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### Sacrifice and Sovereignty

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## Sacrifice and Sovereignty

Mateo Taussig-Rubbo\*

They made the ultimate sacrifice and they are missed by their friends and families and their clients. – The Red Zone (Web site for private military contractors)<sup>1</sup>

Sacrifice seeks to establish a desired connection between two initially separate domains. – Claude Lévi-Strauss, *The Savage Mind*

In recent years, sacrifice is often discussed as the act that U.S. citizens have not been asked to perform. Although many of our highest officials declare that this is a time of war, the complete giving of the self – or its taking by the government – that had come to characterize total war of the twentieth century is absent. Sacrifice instead appears as a tactic that America's adversaries employ when they martyr themselves.<sup>2</sup> Even so, sacrifice and sacralization are visible at sites like Ground Zero in New York and in the public reception of the deaths of U.S. soldiers in war, and we can still detect republican currents by which sacrifice and citizenship are mutually constitutive, however attenuated or partisan these links might seem.<sup>3</sup>

One reason to focus on sacrifice is that it can be a register of the government's dependence on the citizenry. Especially in the context of

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<sup>1</sup> The Red Zone military contractor Web site,<sup>1</sup> accessed Mar. 31, 2006, [http://psd-eod.typepad.com/dont\\_worrywell\\_protect\\_yo/2005/06/index.html](http://psd-eod.typepad.com/dont_worrywell_protect_yo/2005/06/index.html).

<sup>2</sup> Talal Asad, *On Suicide Bombing*. New York: Columbia University Press, 2007, 43–45, 51. Asad acknowledges and criticizes the use of sacrifice as a widespread analytic to describe suicide bombing.

<sup>3</sup> For discussion of "sacralization" at Ground Zero see Mateo Taussig-Rubbo, "Sacred Property: Searching for Value in the Rubble of 9/11," at SSRN [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1269533](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1269533).

war, in which citizens kill and are killed on behalf of the government, the logic and rhetoric of sacrifice can function as a form of accountability. It serves to ground a claim that a loss was of (or should have been) of great significance. At the same time, because this accountability can verge on the ephemeral, in many instances it might seem like little more than a cynical screen for an underlying ability to demand or accept an offering without giving compensation. What at one moment might look like a transcendent act of sacrifice can at another come to seem like a purely pointless and banal loss.

From the point of view of the citizen, the reasons to want to avoid sacrifice are understandable, but it is also important to realize that the government that avoids asking for sacrifice is in some sense declaring its autonomy from the citizenry. Put another way, we have seen again and again in U.S. history that citizens who can frame their losses as sacrifices often gain a claim on the government and a means of showing that they are part of the popular sovereign, "We the People." Seen in this light, a turn away from sacrifice in the U.S. political and legal order constitutes a recalibration of relations between citizen and government that runs parallel to the state of exception and governmental sovereignty. These developments share a common theme: the independence of the government from the citizenry in one case and the legal order in the other.

Rather than examine sacrifice as a category that pertains only to the barbaric other – such as the suicide bomber – I assume that it has been central to the critical moments of founding, maintenance, and transformation of the U.S. political and legal order. I do not undertake a deconstruction of social contract theory, in which the preservation of the individual's life is the purpose of the covenant, or liberal political thought, for which death is nothing but negation, as unable to account for the actual place of sacrifice in our political order. Paul Kahn, in his book *Putting Liberalism in Its Place*, has already done this in a profound way; he has urged that that sacrifice and sovereignty must be considered together and that sacrifice and not contract is the most accurate way of framing the political relationship as it has been experienced.<sup>4</sup> I take as a point of departure that the U.S. government pursues not only a monopoly of violence but also a monopoly

<sup>4</sup> Paul Kahn, *Putting Liberalism in Its Place*. Princeton, NJ: Princeton University Press, 2005, Ch. 5; see also Danielle Allen, *Talking to Strangers: Anxieties of Citizenship Since Brown v. Board of Education*. Chicago: University of Chicago Press, 2004, 39.

of sacrifice – that is, control over sacralized, transcendent loss. In using a vocabulary that has Christian (not to mention Jewish and Islamic) resonances, I do not mean to address the question of whether the state is actually a church, nor do I propose to examine the reception of religious meanings and forms by the political order in the founding moments of political modernity, when sovereignty is redistributed from divine king to the sacralized but ephemeral People. Rather, I seek to explore a form of meaning of action that can be detected in a variety of present-day settings, putting to the side the question of whether they are “religious” and/or part of a “political theology”<sup>5</sup> and draw instead on what the secular state has designated as religious for what seem to be suggestive analogies (and presumably homologies).

Having made these assumptions, what I actually explore in this essay are efforts by officials, through law and policy, to *avoid* sacralization and sacrifice, to unbundle the sacred and the state. More specifically, I describe a state that uses legal form to attempt to construe certain deaths as sacrificial and others as banal and meaningless in relation to a given audience. I then explore some of the difficulties that these attempts encounter as nonstate actors employ and advance their own conceptions of sacrifice and meaningful loss. In sum, I (1) suppose that the sovereign (either the popular or the state sovereign and without specifying the relation between these two and the government) is a sacralized entity and that sacrifice is central to the citizen’s relation to the sovereign; (2) look at the attempts that officials make to avoid this reality; and (3) describe nonstate actors reasserting the importance of sacrifice and the sacred, but now as a form of action and a resource that they command.

My first case study construes the emergence of the private military contractor in recent decades as an effort to displace or outsource sacrifice and avoid engaging with the rich tradition that designates soldiers as participating in sacrifice. This attempt at desacralization, an attempt to render certain deaths banal for a national audience, has encountered difficulties.

<sup>5</sup> For discussions of these themes see Talal Asad, *Formations of the Secular: Christianity, Islam, Modernity*. Stanford: Stanford University Press, 2003, Ch. 1; Michael Taussig, *The Magic of the State*. New York: Routledge, 1997; Winnifred Sullivan, *The Impossibility of Religious Freedom* (Princeton: Princeton University Press, 2005); Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, trans. George Schawb. Cambridge, MA: MIT Press, [1922] 2006.

I consider the U.S. reception of the spectacular televised killing and desecration of four contractors in Fallujah in 2004, where actors who had contracted their security services to the private sector became reconceived as sacralized citizens, their bodies a visible site for the idea of the nation. In a second case study, I look at instances in which U.S. officials try to “privatize” sacrifice by placing it in a gendered framework or making it a “family matter,” and the corresponding attempts of nonstate actors to manipulate their private status. In a third case study, I turn to what might be seen as sacrificial action by those deemed the enemies of the United States, focusing on hunger strikes by detainees in Guantánamo Bay, Cuba. Detainees’ attempts to turn themselves into martyrs – this is how military officials and some detainees describe what they are doing – are blocked by a counter-sacrificial policy by officials, including force-feeding and increased secrecy.

Each of these cases concerns a legal form and policy – whether it is contract and exclusion from military law in the case of contractors, the privatization of a mother’s sacrifice, or exclusion from normal law in Guantánamo – and the ways in which the meaning attributed to violence and loss can attempt to overcome those classifications. My aim is not to discuss comprehensively the theories of sacrifice; instead, I wish to point out some important dynamics that merit more thorough investigation.

One theme that runs throughout this essay is the relation of sacrifice to law and ritual. Ritual sacrifice often marks the sacrifice practiced by others as alien for moderns, Christians, and post-Christians, for whom sacrifice (if the category makes any sense at all) must be a sincere and heartfelt giving of the self, not a formalistic and economic act and not a giving of a substitute in place of the self.<sup>6</sup> My examples are ones in which sacrificial

<sup>6</sup> Many interpreters of our dominant religious traditions insist, like theorists of modern disenchantment, that ours is a postsacrificial era. For instance, many commentators describe archaic shifts internal to the sacred Book from sacrifice to law in the Jewish case, or from sacrifice to love in the Christian. Christ’s “sacrifice” is a paradigm case where the body of an individual is human, divine, and a stand-in for all “mankind,” yet it is described as the *last* sacrifice, the sacrifice of sacrifice. See Jean-Luc Nancy, “The Unsacrificeable,” *Yale French Studies*, 79: 20–38, 24 (1991); see also Jill Robbins, “Sacrifice,” ed. Mark Talyor, *Critical Terms for Religious Studies*. Chicago: University of Chicago Press, 1998, 288. (“Both the figure of Christ and Socrates propose a transfiguration and a transcendence of sacrifice. They determine it as autosacrifice, namely, not only as sacrifice of the self that is willed and desired, but also, it will be shown, self-sacrifice on its way to becoming the very sacrifice of sacrifice. They determine it by a repetition of the old sacrifice that reveals an entirely new content, as when

meaning appears in places where it is officially excluded, where it is more improvisational and post hoc than ritually or legally permitted.

In my second epigraph, I quote anthropologist Claude Lévi-Strauss. Lévi-Strauss derided sacrifice as nonsensical because it confounded classification by asserting a connection between ordinarily separate categories – such as individual person and god or cucumber and ox in a famous anthropological example.<sup>7</sup> It blurred distinctions and hence, for the great structuralist, meaning itself. Those moments of merging between different entities, the sacrificer and his or her god, surely can help to ground authority. The technique of sacrifice, however, is not invariably tied to law and ritual, nor is the monopoly by officials ensured – it can be taken up by a variety of unauthorized actors. It is the potential nonsense of sacrifice, when in the hands of nonstate actors, that is especially interesting in our current moment. The schemes of significance and insignificance that law and policy designate (the soldier's death is a sacred presence of the sovereign; the contractor's, banal) can be challenged by other actors. From the perspective of the *ex ante* scheme, these assertions are indeed nonsense, but *ex post*, in some of my examples, we can see that the structure of legal and policy classification can begin to shift, or that officials will have to take special action to preserve the *status quo*.

Finally, I must mention Giorgio Agamben's much-discussed conception of sovereign power as that which can take life without the action being considered a sacrifice (or a homicide).<sup>8</sup> Each of my examples could be read as supporting Agamben's conception as a description of the government's ideal world, because it appears that sacrifice is the form of action and meaning that officials generally attempt to displace. I would locate Agamben's formulation not as describing a transcendent truth of modern sovereignty but as one tentative effort to constitute actors whose death

the New Testament understands itself as the revelation of what was concealed in the Old. Both claim to have acceded to the truth, hitherto concealed, of sacrifice. That is why, in the West, the movement of going beyond, or the transcendence of sacrifice, is foundational.") See also Jonathan Sheehan, "The Altars of the Idols: Religion, Sacrifice and the Early Modern Polity," *Journal of the History of Ideas*, 67, 4: 649–674 (2006).

<sup>7</sup> Claude Lévi-Strauss, *The Savage Mind*. Chicago: University of Chicago Press, 1966, 224–228.

<sup>8</sup> Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, trans. Daniel Heller-Roazen. Stanford: Stanford University Press, 1998, 83. Agamben writes that the "sovereign sphere is the sphere in which it is permitted to kill without committing homicide and without celebrating a sacrifice, and sacred life [homo sacer] – that is life which may be killed but not sacrificed – is the life that has been captured in this sphere." (Italics in original.)

is not a sacrifice (or a homicide). Although the main thrust of this piece is the enormous difficulty that this encounters, the examples I have selected are those in which we can detect an effort by the United States to be a sovereign in Agamben's sense, to chart the course carefully between two forms of liability: the designation of a killing as a sacrifice or as a homicide.

### Outsourcing Sacrifice and Private Military Contractors<sup>9</sup>

While stopped in traffic, several armed Iraqi insurgents walked up behind these two unarmored vehicles and repeatedly shot these four Americans at point blank range, dragged them from their vehicles, beat, burned and disfigured them and desecrated their remains.<sup>10</sup> – Plaintiff's Complaint, *Nordan v. Blackwater*

[A mercenary is] motivated to take part in the hostilities essentially by the desire for private gain . . . material compensation substantially in excess of that promised or paid to combatants . . .<sup>11</sup> – Geneva Convention, Protocol 1

This section examines one important example of the difficulties entailed in creating a group of unsacrificeable subjects. This came early in the U.S. war in Iraq, in March 2004, when four armed Blackwater contractors were ambushed and then grotesquely and spectacularly killed, dismembered, and immolated by hundreds of Iraqis in Fallujah. For many U.S. officials and media commentators, these acts of “desecration,” as many called them, re-nationalized what had been privatized, and the deaths were conceived by many as sacrifices on behalf of the United States. How are we to think about this overcoming of the official insignificance attributed to the contractors' deaths?

A Web site for private military contractors speaks of contractors whose deaths were an “ultimate sacrifice” and “is dedicated to the men who gave their lives so ‘the client’ would be safe.”<sup>12</sup> In the military context,

<sup>9</sup> This section is drawn from Mateo Taussig-Rubbo, “Outsourcing Sacrifice: The Labor of Private Military Contractors,” *Yale Journal of Law & Humanities* (forthcoming) (posted on SSRN [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1157399](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1157399)).

<sup>10</sup> Plaintiff's Complaint, *Nordan v. Blackwater*, North Carolina, Wake County Superior Court, 7 No. 05-CVS-000173 (filed Jan. 5, 2005) [hereinafter Complaint].

<sup>11</sup> Protocol Additional to the Geneva Conventions of Aug. 12 1949 and Relating to the Protection of Victims of International Armed Conflict (Protocol 1), Art. 47.

