

‘Orientalism’ is a word so often heard in the academy, one might be excused for no longer wondering what it means. A recent and well-cited article defines it as “the process of the West defining itself as a superior civilization by constructing itself in opposition to an exotic, but inferior ‘Orient’” (Ward 2016, 68). In his excellent work, J.A. Boone writes it is, “a discursive system justifying the Occident’s domination of the Middle East” (Boone 2014, 24). Gayatri Spivak summarizes *Orientalism* writing, “It was the study of the construction of an object, for investigation and control” (2009, 62). While it is true that Orientalism invents an object of knowledge—‘Arabs’—for the purpose of domination, a closer inspection reveals it is a theory of time emerging from nineteenth century philosophies of history (Said 1978, 143). While a number of authors have demonstrated how European philosophers have segregated time such that non-Europeans are always a step behind Europe, Orientalism draws on a tradition postulating a white time that progresses organically and a recalcitrant Arab time featuring no growth or change, eternally repeating the same cycles (Cf. Fanon 2008, 101; Bhabha 1994, 342; Johnson 2010, 28).

In this respect, one passage from *Orientalism* is particularly important. In support of his claim that nineteenth century philologist Ernst Renan is the first rigorous ‘scientist’ of the Arabs, Said writes,

[E]ven as he encourages us to see languages as in some ways corresponding to ‘*êtres vivants de la nature*’ [Renan] is everywhere else proving that his Oriental languages, the Semitic languages, are inorganic, arrested, totally ossified, incapable of self-regeneration; in other words, he proves that Semitic is not a live language, and for that matter, neither are Semites live creatures (1978, 145).

In his study of Renan's work Harfouch has explained some of the implications of Renan's 'proof' that Arabs are inorganic. I build on that work in what follows.

Renan's philological studies attempt to scientifically establish a representation of Arabs as inorganic or ossified entities. Taking language as the mark of racial difference, Renan argues Europeans are a living race because European languages grow and develop in ways that parallel the growth and development of organisms. That is, European languages begin in a kind of embryonic state lacking nuance and precise definition. This was Latin, which began as a confused unity of what later became distinct and finely articulated languages (1855, 410). As the European mind progresses and evolves, its languages differentiate with increasing detail just as a fetus develops more complex and differentiated organs. As the expression of a living people, European languages are '*êtres vivants de la nature*'.

Nonetheless, as Said alludes in the passage quoted above, Renan claims Arabic does not display similar growth because the Arab, for whom language is the essential expression, is not 'living'. Rather, Renan states Arabs are "architectural" (429), "geometric" (Ibid), and "metallic" (Ibid, 390). While Europeans multiply dialects and develop latent possibilities within an embryonic whole, Arabic only ever swallows up distinctions as in the case of its relation to Aramaic: "In the epoch of Muslim conquest, there were not more than two Semitic languages, the Aramean and the Arab: the Arab in time absorbs the dialects of the Aramaic and remains the unique representative of Semitism" (Ibid, 390). Accordingly, while an analytic movement defines the organic regenerative world, Arabs do just the opposite. The living world begins with an amorphous embryo and gains detail and specificity. The Arabs meanwhile, "preserve their character of metallic rigidity that prevents all life's development in its womb" (Ibid, 390). Arabs are therefore not a dead people, since we were never living in the first place.

Although Said states Arabs are outside the organic world in *Orientalism*, he does not seem to fully understand its implications. For example, although he claims Renan's Arabs are inorganic, Said sometimes still resorts to the vocabulary of life and death, using 'dead' as a synonym for inorganic (Cf. 1978, 146). However, the vocabulary of life and death only applies *within* the organic realm and an inorganic entity is neither living nor dying. Beyond what Harfouch established on this point in his recent article, there are two points I add to clarify just what Orientalism calls 'the Arab'.

First, in the introduction to *Orientalism*, Said defines Orientalism in three interdependent ways. It is (first) what the Orientalists do (1978, 2), which is (the third definition) construct a discourse for purposes of domination and

control (ibid, 3). Although the third meaning of Orientalism is the most famous, one must not discount the second meaning. Said writes, “Orientalism is a style of thought based upon an ontological and epistemological distinction made between ‘the Orient’ and (most of the time) ‘the Occident’” (Ibid, 2). According to this second definition then, Orientalism is neither Arab nor European. It is rather the generation of structural difference itself: “For Orientalism was a political vision of reality *whose structure promoted the difference between the familiar (Europe, the West, ‘us’) and the strange (the Orient, the East, ‘them’)*” (Ibid, 43) As a productive differential, one must be clear about exactly what Orientalist difference produces and distinguish it from other (racist) ideologies. From what I wrote above, the antagonism between Europe and the Orient is not an antagonism between the human and the animal, as one so often finds in Enlightenment race theory.¹ Nor is Orientalism’s structural difference defined by a kind of native/settler or capitalist/worker Manicheanism wherein one group of humans oppose another. The Arab’s antagonist is not even the human being.² Rather, when Renan furnishes Orientalism with its technical characteristics he generates a fundamental antagonism between the “essentially vegetative and living” and the “inorganic”. Speaking of the latter Renan claims, “They are not vegetative, they are not alive, they are enduring” (1855, 408). Between the living and the enduring, the difference that is Orientalism positions itself between those that die and those that endure. In other words, the Arab’s antagonist is death. That does not mean the world wants the Arabs to die. It means that while the organic world, including the human, animal, and vegetable kingdoms, all die, Arabs are structurally barred from the kingdoms of the dying.

