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Hunger Strike: The Body as Resource

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> We have a policy that is to preserve life. That policy is an ethical policy. It's in the best interests of the individual who is a hunger striker, for his life to be preserved, in our judgment (Winkenwerder 2006).

Introduction

The first coordinated hunger strike at the Guantánamo Bay detention facility began in February of 2002, and the last of these strikers were the first to be fed against their will by the United States Department of Defense (Dao 2002). During the June/July 2005 strike, approximately 50 of the 52 to 200 detainees on strike were fed intravenously (Gutierrez 2005: 9, 11). When the strike recommenced in August as many as 20 of its 76 to 210 participants were being kept at the camp hospital and being fed intravenously and through nasal tubes. According to camp spokesman Major Jeffrey J. Weir, the hospitalized strikers were not generally strapped to their beds and gurneys, but were in handcuffs and leg restraints (see Lewis 2005b, Gutierrez 2005). In December 2005, restraint chairs arrived at the camp (Golden 2006b) and their use saw the number of strikers drop from 84 in January of 2006 to 4 by February of that year (Golden 2006a). Numbers rose briefly to 86 in May 2006. A new strike began at the start of 2007, and in April most of the then 17 participants were being force-fed (Golden 2007a, Goldenberg 2007). At the start of the Obama presidency, between 40 and 70 of the 245 remaining detainees were on strike, and 35 of these strikers were being force-fed (Reid 2009, Rosenberg 2009). As of at least August 2010, the Department of Defense no longer reveals the precise number of detainees being force-fed at Guantánamo Bay (Rosenberg 2010).

Like others prisoners before them, the War on Terror detainees at Guantánamo Bay have used hunger strikes as a way of challenging the material and legal conditions of their detention. While the strikes have often been triggered by particular events—a camp guard removing a makeshift turban from a praying detainee, the beating of a young detainee, the transfer of detainees to Camp 6, a maximum security complex—they have lasted because of the more general demands that animate them: better medical care, greater respect for the Koran, an end to the hierarchy of detainee privileges, an end to the indefinite nature of the detainees' detention, and the application of the Geneva Conventions to the camp. The United States Department of Defense has responded to these strikes, as the

chronology above makes clear, by feeding the detainees against their will. It has defended this practice by insisting that it is motivated in its actions by the desire to protect the lives of the detainees, and by arguing that the practice of force-feeding is consistent with existing professional and legal guidelines, in particular, the World Medical Association's (WMA) Malta Declaration and Title 28 of the US Code of Federal Regulations (CFR).

This chapter critically examines the Department of Defense's justifications of its force-feeding practices, and uses the Department of Defense's representations of the detainees and the strikes to suggest an alternative, unstated, motivation for this practice. In the first half of this chapter, I assess whether the force-feeding practices at Guantánamo Bay are indeed consistent with the relevant World Medical Association declarations and the US Code of Federal Regulations. I argue that these practices are not consistent with either of the relevant World Medical Association declarations—Malta or Tokyo. While the Code of Federal Regulations is more permissive than these declarations, it does not give authorities a free hand in deciding when to begin a force-feeding regimen. Unfortunately, the Code does not specify when and after what kinds of efforts force-feeding becomes acceptable. The vagueness of the Code, coupled with the absence of public information about the Department of Defense's actual force-feeding practices at Guantánamo Bay, make it difficult to assess with certainty whether these practices are consistent with the spirit of the Code. Evidence exists, however, that suggests that the Department of Defense is interpreting the Code of Federal Regulations liberally. The questionable nature of the Department of Defense's compliance with both the World Medical Association guidelines and the Code of Federal Regulations suggests that its primary interest is in using these documents as justifications for its practices rather than as guides to action.

If this assessment is correct, a subsequent question presents itself: *why* is the Department of Defense so invested in the force-feeding of hunger striking detainees that it is willing to skirt existing professional and legal guidelines to do so? I begin the second half of this chapter by suggesting some of the limitations of answering this question through the lens of biopolitical theory. While the management of biological life has been widely accepted as the *modus operandi* of the modern state, I suggest that a too-complete acceptance of the theory of biopolitics—particularly as it appears in the writings of Giorgio Agamben—may blind us to motivations at work other than the state's desire to reproduce its own authority over matters of life and death. In the balance of the chaper I examine both the Department of Defense's practice of force-feeding and its representations of the strikers; I argue that the force-feeding should be understood not only as an attempt to preserve detainee lives, but as part of a multi-pronged effort to silence detainee speech. Silencing detainee speech matters not only because the US state wants to avoid domestic and international criticism, but because detainee speech disrupts the state's own ability to represent the detainees as it will, and thus to use their silent bodies as inputs for the achievement of particular domestic gepolitical ends.