<sup>12</sup> The Red Zone, *supra* note 1.

we typically think of sacrifice as something that the soldier does for the nation or state at least if we recall Lincoln at Gettysburg, when he speaks of the “consecration” of the battlefield by those who “gave their lives that [the] nation might live.”<sup>13</sup> As the military contractor quote might suggest, however, the matter of who can sacrifice for whom is complicated: the nation is not the only purported recipient of this form of offering.

Indeed, killing by and the killing of armed private military contractors in Iraq has drawn attention to their ill-defined legal and cultural position. Are these contractors and their employers subject to Iraqi law, U.S. military or criminal law, state tort law, or international law? Can they kill with impunity? Can they be killed with impunity? By this I mean not whether an Iraqi who kills a contractor would be immune from prosecution but whether the killing of a contractor implicates the U.S. government in the same way that the killing of a U.S. soldier does – that is, as a sacrifice for the nation that officials and the public are expected to recognize, count, and honor. Are the contractors, in sum, unable to commit murder and ineligible for sacrifice? Do the legal form of contract and the policy of privatization serve to immunize and dissociate the United States from these forms of liability for those who act on its behalf?

Before addressing these questions, it is important to note that in the United States, sacrifice and citizenship have long been seen as mutually constitutive: to forgo one is to disaggregate an ancient coupling. In his notorious pre-Civil War opinion in *Dred Scott v. Sandford*,<sup>14</sup> Chief Justice Taney evoked this tradition to buttress his position that African Americans were aliens, not citizens, referring to their exclusion from state militias. He cited the laws of New Hampshire as one example according to which

No one was permitted to be enrolled in the militia of the State, but free white citizens. . . . Nothing could more strongly mark the entire repudiation of the African race. The alien is excluded, because, being born in a foreign country, he cannot be a member of the community until he is naturalized. But why are the African race, born in the State, not permitted to share in one of the highest duties of the citizen? The answer is obvious; he is not, by the institutions and laws of the State,

<sup>13</sup> Abraham Lincoln, Gettysburg Address (Nov. 19, 1863), in 7 *Collected Works of Abraham Lincoln*, ed., Roy P. Basler. New Brunswick, NJ: Rutgers University Press, 1953.

<sup>14</sup> *Dred Scott v. Sandford*, 60 U.S. 393, 415 (1856).



numbered among its people. He forms no part of the sovereignty of the State, and is not therefore called on to uphold and defend it.

Although Taney's decision was rejected by the Civil War Amendments, the assumption of the passage cited was not. Indeed, this same structure is at the heart of Lincoln's Gettysburg Address and Emancipation Proclamation – except that the “state” that is receiving the sacrifice is now the United States, not its member states.<sup>15</sup> Those excluded from military service have understandably claimed that they are losing out on accessing the particular prestige accorded to it,<sup>16</sup> whereas those who serve but are not accorded full citizenship rights have found that their exclusion can be challenged as violating the mutually constitutive nature of sacrifice and citizenship.

Although this traditional citizen/sacrifice coupling is still visible, it is also easy to see it as anemic – whether it has become weak because of a “Vietnam gap” between the military and the rest of the population, the end of conscription under President Nixon, or some other reason, such as a diminished need for active mass participation in warfare. Many of the clichés about and diagnoses of American society after World War II suggest that America is a hedonistic, self-centered, consumer society and that the traditional relationship of citizenship to military service is disintegrating.<sup>17</sup> One commentator notes “a central paradox of present-day American militarism. Even as U.S. policy in recent decades has become progressively militarized, so too has the Vietnam-induced gap separating the U.S. military from society persisted and perhaps even widened.”<sup>18</sup>

<sup>15</sup> Abraham Lincoln, Gettysburg Address (Nov. 19, 1863), in 7 *Collected Works of Abraham Lincoln*, ed., Roy P. Basler. New Brunswick, NJ: Rutgers University Press, 1953; Abraham Lincoln, The Emancipation Proclamation (Jan. 1, 1863), available at [www.archives.gov/exhibits/featured\\_documents/emancipation\\_proclamation/transcript.htm](http://www.archives.gov/exhibits/featured_documents/emancipation_proclamation/transcript.htm).

<sup>16</sup> Elaine Scarry, “War and the Social Contract: Nuclear Policy, Distribution, and the Right to Bear Arms,” 139 *University of Pennsylvania Law Review*, 1257, 1308 (1991). Scarry notes: “The logic of that coupling [civil rights and military obligations] is clear: from the earliest moments of the republic to the most recent, the concept of the civil franchise has been inseparable from the record of military participation.”

<sup>17</sup> Lizbeth Cohen, *A Consumers' Republic: The Politics of Mass Consumption in Postwar America*. New York: Knopf, 2003.

<sup>18</sup> Andrew J. Bacevich, *The New American Militarism: How Americans Are Seduced by War*. New York: Oxford University Press, 2005, 28. Bacevich writes at 27: “For the generations that fought the Civil War and the world wars, and even those who served in the 1950s and 1960s, citizenship and military service remained intimately linked. Indeed, those to whom this obligation to serve did not apply – including at various times the poor, people of color, and women – were thereby

Thus, the picture today is complicated. The roles of those giving and receiving sacrifices for the nation are not clearly defined. We can see sacrifice invoked both as an inclusive practice and as an unfairly distributed burden. Having said that, it remains the case that the soldier's sacrifice remains, in U.S. public culture, remarkably sacrosanct, even though (or because) military service is now voluntary and enlistment is openly promoted as providing educational and other benefits. Officials are expected to honor the deaths of soldiers, and their failure to do so is easily turned into a scandal.

It is in relation to this structure, by which soldiers are recognized for their sacrifice, that I wish to locate the private military contractor. There are many reasons to think that contractors' deaths are not sacrifices, most obviously because they are motivated by private gain, not national service. Thus it may be said that they are mercenaries whose deaths do not resonate with a broader national audience.<sup>19</sup> Contractors are not included in the overall troop figures, even though at present in Iraq they are almost at parity.<sup>20</sup> Their deaths are not included in the daily body count of soldiers (by one estimate they have been killed at a rate one fourth that of U.S. soldiers), nor are they given medals, pensions, or public honor.<sup>21</sup>

marked as ineligible for full citizenship . . . In our own time, all of that has changed . . . There is a simple explanation for this fact. As with so many other aspects of life in contemporary America, military service has become strictly a matter of individual choice."

<sup>19</sup> For an argument that contractors should often be seen as mercenaries, see Zoe Salzman, "Private Military Contractors and the Taint of Mercenary Reputation," *New York University Journal of International Law & Policy* (2008) 40: 874–891. Protocol I provides that mercenaries "shall not have the right to be a combatant or prisoner of war." Protocol I, art. 47(1). It defines a mercenary as "one who (a) is specially recruited locally or abroad in order to fight in an armed conflict; (b) does, in fact, take a direct part in the hostilities; (c) is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a Party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party; (d) is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict; (e) is not a member of the armed forces of a Party to the conflict; and (f) has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces."

<sup>20</sup> John M. Broder and James Risen, "Contractor Deaths in Iraq Soar to Record," *The New York Times*, May 19, 2007 (noting that almost "300 companies from the United States and around the world supply workers who are a shadow force in Iraq almost as large as the uniformed military. . . . about 126,000 men and women working for contractors serve alongside about 150,000 American troops, the Pentagon has reported").

<sup>21</sup> *Ibid.* (estimating that 917 contractors had been killed in Iraq). Only a small portion of the total number of contractors are armed – but of that smaller group, there might be mortality rates higher than those of soldiers. Moreover, because the deaths of non-U.S. citizen contractors

(In fact, individual contractors have accepted medals from the United States, including Bronze Stars and Purple Hearts, in recognition of their service. When it was discovered that the recipients were contractors, however, the medals were retracted.<sup>22</sup>) To emphasize their exclusion from sacrificial logics, we need only point out that there is a Tomb of the Unknown Soldier but none for the Unknown Contractor.<sup>23</sup>

We might infer that for the U.S. government and the American public more generally, the contractor's death is neither offered nor received as a "sacrifice." This sense is strengthened when we reflect on the intellectual pedigree that surrounds the turn to private military contractors, that is, ideas associated with privatization, outsourcing, or neoliberalism. These lines of thought and argument are, to say the least, skeptical of public spiritedness as a firm ground on which to build government policy, and for which the very notion of sacrifice might be analytically impossible or morally abhorrent, because sacrifice entails a giving of the inalienable self.<sup>24</sup>

Contractor firms got their first significant entrée into U.S. foreign policy under President Clinton, who did not want to pay the political cost of sending 9,000 reservists to the Balkans. It has been under President George W. Bush (and Vice President Dick Cheney, former head of contracting giant Halliburton) that the move to contractors has accelerated exponentially.<sup>25</sup>

are not, under U.S. Department of Labor rules, required to be reported, there may be under-reporting of that category. See Thomas E. Ricks, *Fiasco: The American Military Adventure in Iraq*. New York: Penguin, 2007, 370–371.

<sup>22</sup> Renae Merle, "Contract Workers Are War's Forgotten: Iraq Deaths Create Subculture of Loss," *Washington Post*, July 31, 2004. A1; see also Ariana Eunjung Cha and Renae Merle, "Line Increasingly Blurred between Soldiers and Civilian Contractors," *The Washington Post*, May 13, 2004 (the Pentagon mistakenly awarded honors to contractors).

<sup>23</sup> To adapt Benedict Anderson's observation. Anderson, in insisting on the national nature of Tombs to the Unknown Soldiers, writes: "The cultural significance of such monuments becomes even clearer if one tries to imagine, say, a Tomb of the Unknown Marxist or a cenotaph for fallen Liberals. Is a sense of absurdity unavoidable?" Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*. New York: Verso 1991, 10.

<sup>24</sup> See, for example, Milton Friedman's complaint about President Kennedy's famous line from his inaugural address – "Ask not what your country can do for you, ask what you can do for your country." Friedman objected: "The organicism, 'what you can do for your country' implies that government is the master or deity, the citizen the servant or votary." Milton Friedman (with the assistance of Rose Friedman), *Capitalism and Freedom*. Chicago: University of Chicago Press, 1962, 1.

<sup>25</sup> Peter Singer, *Corporate Warriors: The Rise of the Privatized Military Industry*. Ithaca: Cornell University Press, 2003, 6, 208–209.

I want to suggest that the turn to the military contractor represents an attempt by officials to designate, by law and policy, a class of persons whose deaths will be banal and insignificant to a national audience. Their existence and relation to the body politic is one of contract, not sacrifice.

As mentioned, among contractors another position can be detected. For the contractors themselves, as well as for their employers and their families, their deaths might indeed be described as “sacrifices” for the company. A journalist recounts that Blackwater has created something of a mini-Arlington at its corporate headquarters: a “memorial rock garden on their compound in Moyock, NC, where each contractor that has been killed while serving the company is given a stone with their name engraved on it.”<sup>26</sup> The use of contractors can thus be called an *outsourcing* of sacrifice – sacrifice takes place, but the significance is removed from the purview of the government and the public and is contained within the private sphere of the family and the company. This view rejects the assumption that sacrifice can exist only for the nation, that the state monopolizes not only legitimate violence, as Max Weber urged, but sacrifice as well.<sup>27</sup>

A third and more startling view, which can be detected in the reception and classification of deaths of U.S. citizen contractors (there are but a few examples of it extending to noncitizens<sup>28</sup>) by the United States, is that the contractors’ deaths not only are sacrifices for the employer but also sacrifices to and for the United States. This view, which President Bush has expressed, owes much to the attack on the contractors in Fallujah.<sup>29</sup> The sacrifice is still “outsourced” in the sense that it is not performed by

<sup>26</sup> Bill Sizemore, “Suit Against Blackwater Over Contractor Goes to Arbitration,” *The Virginia Pilot*, May 20, 2007.

<sup>27</sup> Max Weber, *Politics as a Vocation*, in *From Max Weber: Essays in Sociology*, eds., H. H. Gerth and C. Wright Mills, trans. 1958), 78 (“[A] state is a human community that (successfully) claims the monopoly of the legitimate use of physical force.”).

<sup>28</sup> One example of the recognition of the sacrifices of noncitizen contractors may be seen in 2008 when five Fijian contractors who died in Iraq were awarded the Defense of Freedom medal, the medal specially created to honor the civilian victims of 9/11 at the Pentagon. The U.S. Embassy representative explained to the *Fiji Times* that “the ceremony was to honour the five men who bravely laid down their lives as part of an international effort to fight terrorism and create freedom.” See Monica Singh, *Local War Casualties Get Medals, Fiji Times Online*, August 15, 2008, at [www.fijitimes.com/story.aspx?id=97870](http://www.fijitimes.com/story.aspx?id=97870).

<sup>29</sup> President Bush, commenting on investigations into Blackwater for shooting civilians in September 2007, said, “I will be anxious to see the analysis of their performance,” and “There’s a lot of studying going on, both inside Iraq and out, as to whether or not people violated rules of engagement. I will tell you, though, that a firm like Blackwater provides a valuable service. They protect people’s lives, and I appreciate the sacrifice and the service that the Blackwater

people wearing the marks of the sovereign – the uniform or the flag – but it is not outsourced in the sense that the deaths are seen, recognized, and honored by the United States, albeit in an *ad hoc* and after the fact manner. The state, nation, or public returns as the recipient of the sacrifice, rejecting the opposition between monetary self-interest and national service.