Second, founded on a philological science representing Arabs as ossified and inorganic, Orientalism invents the Arab in terms of what Harfouch has called a ‘human dirt’ (2017, 234). As an inorganic substance, a geological formation radically distinct from living beings, Arabs are not a race in the

1 For instance, in *The Wretched of the Earth*, Fanon writes, “Sometimes this Manicheanism reaches its logical conclusion and dehumanizes the colonial subject. In plain talk, he is reduced to the state of an animal. And consequently, when the colonist speaks of the colonized he uses zoological terms” (1963, 7). This animalizing dehumanization goes back at least to the 18th century. See Jacques 1997 and Moran 2002.

2 Contrast with Wilderson, 2020. Commenting on Said, Wilderson writes, “The antagonist of the worker is the capitalist. The antagonist of the native is the settler. *But the antagonist of the Black is the Human Being*” (241). Also, “The essential antagonism, therefore, is not between the workers and the bosses, not between the settler and the Native, not between the queer and the straight, but between the living and the dead” (229). Wilderson seems not to understand that Orientalism is grounded in a structural antagonism between the organic and inorganic.

traditional sense of a sub-group within the human species. Nor are Arabs a different species, since Arabs, “metallic” entities, are cast out of the living and dying world all together. Accordingly, Orientalism is neither a form of racism nor a speciesism. This means Orientalist violence is not a racist violence. In fact, it is neither racist nor violent. As a non-human inorganic entity in excess of death Orientalism constructs Arabs such that murder, torture, and genocide cannot apply. In addition to the fact that one cannot be killed qua ‘Arab’, murder, torture, genocide, and the like designate a legal sphere applicable to human subjects. As a form of earth and stone, ‘the Arab’ is not recognized as something against which violence can be directed. Murder, torture, genocide and other legal categories of violence are not the relevant vocabulary. Of course, there are no laws against violating a stone or mineral because violence cannot be committed against these entities. As I argue below, Yoo goes beyond this simple observation. Nonetheless it is worth point out even at this basic level that Orientalism is in keeping with Losurdo’s history of non-violence where, beginning in the nineteenth century, various advocates of non-violence proclaim they will not injure or take the life of another human being only to then exclude their victim from the category of human (Losurdo 2015, 13, 52–3). Orientalism should be included in this tradition of ‘non-violence’ although it constructs its adversary in its own way and, as Guantanamo Bay illustrates, it practices non-violence in a fashion all its own. Nonetheless, one can already see how Orientalism lends itself to doctrines of non-violence: It relies on an object constructed in such a way that racist violence is illegible as either racist or violent.

If one hopes to trace the development of Orientalism in today’s society, it is useful to know just what one is tracing. When Said writes that Renan furnished Orientalism’s scientific foundation by creating a certain vocabulary around the Arab and putting “into circulation a form of discursive currency by whose presence the Orient henceforth would be *spoken for*” (1978, 122), this is not merely a vague science of ‘the Other’. Rather, Orientalism’s ‘discursive currency’ is a grammar and vocabulary of time, history, language, life, death, and the inorganic. The result is an entity beyond death. And although the idea begins with a philologist theorizing the growth and development of European and Arab minds, this currency continues to pass hands until it appears again at Guantanamo Bay in the form of a ‘pain beyond death’. I turn now to that context to rediscover the Arab caught within this new frontier of non-violence. At Guantanamo, ‘beyond death’ is no longer rooted in philology. Instead, it develops through a medico-legal science of Arab pain.

Throughout history, imperialism has constructed non-Europeans in many ways. To name just a few, Peter Camper's taxonomy of facial angles (Meijer 1999), S.G. Morton's classification of skull types (stein 2015), or Gobineau's claim that Aryans have an exclusive relation to the cosmos (1983, 1149) are all infamous attempts to dehumanize non-Europeans. One would be gravely mistaken to overlook the theme of pain in this history. Although philosophers and scientists alike claim that pain is a subjective experience confirmed or denied by the subject's first-person experience, non-whites have never fully participated in that orthodox approach to pain (Bourke 2014). Rather, non-white pain has been and still is represented according to the political and economic programs of a hyper-exploitative regime of white supremacy. For example, in 1851 Samuel Cartwright, a physician in Mississippi, claims Blacks bear "a Negro disease making them insensible to pain when subjected to punishment." In 1755, Immanuel Kant claimed the Hunnish race does not feel the pain of cold air on the face (66). In 1799, a physician in England named Charles White argued that the same organ making the skin dark, the *rete mucosum*, also makes the skin thicker and thereby resistant to painful injury (71). Moreover, a 2016 study reports that a significant number of white medical students still do not believe Blacks suffer with the same pain intensity of whites (Hoffman et. al.).