Justifying Force-Feeding at Guantánamo Bay

Until the United States Supreme Court granted detainees at the Guantánamo Bay detention facility the right to counsel in 2004, the Department of Defense enjoyed near-complete control over what the public knew about what was taking place at the camp. While knowledge remains imperfect about a place that so few civilians have visited (none unguided by camp authorities), our picture of the strikes and of the Department of Defense's response to them has improved as lawyers have gained access to the detainees, and as journalists and health care practitioners have gained access to the site and its official representatives. What little outcry there has been about the Department of Defense's treatment of the hunger strikers—most prominently in two letters published in the British medical journal, *The Lancet*, each with over 250 signatures (Nicholl *et al.* 2006, Nicholl *et al.* 2007)—came after detainee accounts of the feeding regimen surfaced.[1] Detainees and their counsel argued that the Department of Defense was using force-feeding as a form of torture: restraining even those who were willing to accept enteral (tube) feeding; feeding detainees so much that they became ill; inserting the nasal tubes roughly; inserting them anew with every feeding rather than allowing the detainees to keep them in between feedings; and using the same tubes for multiple detainees (for some of these accounts, see Lewis 2005a, Savage 2005, Lewis 2006, Denbeaux and Hafetz 2009: 265–280).

While some camp officials admitted that rough force-feeding techniques represented a strike-breaking strategy (see Schmitt and Golden 2006, White 2006), others defended these techniques as having become necessary once camp personnel became convinced that the strikers were intent on committing suicide (see Potter 2006). The restraints, some camp authorities argued, were needed to keep detainees from removing needles from their arms and from purging what they had been fed (see Smith 2005, Golden 2006b, Schmitt and Golden 2006, Winkenwerder 2006). Others suggested that the restraints were for the protection of the medical staff in addition to that of the detainees (see Winkenwerder 2006, Golden 2007a, see also US Department of Defense 2009: 57).

In addition to defending the particular methods used to force-feed the detainees, the Department of Defense has had to defend the very practice of feeding detainees against their will. This it has done by asserting its commitment to the preservation of detainee lives (Winkenwerder 2006, see also Golden 2006b), and by claiming that its practices are consistent with the World Medical Association's Malta Declaration and Title 28 of the Code of Federal Regulations. A close examination of these and other relevant documents, however, calls this claim into doubt. The Department

1 Condemnations came from other sources as well: see Physicians for Human Rights 2005, 2006, Crosby et al. 2007, Dakwar 2009. On the role and responsibilities of health practitioners involved in the War on Terror more generally, see, inter alia, Miles 2004, Bloche and Marks 2005a, 2005b, Okie 2005, Physicians for Human Rights 2005, Annas 2006, Rubenstein and Annas 2009, American Psychiatric Association 2006.

of Defense's elevation of life-saving above other principles—in particular, the principle of detainee autonomy or self-determination—requires a distorted reading of the Malta Declaration and a complete disregard of the World Medical Association's no less relevant Tokyo Declaration. Moreover, while Department of Defense policy regarding the treatment of hunger-striking detainees may be consistent with Title 28 of the Code of Federal Regulations in letter, the Title is vague enough to permit an interpretation of it that would arguably amount to non-compliance with its spirit. Without more complete knowledge of Department of Defense practices, we cannot pronounce on this question with certainty. We can, however, conclude with some confidence that the Department of Defense is more deeply committed to its practice of force-feeding than it is to compliance with existing standards governing the treatment of incarcerated hunger strikers.

The World Medical Association's Declarations

The Department of Defense's compliance with the Malta Declaration was asserted on several occasions by the former Assistant Secretary of Defense for Health Affairs, Dr. William Winkenwerder Jr., including at a roundtable with the press held on the occasion of the Department's publication of Department of Defense Instruction 2310.08E (hereafter, DoDI 2310.08E or the Instruction) in the summer of 2006. A general set of medical guidelines, the Instruction codified the Department of Defense's policies regarding the feeding of hunger-striking detainees at Guantánamo Bay.[2] Noting that there had been some discussion of the Malta Declaration by critics of the Department of Defense's force-feeding practices, Winkenwerder explained to the press why he and his colleagues saw their practices as consistent with the Declaration:

> We view what we are doing as largely consistent with [the Malta] declaration. The Malta Declaration notes that when there is a conflict appearing with a hunger striker that the moral obligation urges the doctor to resuscitate that patient, even though it's against the patient's wishes. That's in the Malta document.

Winkenwerder went on to note that the doctor's intervention should take place once a hunger striker "has lapsed into coma and is impaired and unable to make a decision." He then defended the Department of Defense's early application of this principle. "It's our view," Winkenwerder stated,

2 As Winkenwerder Jr. made clear to the press, DoDI 2310.08E did not alter but reaffirmed and clarified existing Department practices regarding the treatment of hunger strikers.