One event that challenged the initial policy move of desacralization was the grotesque and spectacular killing of four Blackwater contractors in March 2004 in Fallujah. Although these contractors had contracted their security services to the private sector, they became reconceived as sacralized citizens, their bodies a visible site for the idea of the nation. The contractors had each entered into an independent contractor service agreement with Blackwater, and they were to provide security and logistical support to ESS Support Services Worldwide, which in turn had contracted with Kellog, Brown & Root, which further had contracted with the U.S. Army.<sup>30</sup>

On March 30, the four contractors were sent on a mission to escort three ESS kitchen supply trucks to a military base. Without maps, with no familiarity of the area, and with no logistical support, the convoy got lost, and on the second day all four were killed. Blackwater's account of the attack emphasized that the contractors were targeted as Americans: "The ESS truck drivers – all third country nationals – were intentionally spared and left to escape. . . . The ambush, apparently, was only intended to kill the Americans."<sup>31</sup>

Amid great public excitement and drawing a crowd numbering in the hundreds, the contractors were dragged through the streets behind a vehicle, torn limb from limb, and immolated. Finally, portions of two of the contractors' bodies were hung on a bridge over the Euphrates River. Denunciations of the United States and the burning of the American flag accompanied the attack. Videotaped and disseminated to media outlets,

employees have made." See Associated Press, *Blackwater Will Probably Leave Iraq, Officials Say*. Oct. 17, 2007. Available at [www.msnbc.msn.com/id/21352794](http://www.msnbc.msn.com/id/21352794).

<sup>30</sup> In the Complaint filed by the Estates of the contract workers, at 7–10, the contractual structure is described.

<sup>31</sup> Blackwater emphasized that the cause of the incident was betrayal by Iraqi forces, not its own incompetence. "Blackwater's Response to 'Majority Staff Report' on 'Private Military Contractors in Iraq: An Examination of Blackwater's Actions in Fallujah.'" Not dated or signed; released in Oct. 2007 at 3.

the event dominated the print and television news in the United States,<sup>32</sup> conjuring an atmospherics entirely different from the “shock and awe” phase of the war.

Immediately after the attacks, officials and mainstream media commentators in the United States compared the deaths to those of the U.S. Army Rangers killed and desecrated in Somalia during the Clinton presidency. The fear of a repeat performance, the “Mogadishu effect,” was no doubt important to officials who had subsequently made timely extraction of injured soldiers pivotal to their protocols – recognizing that the body of the soldier was an invaluable canvas on which to work.<sup>33</sup> What is remarkable, given our assumption that the contractor is ineligible for sacrifice, is the ease with which the contractors were assimilated to a consecrated status.<sup>34</sup>

Four days later, at the direction of the White House and the Secretary of Defense, military officials on the ground were ordered to invade the city, over the objections of on-site commanders.<sup>35</sup> Even though military officials were extremely critical of the fact that while the contractors represented the United States to Iraqis, they (the military) had very little control over the contractors, and despite envy and animosity between ordinary soldiers and contractors, the Marines named the bridge where the bodies were hung “Blackwater Bridge.” The U.S. siege of the city led to approximately 800 Iraqi civilian deaths.<sup>36</sup> The insurgents managed to hold the city, which

<sup>32</sup> Images of the attack ran on the front page of *The New York Times*, *USA Today*, and *The Washington Post*. The publication of the gruesome images was itself a topic of debate.

<sup>33</sup> Gwynne Dyer, “The Fallujah Effect,” *Pittsburgh Post-Gazette*, Apr. 4, 2004 (“In the mid-90s there used to be something called the ‘Mogadishu line’ which the U.S. military were never supposed to cross. Rounding up from the 18 U.S. soldiers who were killed in one day in Mogadishu in 1993, it was a doctrine which stated that the U.S. armed forces should undertake no overseas mission that was likely to cause the deaths of more than 20 American soldiers except when vital national interests were involved.”).

<sup>34</sup> William Kristol, “After Fallujah,” *The Weekly Standard*, Apr. 12, 2004 (“The similarity struck everyone right away: Mogadishu, October 3, 1993; Fallujah, March 31, 2004. But we cannot permit these two outrages to be similar in their effect.” According to Kristol, Mogadishu had led to the U.S. withdrawal from Somalia and to genocide in Rwanda. To “properly honor[] the sacrifice of those who died on March 31 in Fallujah” the U.S. should “deepen” its “commitment to victory” and act aggressively against hostile residents).

<sup>35</sup> Ricks, *Fiasco*, 332–333.

<sup>36</sup> Jeremy Seahill, *Blackwater: The Rise of the World’s Most Powerful Mercenary Army*. New York: Nation Books, 2007, 143.

itself marked a major turning point, showing that the United States could be fought to a standstill.<sup>37</sup>

From what we know of the perspective of the attackers, the event is full of sacrificial thematics and evinces a complex global exchange. According to one account, some participants declared that “With our blood and our souls, we will sacrifice for Islam,” and one resident compared the contractors bodies, dangling from the bridge, to “slaughtered sheep” – one archetypal sacrificial victim.<sup>38</sup> Nir Rosen described the attacks as part of a standardized routine: “There is a word for this sort of thing. In Iraqi dialect, the Arabic word *sahl*, which literally means dragging a body down the street, has grown to mean any sort of public massacre.”<sup>39</sup> In another report, the Brigades of Martyr Ahmed Yassin claimed authorship of the attack, describing it as “a gift from the people of Fallujah to the people of Palestine and the family of Sheikh Ahmed Yassin who was assassinated by the criminal Zionists.”<sup>40</sup>

The sacrificial status of the *victims* (as contrasted with the perpetrators) of terrorist and insurgent violence has received little attention, although Arjun Appadurai has described the genre of the videotaped beheading of kidnapping victims, starting with that of journalist Daniel Pearl, as a “public sacrifice.”<sup>41</sup> Whether the Iraqis were making a conscious reference to their own traditions of sacrifice in their mode of killing the contractors, for the American officials the attackers released the latent sacrificial potential of the contractors as American citizens. To make an analogy to the law of business organizations, the attack pierced the veil of contractual intermediaries, making visible for Americans the displaced tie between themselves and the contractors.

<sup>37</sup> Ricks, *Fiasco*: 344.

<sup>38</sup> Scahill, *Blackwater*, 103.

<sup>39</sup> Nir Rosen, “Home Rule,” July 5, 2004, *The New Yorker*.

<sup>40</sup> John Lee Anderson, “Letter from Baghdad,” *The New Yorker*, May 3, 2004, p. 63.

<sup>41</sup> Arjun Appadurai, *Fear of Small Numbers*. Durham: Duke University Press, 2006, 12. See Faisal Devji, *Landscapes of the Jihad: Militancy, Morality, Modernity*. Ithaca: Cornell University Press, 2005, 96. Devji writes: “Indeed, there is a sense in which even the jihad’s enemies – or victims – come to participate in the rites of martyrdom by dying alongside its suicide bombers in spectacular set-pieces like the attacks of 9/11. This may explain why supporters of the jihad are forever drawing parallels between its own dead and those of its enemies, because both coalesce in a community of martyrdom made possible by the virtual intimacy of the media, which allows each party to exchange words and deeds with the other.”

If we ask what went wrong with the effort of the United States to displace sacrificial meaning, we must turn to the attackers' specific framing of their assault as one on the United States. As important as the communications infrastructure of a hand-held video recorder and distribution was – and it was clearly essential – we should not let a focus on the technology overshadow the content of what was communicated and which message was received. To understand these, we must have recourse to American popular sovereignty, which, as Kahn puts it, “tells us that we – each of us – are the popular sovereign, that our bodies constitute its body.”<sup>42</sup> It was precisely this location of sovereignty in the body of the individual citizen that is credited for the restriction of mercenary activity by the United States through neutrality laws shortly after the revolution. This distribution of sovereignty made it increasingly difficult for states to deny responsibility for or identification with the violence employed by their citizens abroad – be that mercenary, filibuster, privateer, or pirate violence. Doing so was “inconsistent with view that sovereignty came not from God through the monarch but from man or the citizen himself. With the individual citizen as the ostensible source of sovereignty, the state could no longer disclaim responsibility for his violent activities in the international system.”<sup>43</sup> In destroying the contractors' bodies, the Fallujah attackers simultaneously gave them back to the United States as citizens. To avoid sacrifice more successfully, policy makers should not employ U.S. citizens, and yet doing so would bolster claims that the contractors are mercenaries.

The notion of sacrifice does not entirely grasp the provocative quality of the action in Fallujah – although the literal meaning of the word *sacrifice*, to “make sacred,” seems on point so far as the reception by the United States is concerned. After all, the attack was aimed at someone else's sacred character; it was a “desecration.” Desecration, however, entails destroying something *already* sacred – as in the cases of “Koran desecration” or in the proposed constitutional amendment banning the “desecration” of the

<sup>42</sup> Kahn, *Putting Liberalism in Its Place*, 246.

<sup>43</sup> Janice Thomson, *Mercenaries, Pirates and Sovereigns; State-Building and Extraterritorial Violence in Early Modern Europe*. Princeton: Princeton University Press, 1994, 148. Thomson describes the controversy over mercenaries who sold their labor on the international market as posing the question of whether the mercenary was “a market actor, pursuing private ends through the sale of his labor? Or was he a political actor for whose actions his home state could be held accountable?” (55).



U.S. flag. Given that one of the attractions of military contract workers is that they are not located as sacred characters – unlike the soldier in the armed forces, whose death is officially a national loss – the reception of the event entailed a resacralization (seeing the contractors as citizens, as belonging to the sovereign).<sup>44</sup> Not only did the Fallujah killing bring added scrutiny to the contractor sector, it also helped to legitimate it. Like soldiers, contractors could have national meanings inscribed on their bodies. The Fallujah case showed that the dichotomy between the contractor and sacrifice could be transcended: relations could be both contractual and sacrificial.

Sacrifice is often described as action contained within ritual and legal formats and is thus formalized and institutionalized. In this incident it emerges as an assertion, a claim that cuts across the legal order advanced by the United States. The designation of “sacrifice” is essentially retrospective. Compared with sacrifice that is contained by the state, exemplified by war memorials, this is unexpected and entrepreneurial.

Despite the moment of consecration and the assimilation of the contractors to the high status enjoyed by the victims of the attack in Somalia, the event did not, of course, *legally* transform killed contractors into killed soldiers. The families of the Fallujah contractors, remaining legally in the domain of contract and tort law, brought a fraud and wrongful death suit against Blackwater in North Carolina state court. Blackwater has vigorously sought to avoid facing a group of local jurors, which might award a large punitive damages award. The soldier, compensated with recognition for “sacrifice” – honor, medals, and other benefits of the regulatory state, is generally excluded from state and federal courts. (This exclusion is but a part of the overall transformation of the soldier’s status to something closer to a possession of the United States. Whereas the contractor can quit, the soldier who leaves can, under certain circumstances, be

<sup>44</sup> For an examination of the importance of negation in creating the sacred, see Michael Taussig, *Defacement: Public Secrecy and the Labor of the Negative*. Stanford: Stanford University Press, 1999, 13. Taussig writes: “Around me there is no sacrifice, nor much passion for sacred things. The disenchantment of the world still seems to me a largely accomplished fact. What exists now is perhaps best thought of as a new amalgam of enchantment and disenchantment, the sacred existing in muted but powerful forms, especially – and this is my central preoccupation – in its negative form as desecration.” I would suggest that there remain in U.S. political culture official sites of the sacred – the Constitution and other manifestations of the popular sovereign – even in the absence of “desecration.”

killed for desertion. The soldier's enlistment contract is akin to what Max Weber described as a "status contract," which is what some courts call it as well.)<sup>45</sup>

Despite its founder Erik Prince's claim, to want to be the military services version of Federal Express, Blackwater's response to the litigation reveals that in some respects the company does *not* want to be a private actor.<sup>46</sup> Blackwater has argued that because war is essentially a federal function, the claim should not be reviewed by state courts and attempted to shift the litigation from the everyday world of contract and tort – in which one might expect a private actor – into another register, that of sovereignty and the sovereign's immunity from suit.<sup>47</sup> Two traditions intersect: one (derived from popular sovereignty) that allows Americans to see themselves in the bodies of fellow citizens, to see "America" when they see the contractors' bodies, and another (the tradition of state sovereignty) by which the state is itself a sovereign and immune from suit.

For two years Blackwater pushed these various claims unsuccessfully, finally seeking review from the U.S. Supreme Court with the assistance of Kenneth Starr.<sup>48</sup> Blackwater finally derailed the case by invoking the binding arbitration clause in the contract – in April 2007, a federal court sent the matter to arbitration, which takes place in private and does not offer punitive damages.<sup>49</sup> (The inclusion of binding arbitration clauses in employment and independent contractor contracts is itself related to the broader currents of privatization, with its valorization of nonpublic fora.<sup>50</sup>)

<sup>45</sup> See, for example, *In re Grimely*, 137 U.S. 147, 151–152 (1890) (describing enlistment contracts as "special because they bring about a change in status, from civilian to soldier, just like marriage contracts change a man's status to husband and the woman's status to wife"); see also *Qualls v. Rumsfeld*, 357 F.Supp.2d 274 (D.D.C. 2005) (denying motion for preliminary injunction by serviceman claiming that government's "stop-loss" policy which involuntarily extended his service in Iraq was a breach of contract included provision for such extension).

<sup>46</sup> *Nordan v. Blackwater Security Consulting, LLC*, 382 F.Supp.2d 801 (E.D.N.C. 2005).

<sup>47</sup> *Nordan*, 382 F.Supp.2d at 807.