As a colonized people, Arabs too have been subjected to an imperial science of pain. Frantz Fanon's 1952 essay, 'The North African Syndrome' details how Fanon's Arab patients in Lyon, cast as liars, children, and animals, were a priori assumed unable to communicate their suffering sincerely or accurately. This purported inability to speak to one's own subjective experience opens the door for others to speak the pain in his or her stead. In this regard, an 1879 essay entitled 'The Present Condition of Palestine' by C.R. Condor, a lieutenant in the British Corps of Royal Engineers, comes to mind. He claims the Palestinians are "brutally ignorant, inveterate liars, and yet they have qualities that could make them useful," namely "their fortitude for bearing pain is remarkable" (9). Here again, power erases the subject's testimony and constructs him or her according to an imperial pain fantasy.

In this section, I argue that the so-called 'enhanced interrogation techniques' deployed at Guantanamo Bay are in part founded on a particular representation of pain that is Orientalist in the specific sense detailed above. Notably, the Bybee memo, authored by John Yoo, defines the pain of torture as not merely extreme, but so intense it exceeds the pain of death. Through Yoo's legal invention the discursive currency of Orientalism is no longer limited to analyses of language, history, and the 'Arab mind' as Renan first developed the

discourse. Yoo brings the language of death's excess out of the psychic realm and reformulates it around the captive Arab body. Yoo expresses Orientalism through a medico-legal invention of a pain beyond death, creating a form of impossible embodiment. This impossible pain, a pain beyond death, lays the groundwork for an Arab subject infinitely receptive to 'non-violent' treatment.

The Bybee memo is a 2002 memorandum of the Department of Justice authored by the Office of Legal Council for Alberto Gonzales. It is a legal analysis of Section 2340 of the U.S. Criminal Code, which criminalized torture after the U.S. signed the Convention Against Torture in 1992. In the opening paragraph of this memo Yoo lays out his evaluation of the interrogation techniques and his strategy for defending them in the opening paragraph of the memorandum. He writes,

We conclude below that Section 2340A proscribes acts inflicting, and that are specifically intended to inflict, severe pain or suffering, whether mental or physical. Those acts must be of an extreme nature to rise to the level of torture within the meaning of Section 2340A and the Convention. We further conclude that certain acts may be cruel, inhuman, or degrading, but still not produce pain and suffering of the requisite intensity to fall within Section 2340A's proscription against torture (41).

Yoo goes on to claim that the specific techniques deployed at Guantanamo do not produce the requisite amount of pain to rise to the level of torturous pain. Although Yoo addresses the question of the interrogator's intent (*Torture Memos*, 44–46), he consistently defines torture not by intent but by the severity of the pain inflicted on the detainee.³

As Christian De Vos has argued (2007), Yoo's definition of torture relies on a specious interpretation of international law. De Vos explains that for some time 'torture' was universally opposed but poorly defined. For instance, Article 5 of the Universal Declaration of Human Rights from 1948 prohibits torture but fails to define it. Similarly, article 7 the 1966 International Covenant on Civil and Political Rights simply states, "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" (175). A more precise legal definition begins to take shape in 1969 when the European Commission on Human Rights interpreted 'torture' to mean "inhuman treatment, which has a purpose, such as the obtaining of information or confessions, or the infliction

3 For example, "The key statutory phrase in the definition of torture is the statement that acts amount to torture if they cause 'severe physical or mental pain or suffering'" (*Torture Memos*, 46).

of punishment, and it is generally an aggravated form of inhuman treatment” (Denmark et. al. v Greece (1969)). Because this definition so clearly underlines the purpose of the inhuman treatment, one might think torture is a crime of intent instead of severity.