> that we're basically along the same ethical tenets, same ethical line of thinking; we just don't want to have someone get to death or near death before we seek to save them. And that only just makes good sense.[3]

Winkenwerder's argument does not withstand scrutiny. At issue is not only whether one can indeed apply the Declaration *earlier*, as Winkenwerder claims that the Department of Defense is doing, and still be compliant with it, but whether the Department of Defense is working with a correct understanding of the World Medical Association's position regarding the treatment of even comatose hunger strikers. We deal with the latter first. While Winkenwerder does mention the competing principles of beneficence and autonomy that must be considered in the treatment of hunger strikers, he misrepresents the weight that the Malta Declaration gives to each of these, cultivating the incorrect impression that the Malta Declaration allows beneficence to take precedence over autonomy. Consider Winkenwerder's account of the physician's conflict (the first quotation in this section) alongside the complete reference to which he is referring:

> [The doctor's] conflict is apparent where a hunger striker who has issued clear instructions not to be resuscitated lapses into a coma and is about to die. Moral obligation urges the doctor to resuscitate the patient even though it is against the patient's wishes. On the other hand, duty urges the doctor to respect the autonomy of the patient (1992 version, preamble point 2).[4]

As this excerpt suggests, the Malta Declaration is not as "pro-life" as Winkenwerder implies. In fact, while the Declaration does acknowledge the ethical difficulties that hunger strikes may pose for some doctors, it *does not* suggest that these difficulties may compromise a competent patient's right to self-determination. The Declaration is written so that a doctor who for reasons of conscience cannot abstain from resuscitating an unconscious striker will not have to, but neither will a striker have to accept the care of such a doctor. The Declaration instructs the doctor to "clearly state to the patient whether or not he is able to accept the patient's decision to refuse treatment or, in case of coma, artificial feeding." If the doctor cannot accept the patient's decision, the Declaration goes on, the striker is

3 Speaking to Harper's Magazine's Luke Mitchell, Winkenwerder makes the same point: "We would prefer not to have people lapse into a coma or to be near death when we make that decision . . . In other words, if we're there to protect and sustain someone's life, why would we actually go to the point of putting that person's life at risk before we act? So I think we're operating on a very similar set of ethical reasoning, but it's applied at an earlier stage" (quoted in Mitchell 2006: 10).

4 The Malta Declaration was first adopted in 1991; it was revised in 1992 and in 2006. The 2006 revision was deemed necessary given the "erroneous interpretations" of the Declaration in circulation (World Medical Association 2006).

"entitled to be attended by another physician" (1992 version, preamble point 4; 2006 version, guideline 15).

The document further states that "the ultimate decision" as to whether a physician should intervene or not lies with the doctor "without the intervention of third parties whose primary interest is not the patient's welfare" (1992 version, preamble point 4 and guideline 4; 2006 version, principle 6 and guideline 18), and that the doctor, in making this decision, should respect the wishes expressed by the striker when he or she was well. This last point appears in both the 1992 and 2006 versions of the Declaration. The 1992 version states that the doctor can administer the treatment that he or she deems in the best interest of a comatose patient, "always taking into account the decision he has arrived at during his preceding care of the patient during his hunger strike" (guideline 4). The 2006 version is even clearer: it states that, if made by competent patients, "advance instructions can only generally be overridden if they become invalid because the situation in which the decision was made has changed radically since the individual lost competence" (guideline 17).

No independent doctors have been allowed to treat or meet with the hunger strikers at Guantánamo Bay, and the Department of Defense screens potential camp doctors to ensure that they are comfortable with the force-feeding regimen (Okie 2005). Clearly, the Guantánamo Bay strikers do not have the access to the independent doctor who is willing to respect their wishes that the Malta Declaration requires. Even if the Guantánamo Bay strikers were only being force-fed once they had lapsed into a coma, the Department of Defense would still fall short of compliance with the Malta Declaration.

Insofar as the Department of Defense applies Malta "at an earlier stage" (Winkenwerder, quoted in Mitchell 2006, see *supra* note 3), it is also in violation of the World Medical Association's guidelines. The Malta Declaration speaks mainly to cases where a striker can no longer make his or her wishes known. About the feeding of *competent* detainees, the 1992 version states: "[a] doctor requires informed consent from his patients before applying any of his skills to assist them, unless emergency circumstances have arisen..." (1992 version, preamble 1.2; see also guideline 2.3). Once again, the 2006 version does away with all ambiguity. It states that:

> Hunger strikers should not be forcibly given treatment they refuse. Forced feeding contrary to an informed and voluntary refusal is unjustifiable (2006 version, principle 3; see also 2006 version, guideline 21).

The 2006 version also clarifies that beneficence does not necessarily mean "prolonging life at all costs, irrespective of other values." Rather, benefitting a patient "includes respecting individuals' wishes as well as promoting their welfare," and avoiding causing a patient harm "means not only minimizing damage to health but also not forcing treatment upon competent people" (2006 version, principle 4). Finally, the 2006 version confirms the ethicality of allowing a "determined hunger striker to die in dignity" rather than submitting them to "repeated interventions against his or her will" (2006 version, guideline 19).