<sup>48</sup> *Cert. denied, Blackwater Sec. Consulting, LLC v. Nordan*, 127 S. Ct. 1381 (2007). John M. Broder and James Risén, "Blackwater Mounts a Defense with Top Talent," *The New York Times*, Nov. 1, 2007.

<sup>49</sup> Order, Apr. 20, 2007, Judge Fox, U.S. District Court, N.C. 2:06-CV-49-F.

<sup>50</sup> Clyde Summers, "Mandatory Arbitration: Privatizing Public Rights, Compelling the Unwilling to Arbitrate," 6 *University of Pennsylvania Journal of Labor and Employment* (2004) "The effect of these contracts has been to privatize justice, substituting privately constructed arbitration for publicly established courts."

The Fallujah event also reached Congress when the Republican Party lost its majority in the 2006 midterm elections and Congressman Waxman began to hold hearings on the contractor industry, and Blackwater in particular. In these hearings Prince, the head of Blackwater, emphatically rejected the mercenary label. He referred to the contractors as “veterans” (which many of them are) and to Blackwater as a place where they reenlist: “Military contractors, comprised largely of military veterans ‘re-enlisting’ through the private sector like the four Americans killed in Fallujah, fill vital gaps in the all-volunteer force.”<sup>51</sup> This marvelous locution – “‘re-enlisting’ through the private sector” – captures well the novel space of outsourced sacrifice as both private and sacrificial. Blackwater officials also offered testimony from a State Department official: “We will always remember their courage, commitment, and ultimate sacrifice for their country.”<sup>52</sup>

In our understanding of sacrifice as “outsourced” yet still sacrifice for a national audience, we run into a fundamental question. Is sacrifice a giving of the self, or can it be the giving of a substitute?<sup>53</sup> In many of the classic stories of sacrifice, there is a substitution of the sacrificial victim at the last minute (the ram in place of Isaac, a hind in place of Iphigenia), although this (some commentators say) is transcended with the self-sacrifice of Jesus or that of Socrates. The contractor case seems to teeter on just this divide, between a giving of the self and the giving of the substitute. In this emergent conception of outsourced sacrifice, does the American public perceive the loss of the contractor as a giving of itself, as seems to be the case with the soldier? If not, then we might think of the contractor as more closely tied to the substitution version of sacrifice – more the ram than Isaac. The significance of this, politically speaking, is that the loss of the contractor will not serve as a check on officials’ willingness to have them die.

<sup>51</sup> “Blackwater’s Response to ‘Majority Staff Report’ on ‘Private Military Contractors in Iraq: An Examination of Blackwater’s Actions in Fallujah.’” Not dated or signed; released in Oct. 2007 at 10.

<sup>52</sup> Statement of Andrew Howell, Esq., General Counsel, Blackwater USA for the Committee on Oversight and Government Reform, Feb. 7, 2007 at 2 quoting Sean McCormick. Indeed, the State Department had become increasingly close with and reliant on Blackwater since it hired the company to provide for the security of much of its personnel around the world.

<sup>53</sup> 2 *Genesis* 12–15; Maurice Bloch, *Prey into Hunter: The Politics of Religious Experience*. New York: Cambridge University Press, 1992, 30.

In a more recent scandal involving Blackwater, contractors shot and killed 17 Iraqi civilians in Baghdad in 2007. As with the contractors' deaths, the deaths of the civilians at first appeared to push against the legal structure that the United States (and the now sovereign Iraqi state) has designated for them as insignificant. In this case, the repressed category is not sacrifice but homicide. Months after the Fallujah attacks and just before leaving Iraq and transferring sovereignty from the Coalition Provisional Authority to Iraq, Paul Bremer issued Order 17, giving the contractors (Blackwater had been guarding Bremer) immunity from prosecution under Iraqi law,<sup>54</sup> implicitly designating those killed by the contractors as "not murdered." Numerous legal reforms are currently proposed that seek to increase accountability of the contractors and establish more adequate structures of oversight and control. In late 2006, a defense spending bill, with very little notice, placed contractors under military law, the Uniform Code of Military Justice – but doubts have been raised about exercising military jurisdiction over civilians.<sup>55</sup> Most recently, Iraq (through the 2008 Status of Forces Agreement with the U.S. and fueled by anger at the killing of civilians in Baghdad by Blackwater) asserted jurisdiction over contractors.<sup>56</sup> And back in the U.S., in late 2008, several of the Blackwater workers involved in the Baghdad shooting have been indicted for manslaughter.<sup>57</sup> Overall, the contractors are increasingly subject to various forms of civil and military jurisdiction in the U.S. and Iraq but there remains much uncertainty.

What policy discussions have *not* focused on is the other side of liability – the "sacrificial" liability of the U.S. government. There have been

<sup>54</sup> Coalition Provisional Authority Order Number 17 (Revised), Status of the Coalition Provisional Authority, MNF-Iraq, Certain Missions and Personnel in Iraq, at [www.cpa-iraq.org/regulations/20040627\\_CPAORD\\_17\\_Status\\_of\\_Coalition\\_Rev\\_with\\_Annex\\_A.pdf](http://www.cpa-iraq.org/regulations/20040627_CPAORD_17_Status_of_Coalition_Rev_with_Annex_A.pdf) (Section 4.3 "Contractors shall be immune from Iraqi legal process with respect to acts performed by them pursuant to the terms and conditions of a Contract or any sub-contract thereto").

<sup>55</sup> National Defense Authorization Act for Fiscal Year 2007, Pub. L. No. 109-364, §552, 120 Stat. 2083, 2217 (amending 10 U.S.C. § 802(a)(10)).

<sup>56</sup> Agreement Between The United States Of America and The Republic Of Iraq On The Withdrawal Of The United States Forces From Iraq And The Organization Of The Activities During Their Temporary Presence In Iraq, Art. 12(2), November 17, 2008, at [www.whitehouse.gov/infocus/iraq/SE\\_SOFA.pdf](http://www.whitehouse.gov/infocus/iraq/SE_SOFA.pdf).

<sup>57</sup> *United States v. Slough et. al.*, Indictment, filed Dec. 4, 2008, CR-08-360 (D.C.D.C.); see Ginger Thompson and James Risen, 5 *Guards Face U.S. Charges in Iraq Deaths*, *The New York Times*, December 6, 2008.

no proposals to bury contractors at Arlington National Cemetery or to insert them into the politically costly structures of honor and recognition that played an important role in the rise of the industry in the first instance. If contractors are to act on behalf of the sovereign – which, if they are to kill and be killed in the interests of the United States, they are – perhaps they should bear the marks of the sovereign as well. Of course, this could generate other problems, because to designate an actors' suffering as a sacrifice for the nation is to grant a particular form of prestige and power.

### The Family and the Sovereign

The concept of sacrifice gives a particular kind of meaning to death, suffering, and violence, and it also seems to generate what we might think of as sacrificial “energy.”<sup>58</sup> This sacrificial energy can be used to mobilize patriotic sentiment, but it is not always easy to manipulate. I argued in the last section that, in an attempt to avoid the potential misdirection of that sacrificial energy against the state, the U.S. government uses private military contractors to distance the sacrificial action from its potential association with the state. In that case, the attempt was not entirely successful, and this section describes a few parallel ways in which the idea of sacrifice is negotiated – ways in which U.S. officials try to privatize (and thereby neutralize) sacrificial energy that they cannot control and nonstate actors attempt to remobilize that energy. Whereas in the contractor case, the United States uses the legal form of contract to privatize sacrifice, the examples in this section show a different kind of privatization: here, we can see an attempt to privatize sacrifice either by calling on gendered understandings of sacrifice or by arguing that it is primarily in the private sphere of the family that death has meaning. Much as in the contractor case, however, the sacrifice theme cannot be so easily contained.

One reason that this sacrificial energy is so volatile is that several different conceptions of sacrifice circulate simultaneously in U.S. public culture. As a result, who sacrifices for whom is not always entirely clear, and the ambiguity means that the idea of sacrifice can be deployed by people in many different spheres. I will outline a few of these different conceptions

<sup>58</sup> See Henri Hubert and Marcel Mauss, *Sacrifice: Its Nature and Function*, trans. W. D. Halls, Foreword by E. E. Evans-Pritchard. Chicago: University of Chicago Press, [1898] 1981, 12.

of sacrifice and, using the examples of Jessica Lynch and Cindy Sheehan, discuss how these conceptualizations are manipulated both consciously and unconsciously by actors who are trying to claim, or to avoid, the various meanings that death and suffering can generate.

Two of the most frequently invoked constructions of sacrifice seem entirely at odds with one another: on the one hand, we have an individualistic and egalitarian conception of sacrifice (in which sacrifice for one's country can actually ground a claim to equal rights). On the other is a gendered division of sacrificial labor in which the primary sacrificial role is taken by men. This gendered conception in turn sets up a particular relationship of sacrifice and the family. I will discuss some of the permutations of that relationship later.

Nancy Jay has elaborated on the gendered conception of sacrifice. She describes sacrifice as a way in which men become the creators of life and the social order. It frees men of the "consequences of being born a woman . . . and at the same time integrate[s] the pure and eternal patrilineage."<sup>59</sup> Lincoln's Gettysburg Address, with its invocation of the "bringing forth" and "conception" of the "nation" by "our fathers," the death of soldiers so that the "nation might live," and the "new birth of freedom" that their sacrifice allows, illustrates the point.<sup>60</sup> Through military sacrifice, men give birth to themselves and to society; they become part of and create the nation; they encompass the duality of male and female. The female obverse of this conception, captured in the notion of republican motherhood, is that women sacrifice as mothers, giving their children to the state.<sup>61</sup> The "family," associated with the female-gendered private realm, thus has a shifting position with respect to sacrifice. If in some conceptions, the family gives up its sons for the state; in others, the state goes to war to protect the family – a parallel narrative to one in which men go to war to protect women.

An individualistic conception of sacrifice, which draws on the revolutionary effects of the women's and civil rights movements of the 1960s

<sup>59</sup> Nancy Jay, *Throughout Your Generations Forever: Sacrifice, Religion and Paternity*. Chicago: University of Chicago Press, 1992, 40.

<sup>60</sup> Abraham Lincoln, Gettysburg Address (Nov. 19, 1863), in 7 *Collected Works of Abraham Lincoln*, ed., Roy P. Basler. New Brunswick, NJ: Rutgers University Press, 1953.

<sup>61</sup> Jean Bethke Elshtain, "Sovereignty, Identity, Sacrifice," in M. Ringrose and A. J. Lerner, eds., *Reimagining the Nation*. Philadelphia: Open Press, 1993.

and 1970s, seems to have made some headway against the gendered conception. In this construction, sacrificial eligibility follows legal and social notions of equality and individualism. Women and racial minorities have asserted equality claims to serve in the military, and service in the military has grounded equality claims. As a citizen, each person can participate in sacrificial dynamics, and those who participate in sacrifice have a claim to equal citizenship.<sup>62</sup>

If, however, we focus on the shared vulnerability entailed by the existence of nuclear weapons as a kind of conscription to a military conflict, we see the matter differently. The post-WWII era emerges as one in which all Americans are grasped by the potential for sacrificial death, albeit a passive sort. In the Cold War nuclear age, for example, each citizen was told that he or she could be incinerated without a moment's notice. In this more passive idea of sacrifice, of *being* sacrificed, the threat of nuclear war represents the entire citizenry's availability for sacrifice. This is Paul Kahn's conception of the matter:

Nuclear weapons are a constant reminder that the state's interests come first and last, that all individuals – citizens and noncitizens alike – may be sacrificed to the primacy of the sovereign state. These weapons rest implicitly on a policy of conscription that extends to every citizen – and even beyond – for which no exemptions are granted.<sup>63</sup>

In the current war on terror, we can see a similarly passive conception of sacrifice: the conflict apparently does not require a full military and economic mobilization. Citizens learn to equate attacks on a small percentage of their number as an attack on the United States.

The combination, then, of a developing notion of individual rights and an imagined shared apocalypse, challenges a conception of society as composed of distinct groups and offers a view in which each body can instantiate the sovereign regardless of race, gender, or even nationality. Differentiated conceptions of sacrifice have not disappeared, however; within the military, soldiers can see themselves as sacrificing not for the

<sup>62</sup> See Judith Shklar, *American Citizenship: the Quest for Inclusion*. Cambridge, MA: Harvard University Press, 1991.

<sup>63</sup> Paul Kahn, "Nuclear Weapons and the Rule of Law," 31 *New York University Journal of International Law and Policy*, 349, 355, 1999.

country but rather for their unit, their “band of brothers.” We might also think of an older conception of military sacrifice, as formulated by Samuel Huntington, in which a “monastic” military sacrifices for a corrupt civilian population;<sup>64</sup> or a more contemporary version, in which the hardworking residents of the “heartland” sacrifice for blue-state elites.<sup>65</sup> While Senator Obama, on the campaign trail in 2008, invoked death for the U.S. as a powerful demonstration of unity: soldiers “have fought together and bled together and some died together under the same proud flag. They have not served a Red America or a Blue America – they have served the United States of America.”<sup>66</sup> In this section, the focus is on the shifting sacrificial politics of gender and the family, but the range of conceptualizations is worth referencing as tribute to its potential for meaningful manipulation and mobilization.