However, subsequent cases challenged the European Commission’s purpose-focused definition and emphasized a standard of pain intensity. The first such case is *Ireland v the United Kingdom* (1978), which Yoo cites as “the leading European Court of Human Rights case explicating the difference between torture and cruel, inhuman, or degrading treatment or punishment” (*Torture Memos*, 76). At issue in this case was whether or not five techniques (wall standing, hooding, subjection to noise, sleep deprivation, and nutritional deprivation) used by the Northern Ireland Government against the Irish Republican Army were crimes of torture. The Court ruled that although the techniques were both inhuman and degrading, the techniques did not rise to the level of torture because “they did not occasion suffering of the particular *intensity* and *cruelty* implied by the word torture” (Ibid, 77). Yoo then goes on to interpret another case from the Israeli Supreme Court in the same way, defining torture in terms of the amount of pain experienced by the victim. In *Public Committee Against Torture in Israel v Israel* (1999) the court was asked to review five techniques similar to those in *Ireland*. Pointing to the Israeli Supreme Court’s decision as precedent, Yoo writes, “The court’s descriptions of and conclusions about each method indicate that the court viewed them as merely cruel, inhuman or degrading but not of the sufficient severity to reach the threshold of torture” (Ibid, 79). Again, he defines torture in terms of pain severity and any references to intent are ignored.

The strategy behind Yoo’s appeal to international law is to define torture in terms of pain severity. One then must measure the detainees’ pain. However, as the December 30, 2004 Levin memo concedes, “Despite extensive efforts to develop objective criteria for measuring pain, there is no clear, objective, consistent measurement” (138, fn. 18). Of course, there is no objective measurement of pain because pain is essentially a subjective experience (International Association for the Study of Pain, 1979). Without an objective means to evaluate the victims’ pain, authorities then step in to represent pain in his stead. Accordingly, the May 30, 2005 memo claims a detainee is impervious to abuse and “maintains a tough, Mujahidin fighter mentality and has conditioned himself for physical interrogation” (*Torture Memos*, 234). In other words, the ‘Mujahidin’ are not especially susceptible to the pain resulting from violent abuse. In addition, while the detainees are alleged to have a high pain threshold, the interrogation techniques are represented as painless. Dick Cheney famously referred to waterboarding as a “dunk in the water” (Tran, 2006).

Donald Rumsfeld asked how forced standing could be criticized when he stands for 8–10 hours every day (Human Rights Watch, 2004). A dunk in the water or standing are therefore not even 'merely' cruel or inhuman.⁴ They are legal, non-violent, and on par with everyday practices.

As a result, in a certain sense the Bybee memo is already Orientalist. If Orientalism's basic formula is "They cannot represent themselves. They must be represented" (Said 1978, epigraph, 335), then by defining torture in terms of pain intensity, Yoo has opened the door for a credible authority to step in and represent the detainees' pain. The detainees are uncommonly 'tough', and the techniques used against him are unremarkably tame. The end result is painless, certainly not rising to the crime of torture. In constructing a subject through a medico-legal science of pain, Guantanamo achieves non-violence.

However, Yoo's work is not done there. He goes on to further define torture as an extreme act wherein the **victim's** experiences,

intense pain or suffering of the kind that is equivalent to the pain that would be associated with serious physical injury so severe that death, organ failure or permanent damage resulting in a loss of significant bodily function would result

TORTURE MEMOS 2009, 57.

Yoo accompanies this summary definition with a long footnote, footnote 6 of the memorandum (Ibid, 57–58), where he specifies the severity of this intense pain. While the definition of torture discussed above relies on a selective interpretation of international law, Yoo grounds the details of torturous pain in California state law. In these details, one finds a pain beyond the pain of death, which is Orientalist in the strict sense.

To support his claim that "torture is generally an extreme act far beyond the infliction of pain or suffering alone" (Ibid, 57 fn. 6), Yoo points to several California cases in addition to the California Penal Code. The question is just how far 'beyond pain or suffering alone' one needs to go before arriving at torture. Citing a number of cases, Yoo continues to define torture in terms of pain intensity. However, now he defines that pain intensity in an extraordinary way. Yoo claims torturous pain incorporates only the "most heinous acts imposing pain beyond that which the victim suffers in death alone" (Ibid, 58 fn. 6). Yoo's assertion here merits careful consideration for several reasons: 1) In spite of

⁴ In fact, the May 30, 2005 CID Memo explicitly concludes that the techniques used at Guantanamo Bay are so benign they do not even constitute cruel, inhuman, and degrading treatment (*Torture Memos* 2009, 248–274).

Yoo's references there is no legal precedent for a brand of pain that exceeds death; 2) A pain beyond death is impossible; and 3) By conceiving torture in terms of an impossible pain, the violence of torture itself becomes impossible. Ultimately, the outcome of Yoo's invention is that torture resides in a realm in excess of death originally staked out by Orientalists in the nineteenth century. By drawing on Orientalism's discursive currency, knowingly or not, Yoo reconstructs the Arab body as a site of impossible violence. Allow me to explain the three points above in their specifics.