In addition to the Malta Declaration, however, the World Medical Association has another, older, declaration that speaks to the force-feeding of *competent* detainees, along with other issues relating to the medical care of incarcerated patients. Point 5 of the 1975 Tokyo Declaration (point 6 in the 2006 version of that document) states clearly that, as long as they are deemed competent, hunger-striking prisoners "shall not be fed artificially." Given the existence of a World Medical Association declaration that speaks directly to the feeding of conscious hunger strikers—and given that both the Malta and Tokyo Declarations were cited by critics of Department of Defense practices (Nicholl *et al.* 2006, Cady 2006)—it is difficult to see the Department of Defense's claim of compliance with its own interpretation of the Malta Declaration as anything but a diversion from the reality of its non-compliance with the World Medical Association's guidelines, guidelines intelligible to anyone willing to engage in a good faith reading of both of the relevant declarations.

In order for the Department of Defense to be compliant with the World Medical Association's guidelines, it would have to respect the rights of competent detainees to engage in hunger strikes. According to the World Medical Association's declarations, the Department of Defense's stated interest in preserving detainee lives does not supersede the detainees' rights to self-determination, whatever the consequences of the exercise of those rights.

Title 28 of the Code of Federal Regulations

The Department of Defense's compliance with the Code of Federal Regulations has been asserted both orally, like its compliance with the Malta Declaration, and in official documents regarding the Guantánamo Bay detention facility. DoDI 2310.08E, mentioned above, states that, while health care is generally provided with detainee consent, "[i]n the case of a hunger strike, attempted suicide, or other attempted serious self-harm, medical treatment or intervention may be directed without the consent of the detainee to prevent death or serious harm" (4.7.1). It goes on to note that "procedures for dealing with cases in which involuntary treatment may be necessary to prevent death or serious harm shall be developed with consideration of procedures established by Title 28, Code of Federal Regulations, Part 549" (4.7.3). The Code of Federal Regulations is also mentioned in the Department of Defense's "Review of Department Compliance with President's Executive Order on Detainee Conditions of Confinement" (hereafter, the Walsh report), published in 2009. Ordered by President Obama within days of his inauguration, the purpose of the Walsh report was to describe current Department of Defense policies and practices at Guantánamo Bay, pronounce on their compliance with all applicable laws governing confinement by the US state (including Common Article 3 of the Geneva Conventions) and issue recommendations where appropriate. The report notes that Department of Defense

policy regarding the treatment of hunger-striking detainees "is similar to that used by the Bureau of Prisons, as authorized in Title 28, Code of Federal Regulations, Part 549" (56).

While the Code of Federal Regulations is more permissive than the Tokyo and Malta Declarations, it remains a cautious document—one that makes infringements upon inmate self-determination conditional upon a determination of medical necessity. Title 28's section on inmate hunger strikers' "refusal to accept treatment" begins by noting that when "a physician determines that the inmate's life or health will be threatened if treatment is not initiated immediately, the physician *shall give consideration* to forced medical treatment of the inmate" (CFR, 549.65.a, my emphasis). "Reasonable efforts" shall then be made to convince the inmate to accept treatment voluntarily. After such efforts have been made, physicians may order treatment without the consent of the inmate once "a medical necessity for immediate treatment of a life or health threatening situation exists" (CFR, 549.65.b and c).

Assessing whether the Department of Defense practices are consistent with the Code of Federal Regulations is difficult given both the vagueness of the Code's guidelines (what are "reasonable efforts"? What constitutes "a medical necessity"?) and the lack of public information about Department of Defense practices regarding the treatment of hunger-striking detainees Guantánamo Bay. DoDI 2310.08E and the Walsh Report both suggest that the requirement in the Code of Federal Regulations that force-feeding take place only once the detainee's health is at risk is being respected. DoDI 2310.08E states that, while detainee consent to intervention is not necessary in cases of hunger strikes, the intervention "must be based on a medical determination that *immediate treatment or intervention is necessary to prevent death or serious harm*" (4.7.1, my emphasis). Similarly, according to the Walsh report's description of practices at Guantánamo Bay, intervention without consent is only considered once the detainee's "medical condition deteriorates to a point, which in the judgment of the attending physician, would present *a significant threat to life or health* if the fasting were to continue" (56, my emphasis).

But at what point does a hunger strike begin to present a threat to the health of the striker? As medical professionals know, the body begins to react to the absence of food and drink almost immediately (Crosby *et al.* 2007). In principle, then, the Department of Defense could begin a force-feeding regimen at any point and still insist that the practice was consistent with Code of Federal Regulations. Because we do not know when, according to what criteria, and after what kinds of efforts, doctors and other authorities at Guantánamo Bay are deciding to begin force-feeding the hunger-striking detainees,[5] we cannot accurately assess the consistency of Department of Defense practices with the restrained spirit of Title 28 of the Code

5 This information—as well as information on the "procedures for dealing with cases in which involuntary treatment may be necessary" that DoDI 2310.08E says would be developed "with consideration of procedures established by Title 28" (4.7.3)—was formally requested from Defense Press Operations in February 2011. As of this writing, I have not received a response.

of Federal Regulations. That said, Winkenwerder's rhetoric above—in particular his failure to link the early application of the Malta Declaration to situations of medical necessity—as well as the fact that the feeding of detainees requires their being physically restrained suggests that the criteria of the existence of a "threat to life or health" is being interpreted very liberally at Guantánamo Bay.[6]

Moreover, the Guantánamo Bay physicians' lack of independence also casts doubt on Department of Defense compliance with the Code of Federal Regulations. As George Annas has noted, "only a physician (not the warden) is permitted to make treatment decisions on the basis of [the Code of Federal Regulations]" (2006: 1379). If other military personnel are making decicions about force-feeding the hunger strikers at Guantánamo Bay, "the rules of the Bureau of Prisons are not being followed" (2006: 1380).