The story of Jessica Lynch can be seen as a case in which the sacrifice concept was extensively manipulated. Originally a “heroic” story that seemed to speak to a gender-neutral notion of military service and sacrifice, it ultimately suggests that the gendered conception of sacrifice remains significant. A 19-year-old serving in Iraq in late March 2003, the early days of the U.S. invasion, Private Jessica Lynch was part of a supply convoy that lost its way and came under attack. She fought off her attackers, firing until she ran out of bullets and was injured, captured, and, according to some accounts (but not Lynch’s), raped.<sup>67</sup> A week later, a daring and videotaped rescue mission brought her home. Lynch’s story saturated the news, appearing on the cover of national magazines as a “female Rambo” and an “American hero.”

Lynch’s presence on the battlefield should have served to undercut the gendered conception of sacrifice – how can men be sacrificing to protect

<sup>64</sup> See, for example, Samuel P. Huntington, *The Soldier and the State: The Theory and Politics of Civil-Military Relations*. Cambridge, MA: Harvard University Press, 1964, 465–466. Huntington describes West Point as a Sparta in a the “midst of Babylon.” He continues: “Yet today America can learn more from West Point than West Point from America. . . . If the civilians permit the soldiers to adhere to the military standard, the nations themselves may eventually find redemption and security in making that standard their own.”

<sup>65</sup> Robert D. Kaplan, *Imperial Grunts: The American Military on the Ground*. New York: Random House, 2005, 259–260.

<sup>66</sup> Mark Z. Barabak and Richard B. Schmitt, *Barack Obama has Advantage of Big Bucks, a Big Name: Colin Powell*, Oct. 20, 2008, *L.A. Times*.

<sup>67</sup> Véronique Pin-Fat and Maria Stern, “The Scripting of Private Jessica Lynch: Biopolitics, Gender and ‘Feminization’ of the U.S. Military,” *Alternatives*, 30: 25–53, 2005.



women if women are dying beside them? As though in answer to this question, the Lynch story turned into one in which she was the victim, rescued by men; it focused on her return to civilian life, in which she hoped to become a nurturer, a kindergarten teacher.<sup>68</sup> Lynch was carefully reinscribed as female in the traditional genre of womanhood in peril, the captive narrative.<sup>69</sup> In addition, the facts behind the heroic version of Lynch's story began to unravel: Lynch insisted that she hadn't fired a shot, because her weapon was jammed; the Iraqi doctors, it turned out, had been professional and caring, and the rescue itself actually encountered little resistance. Lynch rejected the rendition of herself as a hero: "That wasn't me. I'm not about to take credit for something I didn't do. . . . I'm just a survivor." She complained to Diane Sawyer that the Pentagon "used me to symbolize all this stuff."<sup>70</sup>

Lynch's story simultaneously belies a generalized aversion to sacrifice and demonstrates several ways in which the sacrifice narrative was first gendered and ultimately undercut. Indeed, the U.S. relation to sacrifice is not simply one of avoidance: sacrifice has been used rhetorically to strengthen patriotic and nationalistic conceptions of the state. There are also numerous ways in which U.S. officials attempt to contain, ignore, avoid, or displace sacrificial energy, however. Thus, even while Lynch was being proclaimed a hero at the center of a media frenzy, the eleven U.S. soldiers who died in the same attack (one of whom was a mother) were not mentioned. The silence around their deaths is reflected in many other attempts to minimize the visibility of soldier sacrifice and – through elisions of different conceptualizations of sacrifice – to displace sacrifice into the same "private" realm where Jessica Lynch's story ultimately ended.

The ban on photos of returning caskets of U.S. soldiers arriving at the Dover Air Force Base in Delaware is one such attempt and begins to demonstrate how the relationship of sacrifice and family can be manipulated. According to President Bush's spokesperson, the policy (implemented in 1991 by then Secretary of Defense Dick Cheney) served to protect the "privacy" of the affected families, even though there are no

<sup>68</sup> Id.

<sup>69</sup> Id.

<sup>70</sup> Quoted in David Kirkpatrick, "Jessica Lynch Criticizes Accounts of Her Ordeal," *The New York Times*, Nov. 7, 2003.

identifying marks on the caskets.<sup>71</sup> A Pentagon official explained that the Dover base is “a tarmac, not a parade ground.”<sup>72</sup> This is not the reception that we expect for the return of “heroic” soldiers, but in the context of an increasingly unpopular war, the potential political danger posed by these consecrated persons is palpable. The energy released by the dead, in this context, is channelled by officials into “privacy,” yet privacy seems imposed, in a preemptive effort to forestall the sense that the families could publicly utilize the energy released from sacrifice. Not only is the press barred from the base, so too are the deceased soldiers’ families, those whose “privacy” is being protected.<sup>73</sup>

This is an intriguing privatization and one that reflects not only the particularities of the war in Iraq but also (and more interestingly) turns to the private sphere and the family to explain loss on behalf of the state. From this view, the purpose of the political community is seen as the preservation of private and family life – the private becomes the core public value, as bemoaned by Hannah Arendt.<sup>74</sup> This need not result in a liberal interest group conception of the political sphere, however, because the family is also a site full of sacrificial rhetoric that can be deployed to transcend the private.

For officials, granting such prominent place to the private sphere and the family carries its own risks, because there is no guarantee that families will not make public use of their now exalted “private” position, as exhibited by the families of those killed in the 9/11 attacks. Those families were able to force an independent investigation into the attacks,<sup>75</sup> even as the president

<sup>71</sup> A settlement in a suit against the Pentagon brought under the Freedom of Information Act has succeeded in releasing some of the images, but the ban on the press remains. Ralph Begleiter, who worked for the release of the images saw it as “significant victory for the honor of those who have made the ultimate sacrifice in war for their country, as well as for their families, for all service personnel and for the American people.” John Files, “Pentagon Agrees to Issue Photos of Coffins of Iraq War Dead,” *The New York Times*, Aug. 5, 2005.

<sup>72</sup> Lt. Col. Barry Venable, Defense Department Spokesman, quoted in Rebecca Carr, “Pentagon Denies Mother’s Plea for Photo,” in *Times Argus* Mar. 24, 2005.

<sup>73</sup> John Files, “Pentagon Agrees to Issue Photos of Coffins of Iraq War Dead,” *The New York Times*, Aug. 5, 2005. “The Pentagon issued a statement, saying, ‘As with all information, including images, the Department of Defense has an obligation and a responsibility to strike a balance between our strong desire to be as transparent as possible and the legitimate concerns to protect the privacy of military families and as necessary, operational security.’”

<sup>74</sup> See Hannah Arendt, “Public and Private,” in *The Human Condition*. Chicago: University of Chicago Press, 1958.

<sup>75</sup> See Jonathan Simon, “*Parthasiastic* Accountability: Investigatory Commissions and Executive Power in an Age of Terror,” 114 *Yale Law Journal*, 1419 (2005).

successfully channelled the energy and fear generated by the attacks in the directions that he wished. To examine the potential implications of an emphasis on the family and the private sphere, I conclude this section by examining the widely publicized story of Cindy Sheehan, the 48-year-old mother of U.S. Marine Casey Sheehan, who was killed in Iraq in April 2004, a few days after the contractors in Fallujah.

Cindy Sheehan staged a vigil outside President Bush's Texas ranch during his summer holiday.<sup>76</sup> She demanded that the president meet with her so that she could question him about the war, which at that point had claimed more than 1,800 U.S. soldiers' lives (a number that, as usual, did not include contractors or Iraqi civilians killed). Claiming the power of sacrifice that she had made as a mother, she urged Bush to withdraw all U.S. troops from Iraq. Sheehan had met with the president during one of the many closed-door sessions he held with the families of soldiers killed in the war, but she took offense at his jovial attitude, his refusal to say her son's name, and at the fact that he referred to her as "Mom."<sup>77</sup> Her protest rejected the president's description of grief as private or, more precisely, mobilized her private suffering in the public domain.

Sheehan became both a focal point for antiwar demonstrators and a target for some of the president's supporters who accused her of aiding the enemy in the "global war."<sup>78</sup> Sympathetic commentators dubbed Sheehan's outpost outside the president's ranch "Camp Casey," in honor of the dead son, but when she and her supporters placed small wooden crosses on the roadside outside Bush's ranch – one for each U.S. soldier killed – other parents of the deceased soldiers objected to the mobilization of *their* children's deaths in the service of an antiwar protest. Competing concepts of sacrifice were used either to support or reject her claim to protest. A conservative commentator wrote that Sheehan's "loss of a son does not give her particular standing with respect to analyzing the nature of this conflict or the consequences of abandoning the fight."<sup>79</sup>

<sup>76</sup> MacNeil Lehrer Newshour, Aug. 16, 2005, "Cindy Sheehan's Protest," transcript at [www.pbs.org/newshour/bb/military/july-dec05/sheehan\\_8-16.html](http://www.pbs.org/newshour/bb/military/july-dec05/sheehan_8-16.html).

<sup>77</sup> Richard W. Stevenson, "Of the Many Deaths in Iraq, One Mother's Loss Becomes a Problem for the President," *The New York Times*, Aug. 8, 2005.

<sup>78</sup> Frank Gaffney, guest on MacNeil Lehrer Newshour and columnist for the *Washington Times*. Aug. 16, 2005, "Cindy Sheehan's Protest," at [www.pbs.org/newshour/bb/military/july-dec05/sheehan\\_8-16.html](http://www.pbs.org/newshour/bb/military/july-dec05/sheehan_8-16.html).

<sup>79</sup> Frank Gaffney, "Poster Child for Surrender," *Washington Times*, Aug. 16, 2005. Frank Rich, "The Swift Boating of Cindy Sheehan," *The New York Times*, Aug. 21, 2005, summarized: "True to form, the attack on Cindy Sheehan surfaced early on Fox News, where she was immediately

Indeed, the various ideas of sacrifice can easily become blurred: Was Sheehan mobilizing her son's sacrifice, or was she speaking of her own sacrifice as a mother? Was hers a private or a public loss? Was it an individual or a collective loss? Some claimed that her effort to bring her loss into the public, to nationalize and publicize it, was a means of exploiting her private position. Others wrote that she was either a dupe of larger forces opposing the President, or disqualified as an innocent victim because her political activism against the war made her a partisan.

As Sheehan's protest gained momentum and support – including paid television advertisements in Texas and a national tour – the White House countered with its own war mother, Tammy Pruett, whose husband and four sons had served (but not died) in Iraq. President Bush praised the family in a public address: “America lives in freedom because of families like the Pruetts.”<sup>80</sup> Sheehan's supporters pointed out, and Ms. Pruett conceded that, as Pruett had not lost anyone in the war, she should not be compared with those who had.<sup>81</sup> One parent declared that Sheehan “better not be presenting herself as the voice of all the fallen.”<sup>82</sup> A tour under the banner of “You Don't Speak for US, Cindy” began in Sheehan's hometown and made its way to Bush's ranch. On the other side of the debate, candles were lit across the United States in more than 1,600 antiwar protests.<sup>83</sup> The father of a soldier killed in Iraq objected: “The lady's not honoring her son's sacrifice, because we don't have a draft, and he went and signed his name on the dotted line.”<sup>84</sup> In other words, because Sheehan's son's action was voluntary and was a sacrifice that he himself had authored, her complaint was really with him.

Again, several ideas about sacrifice are simultaneously present, and different formulations lead to drastically different conclusions about official and individual responsibility. If Sheehan thought that her son's death was

labeled a ‘crackpot’ by Fred Barnes. The right-wing blogosphere quickly spread tales of her divorce, her angry Republican in-laws, her supposed political flip-flops, her incendiary sloganeering and her association with known ticket-stub-carrying attendees of ‘Fahrenheit 9/11.’ Rush Limbaugh declared that Ms. Sheehan's “story is nothing more than forged documents – there's nothing about it that's real.”

<sup>80</sup> Elizabeth Bumiller, “In the Struggle over the Iraq War, Women Are on the Front Line,” *The New York Times*, Aug. 29, 2005.

<sup>81</sup> *Id.*

<sup>82</sup> Abby Goodnough, “In War Debate, Parents of Fallen Are United Only In Grief,” *The New York Times*, Aug. 27, 2005.

<sup>83</sup> Paul Harris, “Mother Tips Balance against Bush,” Aug. 21, 2005, *The Observer*.

<sup>84</sup> *Id.*

a waste, then perhaps officials are responsible for his death having been a meaningless death – rather than a sacrifice, the death starts to look more like a homicide. Her claim that it *was* a meaningless death also raises questions about the purported purpose of the war. As another mother of a dead soldier said, “I read that she questioned whether her son died for a noble cause, and I totally disagree with her on that. . . . Her son died for the most noble cause: human rights.”<sup>85</sup> In this formulation, official responsibility is intermingled with a more “universal” cause. Casey Sheehan did not sacrifice for the American popular sovereign so much as for human rights or, instead, the two are intermingled. Contemporary advertisements for the army portray the delivery of freedom to the oppressed and sustenance to the needy. Indeed, this version of U.S. military action as oriented less to the destruction of an enemy than the expansion of universal rights is increasingly visible.<sup>86</sup> It speaks to a transcendent imperial project in which the U.S. is willing to sacrifice to save others and to provide the basic public good of global security. In its strongest form, which perfectly inverts narratives of the U.S. as an exploitative empire, the globe is seen as covered in the blood of Americans who have died for others. As former presidential candidate John McCain urged: “But the fact is, America is the greatest force for good in the history of the world. My friends, we have gone to all four corners of the Earth and shed American blood in defense, usually, of somebody else’s freedom and our own.”<sup>87</sup> In the same vein, President Bush, when asked on *60 Minutes* whether he owed an apology to the people of Iraq, responded that, on the contrary, “the Iraqi people owe the American people a huge debt of gratitude” and most Iraqis “understand that we’ve endured a great sacrifice to help them.”<sup>88</sup>

What unites the examples of the contractors and Sheehan is that it is nonstate actors who are advocating for greater recognition of sacrifice and consecration, while officials seem unnerved by the unpredictability and political danger inherent in doing so. This posture of officials is,

<sup>85</sup> Id.