First, the notion of a pain beyond death is Yoo's own fabrication specific to Guantanamo and without precedent in American law. In defining torture in terms of a "pain beyond that which the victim suffers in death" Yoo references California Penal Code 190.2. However, he neither quotes nor cites it and for good reason. While this 1872 law mentions torture, it does not mention pain or pain intensity at all. The more relevant law is Penal Code 206, enacted in 1990 through California's Crime Victims Justice Reforms Act. This law, which Yoo references elsewhere in the footnote, governs nearly every California case Yoo cites. There one finds a far more precise and current definition of torture. Torture is "the intent to cause cruel or extreme pain or suffering for the purpose of revenge, extortion, persuasion, or for any sadistic purpose." The definition goes on to make clear that torture is a crime of intent and not pain intensity when it states unequivocally, "The crime of torture does not require any proof that the victim suffered pain." Furthermore, the fact that pain, let alone a pain beyond death, is irrelevant to California's legal definition of torture is found explicitly stated in *People v Davenport* (1985), *People v Barrera* (1993), and *People v Hale*, all of which Yoo cites in the footnote. Rather than a standard of pain beyond death, *Davenport* states,

the intent to inflict torturous pain and suffering on the victim is at the heart of the crime of first degree murder perpetrated by torture. As a corollary to the emphasis on the acts and intention of the perpetrator, it has long been held that awareness of pain by the victim is not an element.

The court goes on to argue that pain intensity (including a pain beyond that suffered in death) is a nonsensical standard in determining murder by torture because gathering the pain testimony of a deceased victim is "impossible and thus absurd." In other words, if pain is a subjective experience of which the victim is conscious, there can be no pain in excess of death.

From here, torture's impossibility is a logical outcome. If Yoo defines torture such that it is tantamount to a certain pain threshold and that threshold is impossible to evidence, then torture is an impossible crime. One can then

inflict pain both limitlessly and legally. The gravity of this invention comes into relief against a proper historical backdrop, which Losurdo provides.

One of Losurdo's earliest examples of the paradoxes of non-violent ideology comes from the American Peace Society's work in the nineteenth century. Although the society was founded on the principles of non-violence and abolition, those values were often only adhered to through various artifices. For instance, in India, when the Sepoy's mutinied against the British East India Company in 1857, the British suppressed the rebellion with brutal force. The American Peace Society responded by claiming the British had an obligation to maintain order, and the suppression was not a war but rather the routine maintenance of law and order against a criminal element (2010, 91). They appealed to the same rationale in supporting the Union soldiers in the American Civil War (Ibid, 92). As Losurdo explains,

Even a movement dedicated to spreading the cause of non-violence justified its choice by resorting to a familiar reasoning strategy: the conflict was not seen as war, but as rightfully repressing a criminal rebellion. Rather than soldiers in the true sense of the word, the soldiers of the Union were viewed as policemen acting to serve public order." (Ibid, 92)

'War' is violent and thereby prohibited. Yet, police officers maintaining law-and-order is a rightful and just act of non-violence.

Likewise, at Guantanamo Bay, one finds a non-violent police operation. Without question Operation Enduring Freedom, the name for the Bush administration's 'war on terror', references combat in its mission statement (State Department). However, the capture of Guantanamo detainees was not listed as a component of the military campaign. Rather, their detention was categorized as 'Law Enforcement' and 'Prevention and Investigation' (Ibid). In this case, the Bush administration defines 'Law Enforcement' to encompass, "a global dragnet to help bring terrorists to justice and help prevent future terrorist attacks" as well as "arresting and indicting known terrorists" (Ibid). Of course, in practice what the U.S. calls 'law enforcement' involves the outright purchase of individuals. Far from a police investigation or 'dragnet', the American government bought around 85% of the nearly 800 detainees outright for around \$5,000 each.⁵ Nonetheless, the purchase of Arabs or anyone

5 Clive Stafford Smith, a lawyer for several detainees, writes, "One interesting nugget involves Pakistan's sale of hundreds of stray Arabs to the Americans, for shipment to Bagram air force base and on to Guantánamo Bay. Many of my clients in Cuba insist that, far from being captured on the battlefield in Afghanistan, they were grabbed in Pakistan and flogged to the

suspected of being Arab is law enforcement, a non-violent police dragnet, and not an aspect of the actual military campaign.

There is a pattern at Guantanamo Bay wherein all violence is washed away in a series of subterfuges. The purchase of innocent civilians is not an act of war threatening the sovereignty of other nations. It is a police dragnet. Kidnappings become renditions. Outdoor cages become detention facilities. Waterboarding is a dunk in the water. Within this multi-billion dollar global police operation, footnote 6 of the Bybee memo is the high-water mark in its non-violent system. Torture, an extreme form of violence, is consigned to a region no human can experience. Found only in a region beyond death, the violence of torture becomes illogical, absurd, and impossible. Any amount of pain can be inflicted for any reason and the violence of torture will never manifest.