A further point bears mentioning. US courts have very often found in favor of penal authorities in legal contests over the treatment of hunger-striking prisoners, but this has not uniformly been the case. Several courts, including the Supreme Court of Georgia and the California Supreme Court, have upheld the right of competent prisoners to strike to death, in some cases directly rejecting the state's stated interest in preserving the inmates' lives. Moreover, Mara Silver (2005) has persuasively suggested that holdings that find against hunger-striking prisoners may be inconsistent with recent US Supreme Court decisions. The Supreme Court's rulings in *Cruzan v. Director, Missouri Department of Health* and *Washington v. Glucksberg* affirm the individual's right to refuse medical treatment. Given that the Supreme Court has also found, in *Turner v. Safley*, that prisoners retain those rights that are not inconsistent with their status as prisoners or with penological objectives, it is not clear to Silver why the state's interest in life-preservation should prevail over prisoners' rights to expression and privacy. As she (2005: 645) puts it:

> In cases where a nonprisoner wishes to refuse treatment, the preservation of life is subrogated to the individual's right to self-determination. There is simply no reason why the same outcome should not prevail in the case of prison inmates, unless the state has a stronger interest in preserving the life of a prisoner than a nonprisoner.

To the extent that it is life preservation, rather than prison order, that provides the occasion for force-feeding in the Code of Federal Regulations, the Code itself may eventually be discovered to be inconsistent with these Supreme Court rulings.

6 Note also the comment of camp spokesperson Lt. Col. Jeremy Martin who, in October 2005, said that the suggestion that the hunger strikers were near death was "absolutely false" (quoted in White 2005).

Detainee Bodies as Geopolitical Resources

As the foregoing discussion suggests, the Department of Defense is arguably less interested in strict compliance with professional and legal guidelines regarding the treatment of hunger-striking prisoners than it is in using references to these guidelines to justify its force-feeding regimen. What remains to be explored is why the Department of Defense—or, more broadly, the US state—is so invested in force-feeding the striking detainees. One explanation is that the commitment to feeding the detainees is a function of the biopolitical nature of the modern state—its preoccupation with its own authority over the terrain of life and death. This is the argument offered by Patrick Anderson, one of the few social scientists or humanists to have attempted to make sense of the Department of Defence's force-feeding of the detainees. According to Anderson, "[w]hat terrorizes the state" about hunger strikes "is its inability to assert its sovereignty in these matters of life and death" (2009: 1733), matters over which the state has claimed jurisdiction ever since "[t]he ancient right to kill and to let live" gave way to a biopolitical model in which the state, or the sovereign, *makes live and lets die*" (Agamben 1999: 82, cited in Anderson 2010: 148, 2009: 1735, see also Foucault 2003: 241). For Anderson, the strikes subvert the US state's "insistent, embittered reproduction of sovereignty" and reveal "the desperation with which this state has deployed and intertwined its institutions to stage and seize 'bare life'" (2009: 1736).

While Anderson is one of only a few scholars to have examined the hunger strikes, there has been no shortage of scholars examining the Guantánamo Bay detention facility (and the War on Terror more generally). Many of these scholars, moreover, have—like Anderson—done this work with the help of Agamben's writings on biopolitics, sovereignty, bare life and the space of exception (see, *inter alia*, Agamben 2005, Minca 2005, Gregory 2006, Hannah 2006, Elden 2007). And indeed, Agamben's work seems ideally suited to the analysis of Guantánamo Bay. In insisting that neither US law nor the laws of war applied to the "enemy combatants" at Guantánamo Bay, President George W. Bush seemed to provide a perfect illustration of several of Agamben's major theses, among them: that the sovereign's power is the power to decide the exception—to decide who will be subject to his discretion rather than to law; that sovereign power reproduces itself, as Anderson suggests above, on the backs of the residents of this state of exception; and that the once-hidden and local operations that undergird sovereignty have now become overt and general, with the state of exception "today [reaching] its maximum worldwide deployment" (Agamben 2005: 87).