<sup>86</sup> Although, as Ann Stoler remarks, it would be a mistake to see American empire as unique in imagining itself as beneficent and committed to universal values. Ann Laura Stoler, “Degrees of Imperial Sovereignty,” 18, 1: *Public Culture*, 125–146, 133 (2006).

<sup>87</sup> Transcript of Second McCain–Obama Debate, at [www.cnn.com/2008/POLITICS/10/07/presidential.debate.transcript](http://www.cnn.com/2008/POLITICS/10/07/presidential.debate.transcript).

<sup>88</sup> Transcript of President Bush in an interview with Scott Pelley on *60 Minutes*, January 14, 2007, at [www.cbsnews.com/stories/2007/01/14/60minutes/main235919\\_page2.shtml](http://www.cbsnews.com/stories/2007/01/14/60minutes/main235919_page2.shtml).

presumably, grounded in the specifics of the Iraq conflict and in the particular examples that I have selected. Even so, some more general patterns can be discerned. Calling a death a sacrifice can be a sort of accountability, because the designation means that a death was for some higher purpose, which is a claim that can then be tested. If the death seems to meet that test, then the “sacrifice” label can serve to protect officials from the anger directed at them. If it fails, then the term *sacrifice* sets out the basis of a complaint – that what should have been meaningful was not.

### Sacrifice and the Detainee

“They have no regard for human life.”<sup>89</sup>

– U.S. Navy Rear Admiral Harry Harris in response to detainee suicides at Guantánamo Bay, Cuba

[t]ake some of my blood . . . take pieces of my death shrouds . . . take some of my remains . . . take pictures of my dead body when I am placed in my grave, lonely . . .

– Suicide letter of Jumah al-Dossari, Guantánamo Bay detainee

Sacrifice, as I have discussed it so far, has been tied to a “giving of the self” – either a person gives of him- or herself for the sake of the community or a community gives of itself for the sake of its members. This emphasis on the self and the community makes sense, given that I am discussing sacrifice in the context of citizenship in a regime grounded in popular sovereignty. In this section, however, I want to ask a different – if related – question: Can the suffering of those considered to be “enemies,” the detainees held at Guantánamo Bay, Cuba, be seen as sacrificial?

Suicide in custodial settings has often had a sacrificial dimension. The deaths of hunger-striking members of the Irish Republican Army in the 1980s are well-known examples of suicides that were construed as sacrificial.<sup>90</sup> Prisoners described their self-imposed death as a gift to

<sup>89</sup> “Guantanamo Inmates Commit Suicide,” June 11, 2006, *Aljazeera.net News Global*, at [www.english.aljazeera.net/english/Templates/GeneralArticle.aspx](http://www.english.aljazeera.net/english/Templates/GeneralArticle.aspx).

<sup>90</sup> Unlike the United States, the United Kingdom has recognized the mentally competent prisoners’ right to refuse medical care. *Sec’y of State v. Robb*, [1995] Fam. 127. See Alan Feldman, *Formations of Violence: The Narrative of the Body and Political Terror in Northern Ireland*. Chicago: University of Chicago Press, 1991, 247. In the United States, while there is a right to refuse unwanted medical treatment, there is no right to assisted suicide. *Washington v. Glucksberg*, 521 U.S. 702, 728 (1997). The fact of custody renders detainee conduct “assisted,”

larger cause. In such cases, death becomes a path to transcendence. At Guantánamo, however, where suicides, attempted suicides, and hunger strikes have been an ongoing part of daily life in recent years, the sacrificial component is much less clear. We have little information about how detainees frame their conduct, and the United States has sought whenever possible to prevent detainee suicide.

In a sense, the sacrificial dimension here is present in its negation, a denial of sacrifice that we see both in Giorgio Agamben's explicit equation of Guantánamo detainees with *homo sacer*, he who cannot be sacrificed, and in U.S. officials' emphasis on "preserving life" (or preventing potentially meaningful deaths).<sup>91</sup> I want to explore here the different meanings given to the detainees' suffering, using the sacrifice theme more loosely as a way to open up questions about the communicative potential of death.

By way of background, it should be noted that the U.S. posture at the detention center has evolved over time. Sometimes Guantánamo is described in easily comprehensible terms – as a site for intelligence gathering, removing combatants from the field of battle, or holding trials.<sup>92</sup> Although it is a highly secretive location about which the public is told very little, Guantánamo has also served as a theatre in which the United States performs its domination over its enemies, a feature of the camp that was most obvious in the initial images released by the Pentagon, of stooped and hooded detainees.<sup>93</sup> Some formulations present the prison as a site of beneficence, where detainees are treated more humanely than they deserve; others see it as a place of justice, where they are subjected to

turning the state's act of omission into one of commission. The detainee's interest in privacy is less than that the state's interest in "preserving life." One court wrote regarding a hunger-striking prisoner: "We cannot condemn fasting – Gandhi taught us about its force – as a way to secure change. But prison officials must do their best to preserve [the prisoner's] Life." *White v. Narick*, 170 W. Va. 195, 292 S.E.2d 54 (W. Va. 1982) (convicted murderer serving a life sentence protesting prison conditions). For a discussion of U.S. case-law of force-feeding of hunger strikers in custodial settings, see Mara Silver, *Testing Cruzan: Prisoners and the Constitutional Question of Self-Starvation*, 58 *Stanford Law Review*, 631 (2005).

<sup>91</sup> Giorgio Agamben, *State of Exception*, trans. Kenin Attell. Chicago: University of Chicago Press, 2005, 3–4.

<sup>92</sup> These are the elements that Joseph Margulies, who represented many of the Guantánamo detainees, offers to describe what the prison was "originally intended" to provide. Joseph Margulies, *Guantánamo and the Abuse of Presidential Power*. New York: Simon & Schuster, 2006, 4.

<sup>93</sup> See Stephen Holmes, *The Matador's Cape: America's Reckless Response to Terror*. New York: Cambridge University Press, 2007, 280. Holmes interprets one appeal of torture to its defenders as stemming from the fact that it flouts all restrictions.

the harsh treatment and interrogation that they deserve. Finally, the fact that the camp is seen as an exception from U.S. civilian and military law is a debated but important facet – although the Bush administration would insist in any formal legal proceeding that it was acting legally, tacitly and rhetorically transgressing “law” in its public statements was an important way of signalling commitment to (American) “life.”<sup>94</sup>

It is possible to plot two parallel and sometimes intersecting challenges to the unchecked executive control initially asserted at Guantánamo: the legal struggle to bring the detainees’ case before the Supreme Court, and the detainees’ bodily struggle through the use of suicide and hunger strikes. Although Guantánamo was beset with protests from at least 2003, the most detailed information available concerns two hunger strikes in 2005.

Attorneys for the detainees reported that between 100 and 200 detainees had undertaken a hunger strike in July 2005;<sup>95</sup> it was called off when camp officials agreed to improve conditions and accelerate access to legal procedures. In the statements of detainees and their advocates (drawn principally from litigation discussed at greater length later), this hunger strike serves as a founding moment for the political society of the camp. In a variation of Hobbes’ parable adapted to the custodial setting, everyman lowered his sword from his own neck. A report on the hunger strikes

<sup>94</sup> The rejection by top Bush and Cheney advisors of “acting extralegally” is the perhaps most interesting part of Jack Goldsmith’s account of his brief tenure as head of the Office of Legal Counsel. Advisors such as Alberto Gonzales and David Addington, according to Goldsmith, rejected what Goldsmith calls the “Locke-Jefferson” paradigm: where the executive would take legally questionable steps (in Locke’s language, exercise prerogative) when absolutely necessary but would then “throw himself on the mercy of Congress and the people so that they could decide whether the emergency was severe enough to warrant extralegal action.” By contrast, because of the “hyper-legalization of warfare,” according to Goldsmith, this model was “off the table.” “The President had to do what he had to do to protect the country. And the lawyers had to find some way to make what he did legal.” Jack Goldsmith, *The Terror Presidency: Law and Judgment Inside the Bush Administration*. New York: Norton, 2007, 83, 81. It is hoped that the term *sacrifice* is not stretched too much to think that it is relevant here: that the official who knowingly makes him- or herself a criminal for the common good sacrifices him- or herself for it. *S/he* hopes that the sacrifice will be necessary, that they will be forgiven. This seems to be the civil disobedience model of prerogative power that Judge Posner has described. Richard Posner, *Not a Suicide Pact: The Constitution in a Time of National Emergency*. New York: Oxford University Press, 2006, 152–155. It is a favorite motif of the television series *24* that government agent Jack Bauer invariably has to break the law to defuse the latest terrorist plot but then offers himself up for judgment once the crisis has passed. By comparison, Goldsmith’s account puts the rejection of this offering of the self for judgment at the heart of what was asked of the Office of Legal Counsel.

<sup>95</sup> Charlie Savage, “46 Guantánamo Detainees Join Hunger Strike,” *The Boston Globe*, Dec. 30, 2005.



at Guantánamo by the Center for Constitutional Rights summarizes the quasi-contractual nature of this founding moment:

The breadth and severity of the June/July 2005 Hunger Strike forced the DoD [Department of Defense] to permit the creation of prisoners' representative committee and to negotiate with prison officials concerning the protestors' demands. Based upon U.S. promises to bring the detention center into compliance with the Geneva Conventions, the June/July 2005 Hunger Strike ended on July 28, 2005.<sup>96</sup>

The detainees, acting in concert, gained a form of government and won "promises" that the officials would follow international law.

It was a short-lived peace, however: on August 8, 2005, another mass hunger strike was initiated and continued throughout the year.<sup>97</sup> Detainee Yousef al-Shehri explained to his attorneys that

[A]fter the first strike, they gave us promises. They said we will respect you and your religion and we will give you your rights. They promised me I would be freed. They promised many detainees they would be released. We waited but they did not deliver. Instead they disrespected us and our religion, they threw the Koran on the floor and stripped us naked.<sup>98</sup>

The agreement between detainees and jailors had not included the interrogators, who, according to detainee Al-Azmi, proved its undoing because they were "opposed improving the conditions at Guantánamo. . . ."<sup>99</sup> When the detainees began a second hunger strike, however, the DoD was ready for them, having ordered twenty-five "Emergency Restraint Chairs" – the advertisement for which described them as "Like a Padded Cell 'on Wheels'" – from an Iowa company.<sup>100</sup> A detainee from Yemen, Emad Hassan, described the chairs:

<sup>96</sup>Center for Constitutional Rights, "The Guantánamo Prisoner Hunger Strikes and Protest: February 2002–August 2005," Sept. 8, 2005, p. 12.

<sup>97</sup>Charlie Savage, "46 Guantánamo Detainees Join Hunger Strike," *The Boston Globe*, Dec. 30, 2005.

<sup>98</sup>Statement made Oct. 1 2005 in Supplemental Declaration by Julia Tarver, Esq., filed Oct. 13, 2005, *Al-Joudi et. al. v. Bush*, Civ. 05–0301 at 6–7.

<sup>99</sup>Quoted in Declaration of Thomas B. Wilner, filed Oct. 14, 2005, *Al Odah v. United States*, Civ. 02–0828.

<sup>100</sup>Tim Golden, "Tough U.S. Steps in Hunger Strike at Camp in Cuba," *The New York Times*, Feb. 9, 2006.

The head is immobilized by a strap so it can't be moved, their hands are cuffed to the chair and the legs are shackled . . . They ask, 'are you going to eat or not?' and if not, they insert the tube. People have been urinating and defecating on themselves in the feedings and vomiting and bleeding.<sup>101</sup>

Medical organizations and the United Nations criticized the policy of force-feeding, but U.S. officials were prepared to exploit the potential irony of the situation. When the U.N. Commission on Human Rights concluded that "some of the methods used for force feeding definitely amounted to torture,"<sup>102</sup> the United States responded that "it is bewildering to the United States Government that its practice of preserving the life and health of detainees is roundly condemned by the Special Rapporteurs and is presented as a violation of their human rights and of medical ethics."<sup>103</sup> Faced with criticism from the medical community,<sup>104</sup> a Pentagon spokesman responded that, "the policy of the department . . . is to support the preservation of life by appropriate clinical means and to do that in a humane manner."<sup>105</sup> In response to the medics' observation that the World Medical Association prohibits force-feeding of prisoners, the Pentagon replied that "Professional organization declarations by doctors, lawyers, dentists, etc., are not international treaties, and therefore are not binding and not applicable to sovereign nation-states."<sup>106</sup>

Attorneys, concerned about their clients' well-being, petitioned a federal judge to allow access to their clients' medical files and notice of when their clients were to be force-fed.<sup>107</sup> The government contended that its policies – force-feeding in particular – ensured that "no detainee's life

<sup>101</sup>Quoted in Eric Schmitt and Tim Golden, "Force-Feeding At Guantánamo Is Now Acknowledged," *The New York Times*, Feb. 22, 2006.

<sup>102</sup>United Nations Economic and Social Council, Commission on Human Rights, "Situation of Detainees at Guantánamo Bay," Feb. 15, 2006.