To summarize and conclude this section, I have argued that the Bybee memo features a certain form of anti-Arab abuse made possible through its own legal impossibility. While it is certainly true that not all detainees at Guantanamo are now or have been Arab, once the American government makes 'Arab' synonymous with 'terrorist' every captive becomes 'Arab'. For instance, Slahi's Arab identity is 'proof' he is also a terrorist just as being an alleged terrorist is 'proof' he is Arab (Slahi 2015, 192, 220, 312, 327, 340, 359). Orientalism was never invested in an accurate correspondence between language and the world. As Said writes, "[W]e need not look for correspondence between the language used to depict the Orient and the Orient itself, not so much because the language is inaccurate but because it is not even trying to be accurate" (1978, 71). Guantanamo, as an outpost in the Orientalist Empire created as a laboratory of suffering, generates a subject *for* the U.S. and only for U.S. domination. The correct use of the term 'Arab' is not a relevant concern. The point is to continue constructing something called the 'Arab' in order to exert maximal control.

In producing a definition of torture in this context, the Bybee memo continues to echo the most technical features of Orientalist discourse. Above all, the Arab detainee is caught within a legal construct making torture an impossible act. Because the condition of the possibility of the violence is the impossibility of the subject's pain, the Arab is positioned to endure an incalculable pain and an illegible violence. Because it is unrecognizable as violence, torture slips into the realm of non-violent everyday acts on par with Rumsfeld working at a standing desk or a 'dunk in the water'. All this is made possible once a region

Americans, like slaves at auction" (2006). Perez Musharraf, former president of Pakistan, boasts in his memoir he took in untold bounties from the CIA in exchange for detainees (See Rowlandson 2010, 220).

beyond death is created and torture and the pain of torture are exiled to that region. Beyond the poles of life and death, the pain of torture, like the Arab, is no longer of the organic world. As I argue below, Slahi speaks directly to this inorganic condition when he endures a petrifying pain.

3

In sections I and II, I have delineated Orientalism in terms of the creation of an entity called the 'Arab' featuring certain peculiar and paradoxical characteristics. A human-animal continuum cannot incorporate the Arab. Nor is the Arab inferior on a scale of more or less human. Metallic and infertile, the Arab transcends all the dehumanizing tropes grounded in the organic world. Nonetheless, there is a kind of pain unique to this region, a way of feeling peculiar to a region without feeling. Guantanamo defines 'torture' by an appeal to a region beyond death insofar as there is supposed to be a species of pain unique to that state. Torture without pain and elimination without death are paradoxes that arise from the basic structural antagonism that defines Orientalism: Arabs are excluded from the empire of the dying and held in a discursive region beyond death.

The vocabulary of the inorganic, mineral, and beyond dying is further refined when one considers the perspective of the detainees. As I will detail in this concluding section, Mohamedou Ould Slahi speaks to an Orientalizing pain when he suffers a metamorphosing abuse that pushes him to the inorganic. As an inorganic substance, beyond death, Slahi becomes an infinite repository of non-violent action. Said once wrote of Orientalism's end product, "Above all, the native Arab has to be seen as an irremediable opposite, something like a combination of savage and superhuman, at any rate a being with whom it is impossible (and useless) to come to terms" (1992, 91). This impossible combination of savage and superhuman is Guantanamo's product. As a 'terrorist' supposedly capable of biting through the hydraulic lines of a plane, Slahi, like other detainees, is 'savage' (Rowlandson 2010, 223). As an untorturable and inviolable being held beyond death, Slahi is superhuman. Before turning to Slahi's diary, I first consider what it means for Arabs at Guantanamo to attempt a breakthrough into the world of the dying.

Resistance takes on a number of forms at Guantanamo. First, there is recourse to the law. Without doubt, lawyers have played an important role in the release of detainees. Nonetheless, a resistance through legal recourse has severe limitations. As one Guantanamo lawyer acknowledges, in response to legal victories like *Hamden v. Rumsfeld*, "the government could simply readjust

its legal position, choosing once more from an infinite pool of legal categories, and achieve the same practical result as before the supposed victory” (Denbeaux et al. 2009, 262). The abandonment of the law gives one reason to look for acts of resistance as they are formulated by the prisoners themselves. For example, Omar Deghayes actively fights the guards attempting to enter his cell (Barkham 2010). Murat Kurnaz wrestles the guards, even while in chains (Kurnaz 2007, 182). At other times, detainees mix water and feces in a bucket and shower U.S. captains and generals as they walk the corridors (*Ibid*, 192). The best-known and concerted acts of this kind are hunger strikes, which began in 2005. Certainly, the hunger strikes have different meanings and levels of participation, but through diaries and detainee’s lawyers it is clear some go into the hunger strike aiming to die.⁶ The government response is a brutal forced-feeding program.