Others have refrained from using an Agambenian frame, pointing out the weaknesses of Agamben's account itself (Neocleous 2006) or its inapplicability to Guantánamo Bay and the War on Terror (Johns 2005).[7] Two considerations inform my own reservations about viewing the Department of Defense's response

7 It should be noted that not all of the scholars who find Agamben's work useful adopt it uncritically.

to the hunger strikes at Guantánamo Bay through the lens of Agambenian theory, and in particular, through the lens of Agamben's understanding of biopolitics. First, like all theoretical apparatuses, Agamben's account of biopolitics tends to illuminate some practices and objects better than others. The risk of being seduced by the apparent fit between Agamben's theses and the events at Guantánamo Bay is that we will see most clearly what the theory best illuminates, mistaking the vividness that is an effect of the theory for a property of the practice or object itself. Because Agamben's theories are oriented towards life-and-death issues, they tempt us to take the Department of Defense at its word when it claims that the purpose of the force-feeding of the detainees is the preservation of their lives.[8] The Department of Defense's stated explanation—"[w]e have a policy that is to preserve life" (Winkenwerder 2006)—is perfectly coincident with Agamben's theory of biopolitics. But what if life-preservation if not the reason, or not the only reason, for the practice of force-feeding?

Second, and relatedly, not only does Agamben's theory of biopolitics illuminate particular practices or objects at the expense of others, but it provides a ready explanation for the existence of those practices or objects. Not only do we tend to see what the theory invites us to see, then, but so too do we tend to accept the theory's explanation for what we are seeing. Translated into the particulars of our case: an Agambenian frame encourages an understanding of the force-feeding as indeed about life-preservation, and it provides a ready explanation for *why* life-preservation is a goal of the US state—control over life and death is what the modern state wants. Agamben's confidence in his own narrative about the historical ascendence of biopolitics and about the location of its teleological destiny in the present make specific questions about the Department of Defense's response to the Guantánamo Bay hunger strikes redundant in advance. There is no reason to ask why the US state might be force-feeding the detainees: it is written into the modern state's DNA.[9]

As I will suggest below, the Department of Defense has a motivation for force-feeding the detainees that we cannot see if we have already accepted the motivation of life-preservation provided to us by both the Department of Defense

8 For an argument that demonstrates the limitations of Agamben's exclusive focus on the life and death binary, see Hannah 2006.

9 While this chapter cannot accommodate a substantive critique of Agamben's treatment of biopolitics, it might also be added that Agamben's account of biopolitics has been critiqued for its ahistoricism, among other things. As Andreas Kalyvas has observed, Agamben's account lacks any discussion of the "reasons, forces, interests, struggles, movements, strategies, and actors that were and still are involved in the unfolding of bio-sovereign politics" (2005: 112, see also Bernstein 2004), and it is undisturbed by events as varied as "the birth of the ancient-Greek democratic city, the institution of isonomia, the emergence of commercial capitalism, the modern discovery of rights, the invention of constitutionalism, the democratic revolutions of the late eighteenth century, and the entry of the laboring masses into politics," all of which, for Agamben, merely contribute to the "inexorable historical unfolding" of biopolitics (2005: 111).

and by Agamben's account of biopolitics: this is the motivation to silence detainee speech. Acknowledging this motivation opens the door towards a fuller understanding of the US state's interest in the Guantánamo Bay detainees. In what follows, I first establish that silencing political speech was an important reason for the force-feeding of the hunger strikers at Guantánamo Bay. I then argue that the state's interest in thwarting detainee self-representation in this way is a function of its desire to use the detainees as resources for domestic geopolitical ends.

Silencing Detainee Speech

It has long been acknowledged that hunger-striking is a form of political speech, one often adopted by those denied ordinary or formal avenues of communication, such as, for example, the right to speak before court. As former Guantánamo Bay detainee Mundah Habib stated, the hunger strike was the only way to "send a message to the public outside to know what's going on" (quoted in Doctors attack US over Guantanamo 2006). Although the emaciated body may appear as "a radical negation of the other," self-starvation is in fact a deeply social act, a performance utterly dependent on its spectator (Ellman 1993: 17). By refusing to eat, the striker takes his or her protest inside, but this internal ordeal transforms the body's surface, turning it into a legible text, a "living dossier" of discontents both biological and political (1993: 17). That the bodies of incarcerated hunger strikers often cannot be seen by those to whom the speech of their strike is addressed renders all the more evident the desperate nature of this act.

That the goal of the Department of Defense's force-feeding regimen is to silence the speech that the hunger strikes represent is amply suggested by camp authorities' representations of the strikers as either suicidal or disingenuous. To the extent that they are persuasive, these representations of the strikers neutralize the communicative potential of the strikes. By representing the strikers as suicidal (see Potter 2006, Winkenwerder 2006), camp officials effectively deny that the strikes are speech at all. While some detainees have admitted to hoping for death, and while suicides have been attempted and have occurred at the camp (some explicitly planned as a form of protest, see Gutierrez 2005, Worthington 2007), to characterize most of the Guantánamo Bay hunger strikers as suicidal is to efface the distinction between a detainee who wants to die and one who wants to protest but is willing to die while doing so. As should be obvious in a country where "give me liberty or give me death" is a celebrated slogan, a hunger striker may consider death an acceptable outcome of his or her strike without having death as his or her goal. As the World Medical Association notes, hunger strikers can be divided into two groups: those that "fast to gain publicity to achieve their goal, but have no intention of permanently damaging their health," and those who are willing to "risk their health or their lives for a cause" (WMA Declaration of Malta: a background paper on the ethical management of hunger strikes 2006: 37). Surely, it is into the latter category, rather than into the category of someone suicidal, that

falls someone like detainee Binyam Mohammed, who stated in 2005 that he would not stop his fast "until I either die or we are respected" (quoted in Gillan 2005).