<sup>103</sup>Letter Jan. 31, 2006 addressed to Office of the High Commissioner for Human Rights from Kevin Edward Moley, Ambassador, Permanent Representative of the United States of America to the United Nations and Other International Organizations in Geneva, cited in *id.*, Annex II.

<sup>104</sup>In a letter signed by over 250 doctors and published in the British medical journal *The Lancet*. "Forcefeeding and Restraint of Guantanamo Bay Hunger Strikers," (2006) 367: 811.

<sup>105</sup>Will Dunhan, "US Defends Guantánamo Force-feeding," *Reuters News Agency*, Mar. 10, 2006.

<sup>106</sup>*Id.*

<sup>107</sup>*Al-Joudi v. Bush*, 406 F.Supp.2d 13 (D.D.C. 2005) (J. Kessler).

or health will be endangered” and thus there is no chance of irreparable injury from the hunger strike, noting that “no one has died.”<sup>108</sup> The attorneys did not raise their clients’ right to deny medical treatment, what we might construe as a right to sacrifice; rather, they expressed concern about their clients’ condition. Al-Shehri’s lawyer, for example, noted that “his psychological and mental condition is commensurate with his rapidly failing health,”<sup>109</sup> and another attorney wrote of Mr. Al-Azmi that he “looked like the pictures one sees of starving people in the Sudan.”<sup>110</sup> In addition, some of the attorneys positioned themselves as opposed to the hunger strike, as advocates for life over what they apparently saw only as self-destruction:

[w]e tried to encourage him to end his hunger strike, telling him that we believed that there had been positive developments before the courts and that we hoped he would be granted a hearing soon. Mr. Daihani told us that he had no faith in the U.S. courts. We had brought him a pizza from the local Subway on the base, which he refused to eat. . . . He said the only control he has at Guantánamo is over what he eats, and that he will not eat again until he is released or charged and tried so that he can defend himself and prove his innocence.<sup>111</sup>

In its October 2005 decision, the court accepted the attorneys’ rendition of the detainees’ vulnerability and found that although the detainees did “not lack legal competence as children do, they are indeed vulnerable to further physical deterioration, and possibly death, by virtue of their custodial status at Guantánamo and weakened physical condition.”<sup>112</sup> A preliminary injunction is typically entered to stop one party from harming another; in this instance, the simple-minded reading would be that the detainees requested an injunction against their own behavior. But because

<sup>108</sup> Transcript of hearing at 43 cited in *Al-Joudi v. Bush*, 406 F.Supp.2d 13, 20 (D.D.C. 2005).

<sup>109</sup> Supplemental Declaration by Julia Tarver, Esq., filed Oct. 13, 2005, *Al-Joudi et al., v. Bush*, Civ. 05-0301 at 6.

<sup>110</sup> Declaration of Thomas B. Wilner, filed Oct. 14, 2005, *Al Odah v. United States*, Civ. 02-0828, at 10.

<sup>111</sup> *Id.*, at 3.

<sup>112</sup> *Al-Joudi*, 406 F.Supp.2d at 20.

the detainees were in custody, their actions could not be attributed to them in any simple way:

[T]he Court is cognizant of the fact that Petitioners have voluntarily decided to participate in the hunger strike. Petitioners claim, however, that their voluntary participation is, in fact, a desperate protest against what they perceive as a long, potentially indefinite, confinement without final adjudication of their status. The legal analysis of irreparable harm must focus not on the cause of the injury, but rather the degree and imminence of the harm that will result if the court does not issue emergency relief.<sup>113</sup>

The court solved the puzzle of the self-inflicted injury by disaggregating the injury from its cause. Of note, other federal courts faced with the same claim have refused to do this and rather have seen the harm as self-inflicted and hence as not warranting a preliminary injunction.<sup>114</sup> This disagreement seems quite fundamental: Who really is the cause of the hunger strike?

The court ordered that the detainees' attorneys be given 24-hour notice of force-feeding of their clients and that for those who were force-fed, their medical records be provided to their attorneys. This would allow the attorneys to "counsel [the detainees] in order to persuade them to stay alive," an obvious requirement if they are "to present their claims to the

<sup>113</sup>Id.

<sup>114</sup>See *Al Odah v. U.S.* 406 F.Supp.2d 37, 44 (D.D.C. 2005). "The Court cannot agree that any risk of death that Petitioner faces is solely 'due to the government's improper and substandard force-feeding treatment.' Petitioner has eliminated an important causal link in his analysis – the fact that Petitioner himself is participating in a hunger strike. Without passing judgment on the motives behind Petitioner's participation in the hunger strike, the Court finds that Petitioner, causally, is first and foremost at risk of death of his own accord. Thus the proper question for the Court to consider in determining whether or not to grant Petitioner's request for an injunction forcing Respondents to provide medical reports and access to medical records is whether failure to access such documents will cause irreparable injury above and beyond the state that Petitioner is already in. . . . [T]he Court concludes that on this record, irreparable injury in this case is caused not by Respondents' treatment of Petitioner but by Petitioner's own actions." See also *El-Banna v. Bush*, 394 F.Supp.2d 76, 78 (D.D.C. 2005), which presented another issue: the detainees claimed that they were imminent danger because "Guantanamo Bay medical personnel stated that if a hunger-striking detainee provided written authorization, medical personnel would refrain from using heroic means to preserve the striking detainees' health and, ultimately, life." When officials assured the court that this was not the case, that they would provide involuntary care, the court determined that there was no imminent danger that warranted a preliminary injunction.

Court . . . ”<sup>115</sup> The court situated its preliminary injunction as deriving from the “privilege of litigation” that the Supreme Court had extended to the Guantánamo detainees in *Rasul v. Bush*.<sup>116</sup>

The court did not confront the issue (which the attorneys had not raised) of whether the detainees had a right to take their own lives.<sup>117</sup> Thus, this decision from a federal trial court, although a small and a relatively insignificant episode in the struggle at Guantánamo, indicates that opposition to detainee suicide is the default position. The military rhetoric focused on the “preservation of life,” and neither the court nor the detainee advocates consider an affirmative case for the detainees’ right to commit suicide. What then constitutes the difference in the positions of the military, the advocates, and the court? I want to suggest that the difference lies partly in the fact that the military is keenly aware of the possibility that detainee deaths might be construed as deeply meaningful, whereas the detainees’ attorneys emphasized the detainees’ helplessness. Following the logic presented by the military officials, we might see the hunger strike as a form of powerful action retained by detainees until officials instituted force-feeding. While he or she has some control over his or her own body, the detainee retains some small domain of what Georges Bataille understands as sovereignty, as “life beyond utility,” life opposed to servility, or the ability to destroy a surplus. Harming oneself, then, is a means of claiming sovereignty in this sense because it asserts that one has something to destroy (or to “give,” in sacrificial terms).<sup>118</sup>

In June 2006, three detainees succeeded in committing suicide, hanging themselves with bedsheets,<sup>119</sup> notwithstanding the fact that since February officials had been reading to detainees passages from the Koran forbidding suicide.<sup>120</sup> The detainees left suicide notes, but officials have refused to

<sup>115</sup> *Al-Joudi* at 22.

<sup>116</sup> *Rasul v. Bush*, 542 U.S. 466 (2004).

<sup>117</sup> One reason for this is that the right to petition for habeas corpus, which underlay the attorney’s claims, concerns access to the courts and challenges to the fact of detention, not its conditions.

<sup>118</sup> Georges Bataille, *The Accursed Share: An Essay on General Economy*, trans. Robert Hurley. New York: Zone Books, Vol. 3, 197. Bataille explains that “[t]he sovereignty I speak of has little to do with the sovereignty of States, as international law defines it. I speak in general of an aspect that is opposed to the servile and the subordinate.”

<sup>119</sup> See Mark Denbeaux and Joshua W. Denbeaux, “June 10th Suicides at Guantánamo: Government Words and Deeds Compared,” August 21, 2006 at [www.law.shu.edu/news/guantanamo\\_report\\_june\\_suicides\\_8\\_21\\_06.pdf](http://www.law.shu.edu/news/guantanamo_report_june_suicides_8_21_06.pdf).

<sup>120</sup> David S. Cloud and Neil A. Lewis, “Prisoners’ Ruse Is Inquiry Focus at Guantánamo,” *The New York Times*, June 12, 2006. Sgt. Sara Wood, “Three Guantanamo Bay Detainees Die of

release them. One reaction to the suicides saw them as cover-ups for murder. The father of one detainee expressed skepticism that his son had killed himself,<sup>121</sup> and a Saudi state-sponsored human rights group wrote that the lack of oversight at the camp made it “easy to pin the crime on the prisoners. . . .”<sup>122</sup> Former detainees who knew the deceased also scorned the claim that the deaths were suicides and speculated that it was more likely that the guards killed them during one of the regular and violent cell extractions.<sup>123</sup> The released detainees drew a firm line between hunger strikes and suicide and did not entertain the notion that suicide could have been an honorable act. It was “offensive” “to suggest that [one of the deceased] would stoop to the level of taking his own life.”<sup>124</sup> Advocates for the detainees in the United States, in contrast to military officials, saw the fault as laying with the United States for having “pushed” the detainees “on the road to death” by creating “despair.”<sup>125</sup>

The military articulated two points: its own love of life and the aggressive nature of the suicides. One DoD official framed the United States’ interest: “we are always concerned when someone takes his own life, because as Americans we value life even if it is the life of the violent terrorist captured waging war against our country.”<sup>126</sup> Military officials also described the suicides as acts of war against the United States. U.S. Navy Rear Admiral Harry Harris said that the detainees “have no regard for human life.” He continued, “Neither ours nor their own. I believe this was not an act of desperation but an act of asymmetric warfare waged against us.”<sup>127</sup>

Apparent Suicide,” *American Forces Press Service*, U.S. Department of Defense, June 10, 2006, at [www.defenselink.mil/news/newsarticle.aspx?id=16080](http://www.defenselink.mil/news/newsarticle.aspx?id=16080).

<sup>121</sup> “Family Disputes Guantanamo Suicide” June 14, 2006, *Aljazeera.net News Global*, accessed July 7, 2006 at <http://english.aljazeera.net/english/Templates/GeneralArticle.aspx>.

<sup>122</sup> Muffleh al-Qahtani, Deputy Director, Saudi Human Rights group, quoted in “Guantanamo Inmates Commit Suicide,” June 11, 2006, *Aljazeera.net News Global*, at [www.english.aljazeera.net/english/Templates/GeneralArticle.aspx](http://www.english.aljazeera.net/english/Templates/GeneralArticle.aspx).

<sup>123</sup> Statement by Tarek Dergoul and Statement of June 13, 2006 by British citizens formerly held at Guantánamo Bay, [www.libertysecurity.org/article994.html](http://www.libertysecurity.org/article994.html) and at [www.cageprisoners.com](http://www.cageprisoners.com).

<sup>124</sup> *Id.*

<sup>125</sup> Barbara Olshansky of the Center for Constitutional Rights, quoted in “Guantanamo Inmates Commit Suicide,” June 11, 2006, *Aljazeera.net News Global*, at [www.english.aljazeera.net/english/Templates/GeneralArticle.aspx](http://www.english.aljazeera.net/english/Templates/GeneralArticle.aspx).

<sup>126</sup> Cully Stimson, U.S. Deputy Assistant Secretary of Defense, quoted in “Dead Detainee Was to Be Freed,” June 12, 2006, *BBC News*, accessed June 21, 2006 at <http://news.bbc.co.uk/2/hi/americas/5070514.stm>.

<sup>127</sup> Rear Adm. Harry Harris quoted in “Guantanamo Suicides ‘not PR move,’” *BBC News*, June 12, 2006, at [www.newsvote.bbc.co.uk](http://www.newsvote.bbc.co.uk).

Harris also referenced what he called the “mystical” belief among detainees that three of their number had to die for the rest to go free.<sup>128</sup> Suicide, understood as intended to shame the United States internationally, undermine its morale, and attack its commitment to “life,” is seen a manipulative technique, which thus positions force-feeding as a responsive tactic. The sacrifice theme is present here in its “evil” iteration – in references to the extremism of those who are willing to martyr themselves to harm America. The use of the term *asymmetric* suggests that the United States does not engage in such practices, but the very fact that, of all the interpreters of the suicides (including detainees), the U.S. officials come closest to seeing the detainees’ act as a sacrifice – as lives offered to further a meaningful cause – suggests that they are highly attuned to sacrificial dynamics. The United States’ “commitment to life,” then, is perhaps more accurately framed as a demand that the state monopolize death. In this case, the suicide of the detainee harms the United States not only in public and international opinion but also in its ability to command sacrifice.

The officials attempt to neutralize the meaningful potential of suicide by naming the act as aggressive, as though by this designation they can combat the effectiveness of the technique. Indeed, the DoD has elaborated an entire vocabulary that emphasizes the communicative and manipulative nature of detainee conduct. No longer content with the broad brush of “suicide attempt,” since 2003 officials speak of “hanging gestures” and “manipulative self-injurious behavior” to describe a variety of acts, including some suicide attempts.<sup>129</sup> Only those acts in which officials discerned a sincere intention to commit suicide are designated suicide attempts.<sup>130</sup>

<sup>128</sup> James Risen and Tim Golden, “3 Prisoners Commit Suicide at Guantanamo,” *The New York Times*, June 11, 2006. Tim Golden writes that Col. Mike Bumgarner, warden of Guantánamo Bay at the time of the hunger strike, told him that a Saudi detainee, Shaker Aamer, told Baumgarner that “several of the detainees had had a ‘vision,’ in which three of them had to die for the rest to be freed.” Tim Golden, “The Battle for Guantánamo,” *The New York Times Magazine*, Sept. 17, 2006.