Much has been written on the Guantanamo hunger strikes (Rosenberg 2014a; 2014b), but what is notable in this context is that officials at the detention center view Arabs trespassing into death as a threat that imperialism must guard against. This leads to a kind of paradox where the U.S.’s adversaries—whom Cheney once called “the worst of the worst”—want to kill themselves (Associated Press 2009). Yet, death is forcefully blocked by a feeding program. Operating under the motto “Safe, Humane, Legal, Transparent” (Rosenberg 2014b), Guantanamo prohibits death. A Deputy Commander stated in a meeting among high-level military personnel in October of 2002, “If the detainee dies you’re doing it wrong” (Denbeaux et al. 2015, 57).⁷ Mari Newman, a lawyer for one of the detainees, noted that although the feedings occurred in what looked like an execution chair, “the Bush administration would not allow these men to die” (Denbeaux et al. 2009, 280). Most tellingly, Cheney states, “If you don’t have a place where you can hold these people, the only other option is to kill them, and we don’t operate that way” (Associated Press 2009). That is, the U.S. does not commit violence. Killing and the resultant death is a form of violence and is therefore taboo. Rather, ‘these people’—the **Arabs**—are held

6 This is true of Yusef Al-Shehri, who at age 19 gave his lawyers his Last Will and Testament, telling them he only wished to die (Denbeaux and Hafetz 2009, 267). Jumah Al-Dossari, while held at Camp X-Ray, the open air cages synonymous with GTMO, tried to kill himself by eating a piece of metal he had broken off from the cage. The result was three days in the hospital (Denbeaux et al. 2009, 235).

7 Also see Rosenberg 2014b: “The motto of the 1,700-strong detention center staff at the prison of 166 captives is ‘Safe, Humane, Legal, Transparent.’ And the answer from an Army captain named John, the officer in charge of Guantánamo’s communal Camp 6, was that the military couldn’t let detainees starve themselves to death because ‘that would be inhumane. They can choose not to eat but we’re not going to let them starve.’”

in a site of non-violence. In fact, Arab death is so antithetical to Orientalism, when Arabs do find a way into death, the Orientalists claim to be attacked. In response to (alleged) coordinated suicides in 2006, Navy Rear Admiral Harry B. Harris said, "I believe this was not an act of desperation but an act of asymmetric warfare aimed at us here at Guantanamo" (Denbeaux et al. 2009, 271).

In this regard a comparison with Palestine is appropriate. Similarities between Guantanamo and Palestine are unsurprising because, as I mentioned, part of Guantanamo's legal justification drew from Israeli Supreme Court decisions. Jasbir Puar's research is especially germane because she highlights the occupation's basic prohibition against Palestinian death in a concept she calls 'the right to maim'. Citing Gaza's lack of essential infrastructure like water and sewage, Puar points out that in certain instances Palestinians claim they are better off dead, but they are not afforded death (2017, 140–1). Puar does not claim maiming is non-violent, but she does emphasize that the occupation presents debilitation as more "humanitarian" than killing (Ibid, 139). However, as is the case with Guantanamo's ruthless forced-feeding program, the prohibition against death becomes its own form of degradation. In Puar's words, "It is as if withholding death—will not let or make die—becomes an act of dehumanization: the Palestinians are not even human enough for death" (Ibid, 141).

Puar's analyses of Gaza work through the language of biopolitics, which she is amending to better address the condition of Palestine.⁸ Orientalism is not a biopolitical ideology. Nonetheless, Puar's basic question remains: "How much resistance can be stripped without actually exterminating the population?" Or, stated, otherwise, what is the product of a medico-legal apparatus authorized to inflict an infinite pain while still barring the subject from the kingdoms of the dying?

With this question, certain events from Mohamedou Ould Slahi's diary come into focus. Here, the absurd embodiment Yoo invents to legitimate torture returns in the form of a petrification. As Slahi describes his experiences, one encounters a pain beyond death, which, again, is the very pain that defines torture.

Slahi, a Mauritanian man held at Guantanamo for 14 years, dubs the various techniques used to abuse him 'the recipe' (2015, 219). His 'recipe' consists of all the techniques made famous by the Kubark manual and The Senate Intelligence Committee Report on Torture, including sleep deprivation, temperature extremes, sexual molestation, forced standing, waterboarding, threats to his

⁸ I should mention that it is odd to think Foucault's analyses would neatly apply to the occupation of Palestine considering Foucault was an ardent Zionist (Macey 1993, 40).

family, and, of course, routine beatings.⁹ However, one day the recipe is different. In fact, Slahi does not call it a 'recipe', but instead on the afternoon of August 25, 2003 Slahi endures what he calls his 'Birthday Party' (Ibid, 265). That afternoon three soldiers accompanied by a German shepherd beat Slahi (Ibid, 251). As the dog strains to bite Slahi, two masked guards punch him in the face repeatedly, then quickly put him in goggles and ear muffs (Ibid, 252). Soldiers place a bag over his head and shackle him at his wrists and ankles (Ibid). Slahi assumes they are taking him to his execution (Ibid). Instead, the soldiers throw him into a truck and beat him for several hours, which brings him to the brink of death (Ibid). To prevent Slahi from passing out, the soldiers spray ammonia up his nose repeatedly (Ibid). Eventually, the truck stops at a beach where they put Slahi into a motorboat driven by a new team (Ibid, 253). In order to make him think they were bringing him to a far-away prison, the boat goes in circles for hours (Ibid). All the while, they waterboard Slahi with salt water (Ibid). They then put him into another boat where two soldiers pack him in ice to minimize any bruising, which would be evidence of violence (Ibid, 259). After packing him in ice for several hours, Slahi is driven back to the detention facility where a doctor curses him while stuffing him with painkillers (Ibid, 262–3).