When camp officials have not denied that the strikes are a form of speech, they have often represented this speech as disingenuous and the strikers themselves as manipulative. In 2005, Lt. Col. Jeremy Martin, a spokesperson for the detention facility, suggested that hunger-striking was a technique "consistent with the al Qaedā training," and that it reflected "the detainees' attempts to elicit media attention and bring pressure on the United States government" (quoted in White 2005). When stories emerged in 2006 about the military using the feeding to inflict pain on the strikers, military spokespersons responded by saying that "the prisoners are for the most part terrorists, trained by Al Qaeda (sic) to use false stories as propaganda" (quoted in Schmitt and Golden 2006). In 2007, when detainees began striking to protest the conditions at a new maximum security complex at the camp, camp spokesperson Cmdr. Robert Durand called the strikes "propaganda," and suggested that they were part of an effort by detainees and their counsel to "discredit the detention mission" (quoted in Golden 2007b, see also Glaberson 2007). Finally, when hunger striker Sami al-Haj produced sketches depicting his condition, camp spokesperson, Navy Cmdr. Rick Haupt, stated that "al Qaeda trains its operatives to allege inhumane treatment" (quoted in Guantanamo force-feeding sketch censored 2008).

As an aside, it is worth noting that a similar strategy has been used to characterize the detainees that have attempted, or successfully committed, suicide. The military began characterizing suicide itself as "manipulative self-injurious behaviour" early on (Smith 2005), and the suicides of 2006 were described by Rear Adm. Harry B. Harris Jr. as, not "an act of desperation, but an act of asymmetrical warfare against us," committed by individuals who have "no regard for human life, neither ours nor their own" (quoted in Glaberson and Williams 2009). State Department official Colleen Graffy referred to these suicides as a "good PR move" and "a tactic to further the jihadi cause," and Lieutenant Commander Jeffrey Gordon characterized the dead as "fanatics like the Nazis, Hitlerites, or the Ku Klux Klan, the people they tried at Nuremberg" (quoted in Rose 2006).

Putting Detainee Bodies to Work

Clearly, the Department of Defense's interest is not only in preserving lives but in silencing detainee speech. Why? As some commentators have observed, quite apart from the intelligence they may or may not possess, the detainees seem to have been intended to serve a particular symbolic purpose. It is not only that the captured detainees help to stage a "reversal of national humiliation" (Butler 2004: 77–78). They also help to create, among Americans, "the belief that the homeland is secure" (Ahmad 2009: 1695). As Susan Willis notes, commenting on the "security ideology" that the American public consumes:

> The suffering and mental breakdown of the tortured detainees is traded against the wellbeing of Middle America: they must stay there in order to preserve the peace and prosperity of the citizenry (2006: 125).

The detainees, then, are an input: a resource set to work inside a machine—Guantánamo Bay—that works to confirm domestic fears about the existence of an enemy; to produce a sense of national vindication; and to locate responsibility for that vindication in a heroic state and its representatives (on the simultaneous production of security and threat, see Katz 2007). What must the detainees be, to be this kind of input? Importantly, they need *not* be subjects with intelligence to impart. This helps to explain the otherwise mysterious fact that so many of the detainees were effectively purchased—handed over to US authorities by Pakistan or the Northern Alliance at a time when "the United States offered large bounties for capture of suspected enemies" (Denbeaux and Denbeaux 2006: 3)—rather than carefully selected for the intelligence they possessed (see Golden and Van Natta 2004).[10]

To perform their symbolic duty, the detainees need only be screens onto which the US state can project the representation that it prefers. The technologies of race and sex no doubt go a long way toward corroborating, in the eyes of the American public, the state's story that these men are the worst of the worst—that they are veritable *biohazards*, as is suggested by the widely circulated early pictures of the orange-clad detainees (for an insightful reading of the photographic representations of Guantánamo Bay and its detainees, see Van Veeren 2010). As an ideological apparatus, the Guantánamo Bay detention facility both relies upon and reproduces the discursive construction of Muslim and Arab men as uncivilized and violent (Said 1978, 1997, Shaheen 1991, Puar and Rai 2002).[11] But if race and sex go a long way towards ensuring that the American public will be receptive to perceiving these bodies in the manner that the state presents them, these technologies cannot be relied upon exclusively. They are bolstered by a moratorium on any representations that might compete with the state's representation of the detainees. The brown and male bodies at Guantánamo Bay must also be *silent* bodies. What makes the detainees risky as resources

10 According to Laurel E. Fletcher and Eric Storver (2009: 20), more than a third of the 62 former detainees interviewed by their team "said they knew, either from personal observation or being told by U.S or Pakistani officials, they had been sold to the United States." Interestingly, in my survey of newspaper articles about the force-feeding regimen, I came across no arguments by any US officials that suggested that the detainees needed to be kept alive because of the intelligence they possessed.