<sup>129</sup> Associated Press, “23 Detainees Attempted Suicide in Protest at Base, Military Says,” *The New York Times*, Jan. 25, 2005.

<sup>130</sup> Mark Denbeaux and Joshua W. Denbeaux, “Report on the Guantanamo Detainees during Detention: Data from Department of Defense Records,” Seton Hall Public Law Research Paper No. 916789, July 10, 2006, at SSRN: [www.ssrn.com/abstract=916789](http://www.ssrn.com/abstract=916789), p. 14 (“According to Capt. Edmondson, this category includes acts of self-harm in which ‘the individual’s state of mind is such that they did not sincerely want to end their own life,’ but instead was intended to obtain release or better treatment”).

Although it is the U.S. officials who seem most attuned to sacrificial possibilities, they are also the ones most determined to impede and disguise them.

Agamben has compared the detainees in the U.S. war on terror to the victims of the Nazi concentration camps.<sup>131</sup> Those in the camps were, like *homo sacer*, people who could be killed but not sacrificed. He chides Georges Bataille for emphasizing the “prestige” that can be generated through sacrifice, claiming that he “immediately exchanges the political body of the sacred man, which can be killed but not sacrificed and which is inscribed in the logic of exception, for the prestige of the sacrificial body, which is defined instead in the logic of transgression.”<sup>132</sup> Agamben’s comparison to the Nazis seems legalistic and formalistic in that it does not address obvious substantive differences. My case study highlights one other issue: the nature of the U.S. interest in the body of the detainee. The U.S. response to hunger strikes suggests that there is indeed for the United States a “prestige of the sacrificial body,” a potential that must be blocked and prevented. What Agamben describes, then, is what the United States attempts to enact: a situation in which the detainee is excluded from sacrifice. An enormous effort seems directed toward this exclusion, even when there is little evidence that the detainees or other audiences see their conduct in such terms. One of the interesting things about this case is that none of the actors is able to claim the significance of the deaths authoritatively, in a manner that silences the others. If I speak of sacrifice, it is largely because of the energy expended in *denying* that meaning.

Ultimately, however, is it appropriate to talk about sacrifice in this situation? On the one hand, the detainees’ custodial status raises questions about their relationship to the United States (are they a part of the sovereign or not). On the other, it is unclear whether the form of communication that they are engaged in is truly accessing a form of sacred or transcendent

<sup>131</sup> Agamben, *State of Exception*, trans. Kenin Attell. Chicago: University of Chicago Press. Agamben writes of President Bush’s November 13, 2001 military order authorizing the indefinite detention of noncitizens suspected of terrorist involvement: “Neither prisoners nor persons accused, but simply ‘detainees,’ they are the object of pure de facto rule . . . since it is entirely removed from the law and from judicial oversight.” He then engages in what seems to be excessive formalism: “The only thing to which it could possibly be compared is the legal situation of the Jews in the Nazi *Lager* [camps], who, along with their citizenship, had lost every legal identity, but at least retained their identity as Jews” (3–4; italics and parenthesis in original).

<sup>132</sup> Agamben, *Homo Sacer*, at 113.



meaning or whether it is a more exchange-oriented sense of the word; that is, are the detainees “giving” themselves to the United States? Actually, the question of “giving” is a conundrum of sacrifice noted in many of the religious examples: how can one give to an entity that already owns the thing given? (If all of creation belongs to God, how can we give to that entity what God already possesses? The United States certainly seems to take the position that the life of the detainee belongs to it.) What is critical to the detainee transaction is the dual assertion of taking and giving in the same act of destruction. Destruction claims ownership at the same time as it alienates that claim. This combination links and separates the parties, the detainees, their captors, and the courts.

This understanding of the place of destruction in sacrifice as derivative from the fact that the giver does not really “own” the thing given suggests one reason why in everyday speech in a liberal society we can “sacrifice” something by alienating our interest in it but need not destroy it. Liberal theory supposes the self-owning person and thereby avoids the confusion of ownership that the religious (and sovereign) examples of sacrifice address.<sup>133</sup> If humans, not God (or the sovereign state), are the owners of creation, sacrifice need not involve the two-step process of destruction and then alienation.

The detainee makes no claim that asserts membership in the popular sovereign, yet a part of the United States is offered up to itself: if, as the officials say, the United States is committed above all to “life,” then the detainee is able to access this core value for which this sovereign says that it stands. Indeed, the detainee implicitly recognizes this claim to his or her life by the United States; the action presumes that the state has an interest in his or her life. Of course, this “life” that the United States stands for

<sup>133</sup> Even classic liberal texts resist an absolute commitment to self-ownership. See, for example, John Locke, *The Second Treatise of Government*. New York: Macmillan, [1690] 1952, Ch. II, 6 (“for men being all the workmanship of one omnipotent, and infinitely wise maker; all the servants of one sovereign master, sent into the world by his order, and about his business; *they are his property*, whose workmanship they are, made to last during his, not one another’s pleasure: and being furnished with like faculties, sharing all in one community of nature, there cannot be supposed any such subordination among us, that may authorize us to destroy one another, as if we were made for one another’s uses, as the inferior ranks of creatures are for ours. Every one, as he is bound to preserve himself, and not to quit his station wilfully . . .”; emphasis added).

refers to a variety of things: human life in general, American lives, or the life of the state itself over and above any particular human lives.

After the successful suicides and the resulting media interest, officials expressed their new countersacrificial posture, as I would deem it, in architectural form. Plans to provide less restrictive housing for the remaining detainees were replaced with a supermaximum security facility – the building-sized version of the restraint chairs used for hunger strikers. Moreover, in June 2006 the government imported a new group of fourteen “high-value” detainees to Guantánamo, at least one of whom has more obligingly played the role the government has seemed to assume all along.<sup>134</sup> When Khalid Sheikh Mohammed, recognized by many as the planner of the 9/11 attacks, recently demanded of his Guantánamo tribunal that he be put to death since “I’m looking to be martyr for long time,”<sup>135</sup> the officials might have sensed that they were finally dealing with someone who spoke their language.

A final glimpse into the context of the hunger strikes, suicide attempts, and other forms of protest by detainees can be found in an October 2005 letter by one detainee, Jumah al-Dossari, to his New York attorney and translator, explaining his suicide.<sup>136</sup> In the letter, a two-page document declassified by the Pentagon, which I first encountered on the Center for Constitutional Rights Web site, Dossari apologizes to his attorney and interpreter for performing his suicide in their presence: “I feel very sorry for forcing you to see . . . It might be the first time in your life . . . to see a human being who suffered too much . . . dying in front of your eyes . . . I know it is an awful and horrible scene.” He explains: “[t]here was no other alternative to make our voice heard by the world from the depths of the detention centers except this way in order for the world to re-examine its standing [ . . . ].” Dossari’s attorney surmised that he required

<sup>134</sup>President Bush, quoted in Jonathan Karl, “‘High-Value’ Detainee’s Transferred to Guantanamo,” *ABC News*, at [www.abcnews.go.com/International/story?id=2400470](http://www.abcnews.go.com/International/story?id=2400470).

<sup>135</sup>Quoted in William Glaberson, “Arrested, 9/11 Defendants Talk of Martyrdom,” June 6, 2008, *The New York Times*. See Mateo Taussig-Rubbo, “The Unsacrificable Subject?” in Austin Sarat and Karl Shoemaker, eds., *Who Deserves to Die? Constructing the Executable Subject*. Amherst, MA: University of Massachusetts Press (forthcoming 2009) Ch. 1.

<sup>136</sup>The letter is available [www.ccr-ny.org/v2/legal/september\\_11th/docsjumaa\\_English.pdf](http://www.ccr-ny.org/v2/legal/september_11th/docsjumaa_English.pdf). Ellipses are in original document. It is not apparent from the English translation whether it was redacted.

their audience “so that the military could not cover it up and his death would not be anonymous.”<sup>137</sup> Dossari envisages that his “soul is leaving my body to rise to its creator,” and he asks that his attorney and interpreter

[t]ake some of my blood . . . take pieces of my death shrouds . . . take some of my remains . . . take pictures of my dead body when I am placed in my grave, lonely . . . send it to the world . . . to the judges . . . to people with live consciences . . . make them carry the burden of guilt in front of the world for this soul that was wasted with no guilt it has ever done . . .

Dossari asks to be turned into a sacred relic, that his blood, shroud, remains, and photos of his body be circulated throughout the world. In a stream of images running parallel to the illicit photographs of victims from Abu Ghraib wherein U.S. soldiers recorded their own theatre with detainee bodies, Dossari establishes himself as the director of his own performance, one intended to “burden” anyone with a “conscience.”

Dossari’s death did not take place as he had envisaged, however: his attorney, whom Dossari intended to serve as his witness, discovered Dossari in a bathroom hanging from the ceiling by his neck, while a pool of blood formed on the floor beneath him. The attorney interfered in the rite and summoned the authorities. Dossari’s life was saved, his ritual preempted, and no photos circulated showing his gruesome state.<sup>138</sup> On the other hand, Dossari’s efforts were not unnoticed: his attorney has recounted the dramatic story numerous times in media outlets. Dossari’s letter has been widely distributed, is included in a book of poems from Guantánamo, and is recited on YouTube.<sup>139</sup>

## Conclusion

The types of action that are recognized as sacrificial are, necessarily, controlled and fraught. In a world with much pain, states attempt to draw out

<sup>137</sup> Quoted in Josh White, “Suicidal Guantánamo Inmate Moved out of Isolation,” *The Washington Post*, Dec. 17, 2005.

<sup>138</sup> Josh White, “Guantanamo Desperation Seen in Suicide Attempts: One Incident Was During Lawyer’s Visit,” *The Washington Post*, Nov. 1, 2005; see also Margolis, *Guantánamo*, 212–214 (describing that “Jumah tried to kill himself again, this time by attempting to reopen the gash he had made a month earlier”).

<sup>139</sup> Mark Falkoff, ed., *Poems from Guantánamo: The Detainees Speak*. Iowa City: University of Iowa Press (2007); YouTube reading at <http://youtube.com/watch?v=6qtakOxnfoo&feature=user>.

some portion as sacrificial, as invoking larger meanings that involve the collectivity. A series of divides and explanatory devices assist in deciding whose suffering is to be recognized and the type of recognition granted. I have not addressed two of the most powerful constructs that channel how our legal and social order frames suffering: the accident and a statistical conception of events. Both divert attention from human and divine agency as explanatory frameworks for understanding misfortune. There is nothing inherently “accidental” about accidents, however, as Guido Calabresi pointed out long ago. They arise from an implicit or explicit policy choices to accept certain losses.<sup>140</sup>

This chapter has explored legal and policy forms that organize suffering as meaningful and meaningless for the U.S. public – whether it is the use of private military contractors, a description of the soldiers’ sacrifice as private and belonging to the family, or the exclusion of detainees from the normal legal order. These are interesting cases because the effort to construct these losses as insignificant seems difficult and in some cases runs contrary to extremely deep national traditions.

In the examples that I have explored, designations that officials have established are challenged. In the military contractor context, a policy of subcontracting and privatization seems overwhelmed by the spectacle of the attack on the contractors who are then resacralized. The state’s attempt to unbundle itself from sacred meanings is not entirely successful. My account of the privatization, this time to the family sphere, of a soldier’s death, is challenged by Cindy Sheehan’s ability to take the role of a grieving mother, privately comforted by the president for her son’s death, into the public sphere. Her actions, linked to widespread underlying doubts about the meaningfulness of the Iraq war and the disproportion between its justification and her son’s death, opened up the question whether his death was sacred or banal. My detainee example shows the struggle between the United States trying to hold onto a framework of exclusion from ordinary law and the efforts of the prisoners to claim a position for normal treatment. Judging by the response of authorities, the detainees were not mistaken about the potential efficacy of their acts.

<sup>140</sup> Guido Calabresi, “The Decision for Accidents: An Approach to Nonfault Allocation of Costs,” 78 *Harvard Law Review*, 713 (1965); see also John Fabian Witt, *The Accidental Republic: Crippled Workingmen, Destitute Widows, and the Remaking of American Law*. Cambridge, MA: Harvard University Press (2004).

In each of these cases, the event potentially exceeds the capacity of the legal and cultural framework to contain the deep meaning that these actors (and their audiences) find in destruction. Although this potential is palpable, it is not necessarily realized. The detainees' efforts are met with the policy of force-feeding and the construction of a maximum-security detention facility. The legal position of the contractors has been changing rapidly as of this writing, and this can be traced in part to the Blackwater scandal. It is hard to point to a specific legal or policy change stemming from Cindy Sheehan's efforts, but she did mobilize antiwar sentiment.

A focus on sacrifice draws attention to a form of meaningful loss and violence that seems hard to grasp with other terms. We could adopt another vocabulary – of grotesque violence against contractors, of an outraged mother, of a desperate detainee – but this would leave unexamined the various transactional forms in each case. We could consider another register of meaningful loss. Criminal liability, for instance, also appears in each of my examples. Just as sacrifice was a form of meaning that came in and out of focus in each case, so was homicide.

We have encountered recent attempts to hide and privatize various forms of loss and violence. The examples presented in this chapter suggest some of the difficulty entailed in constructing the character whose suffering is meaningless. It could be then that we see in these instances a portrait of the United States attempting to shed the liability that is implied by recognizing a loss as a sacrifice.