Slahi calls the pain of this brutality "unbearable" (Ibid, 255) and "a milestone in my interrogation history" (Ibid, 258). He states that at one point, "it wasn't me anymore," and "a thick line was drawn between my past and future" (Ibid). What exactly is this thick line he crosses? What is this transformative pain? What is born from this 'birthday party'? Weeks later, Slahi is still only semi-conscious. He is unable to pray or even find the *Kiblah*. Nonetheless, as soon as he begins to heal, the abuses start again. Only a month later, a white woman beats and molests Slahi in his cell. She threatens him with more abuses from Egyptian and Israeli torturers, but Slahi has no response. The threat of violence and the subsequent abuse is ineffective. His pain is complete. A mutation has transpired. He petrifies: "I neither talked nor showed any resistance. I was sitting there like a stone" (Ibid, 267).¹⁰

As a productive differential, Orientalism is generative. Although it is mostly known as the production of an imperial academic discourse, it was never meant to remain theory. Orientalism produces Arabs in theory to then produce Arabs in fact. Guantanamo is a site of just this material production. They do

9 See, for example, Slahi 2015, 228–233; 242–243. However, one finds these abuses throughout his diary.

10 Fanon encountered a similar petrification in Algeria observing that in response to their treatment at French internment camps certain patients adapted by becoming rigid and stiff, "made of one piece" (2004, 216–219).

not animalize Slahi, nor do they try to kill him. There are times in Slahi's diary where he hopes to die, but Guantanamo will not produce a corpse. Orientalism does not and has never generated death. Rather, Orientalism creates "a thick line" between those that die and those pushed down another path going beyond death. Slahi was brought down that second path, which was sketched in the Bybee memo almost exactly a year earlier and is defined by a pain extending beyond death. It being the only way offered within the Orientalist institution, Slahi is petrified and exits the organic world. In his 'birthday party', he is born an Arab in the most technical Orientalized sense of the word. Through all his many beatings and waterboardings he is produced as a kind of inorganic thing for whom pain is impossible.

Under Orientalism, this is the Arab condition: impossible and yet real, inorganic and yet tortured, not beaten to death but beaten beyond death and pushed to a region without pain. Can a being incapable of pain or feeling suffer violence? At least insofar as the Bush administration tie the violence of torture to pain intensity, a subject without pain cannot endure this violence. Slahi, under the Orientalist regime, stands as a boundless repository of non-violent procedures.

In his counter-history of non-violence, Losurdo emphasizes one particular turn in the meaning of non-violence that has come to define the present age. Figures like Ghandi and Martin Luther King used non-violence to resist Western supremacy making non-violence an anti-colonial strategy. However, imperial powers have since co-opted the practice and rhetoric of non-violence. Losurdo writes, "the ideal of non-violence goes hand-in-hand with the celebration of the West", which has transformed non-violence "into a tool of the imperial policy of a country that has a gigantic military budget, a nuclear arsenal capable of annihilating humanity several times over, and military bases in every corner of the planet, which enable it to intervene militarily anywhere" (2015, 203). Of course, the clearest path to a non-violent ethos is to construct the adversary as inviolable. The meaning of the word 'Arab' in the West has always harbored implicitly or explicitly just this inviolability. At Guantanamo, Slahi is Orientalized. Orientalism produces Arabs as stones. Geologized, the Arab is identified with a site of interminable 'non-violent' action.

Commentators have called Guantanamo Bay a "black hole" (Steyn 2004) and a laboratory where "detainees are truly the lab rats of the country" (Denbeaux et al. 2015, 31-2). But perhaps the vocabulary of outer space or animality obscures more than it reveals. As I have argued, Guantanamo is above all an institution committed to the ongoing creation of what the West continues to call the 'Arabs'. It falls into a centuries old tradition of producing the Arab as a phenomenon beyond death, outside the organic world, and thereby prone to

limitless experiments in non-violence. The closure of Guantanamo will never be complete without also shuttering this phase in the history of non-violence wherein adherence to non-violence requires a being that cannot legally, medically, or conceptually suffer violence. For that to happen, one must reimagine life in order that the Orientalist construction of the Arab can die at last.

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