11 We can venture that this construction goes some way towards explaining how little outcry there has been about the force-feeding of the Guantánamo Bay detainees in the United States: if 9/11 was an emasculating event, force-feeding—an experience that has been likened to rape—can be seen as a small part of the United States' remasculinization effort, a micro-scale staging of the drama of vindication (on the War on Terror as a process of remasculinization, see Puar and Rai 2002).

is that they consist of more than bodies. Like the capitalist who must employ workers—his gravediggers—if he is to exploit labor power, a state that wants to make symbolic use of living human bodies must contend with the fact that these bodies are also human subjects, capable of representing themselves. When they do represent themselves, their status as a resource that can be deployed by the state is compromised; they cease to be representational vacuums. Hence the imperative that the state disrupt the communicative potential of what little self-representation is able to make it out of the camp.

Another illustration of the Department of Defense's efforts at disrupting the ability of the detainees to communicate is its unwillingness to allow the public to see the faces of the detainees. According to Department of Defense policy, photographs of detainees may be out of focus, taken from behind, or cropped so that the face is not visible (though the beard—that reminder of the detainees' exoticness—may be) (Rosenberg 2008). While US officials have suggested that this policy was adopted with the Geneva Conventions' proscription against humiliation in mind, Elspeth Van Veeren observes that the policy keeps the detainees "from turning their eyes and therefore their gaze back at the viewer" (2010: 1733). As such the detainees' "ability to communicate with the viewer is limited" (1734), as is the possibility that the viewer will have an "empathetic encounter" with the objects of the photographs (1735).

As this example makes plain, in addition to being a potential resource for the US state, the bodies of the detainees are also resources for the detainees themselves. We need our bodies to communicate: to speak, to act, to gaze. Denied the ability to communicate in these ordinary ways, we can recruit our bodies to perform more unorthodox tasks. The Department of Defense's denial that the strikes represent sincere speech can be read as an attempt to deny the detainees the use of their own bodies as resources. At stake for the Department of Defense is more than the possibility that the detainees' speech—whatever form it takes—will challenge the state's authority over matters of life and death. At stake is more than the possibility that the speech will draw attention to the detainees' mistreatment at the hands of the US state. At stake is also the US state's ability to use the bodies of these detainees as resources of its own. Through the speech of the strike, the detainees threaten to deprive their captors of the use of their (detainee) bodies as silent screens onto which the state's representations can be projected. In attempting to silence detainee speech, then, the Department of Defense has been attempting not only to guard the state's sovereign power, not only to protect the state's name, but to preserve the state's investment.

Conclusion

My goal in this chapter has been, first, to assess whether the Department of Defense's practice of force-feeding hunger-striking detainees at the Guantánamo Bay detention facility is consistent, as the Department of Defense claims, with

the World Medical Association's guidelines and with Title 28 of the Code of Federal Regulations. My argument here has been that the Department of Defense's practices are not consistent with either of the World Medical Association declarations relevant to the treatment of hunger striking detainees. Because of both the vagueness of Title 28 of the Code of Federal Regulations and our lack of information about the protocols governing the treatment of hunger-striking detainees at Guantánamo Bay, it is impossible to state with certainty whether the Department of Defense's force-feeding practices are consistent with Title 28. It is clear, however, that the Department of Defense is committed to its practice of feeding the detainees against their will. The second goal of this chapter has been to inquire into the reasons for the state's commitment to this practice. Whatever the feeding of the detainees may have to do with life preservation—a point made by the Department of Defense and echoed by Agambenian biopolitical theory—I argue that it is also motivated by a desire to deprive the detainees of the use of their bodies as vehicles for speech. Silencing detainee speech is imperative if the state is to use the detainees' bodies for its own representational purposes.

What counts as a resource changes over time and across space, depending on our stage of development and our particular social goals (Harvey 1974, 1996). The use of detainee bodies as resources is no less contingent. President Obama campaigned on a promise to close the Guantánamo Bay detention facility that the George W. Bush Administration had found so useful. At least at the start of his presidency, it was the proper disposal of these bodies that occupied Obama's attention. Ultimately, however, Senate opposition to funding the closing of the detention facility, and widespread right-wing rhetoric (including in the Senate and in Congress) about the dangers of allowing Guantánamo Bay detainees—even those deemed innocent—onto American soil, altered Obama's plans. The state's representation of the detainees as the worst of the worst, and its struggle to silence detainee self-representation, have borne fruit in the form of a nation unable to see the detainees as anything but the threats they've been presented as. The risk for the detainees is that Guantánamo Bay, the machine for which they have been inputs, will be transformed into the container in which they—like radioactive waste—are stored *in perpetuum*.

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