Racial Terror: Torture and Three Teenagers in Prison

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Abstract

Omar Khadr is a Canadian of Muslim/Arab origin. Held since 15 at Guantanamo and now incarcerated in Canada, Khadr’s life in prison mirrors the lives of Ashley Smith and Kinew James in many ways. Ashley Smith, a white teenager who had been imprisoned since 15, tied a ligature around her neck and strangled herself as several guards watched and the event was captured on video. In their dealings with Ashley, prison guards often wore combat gear, of the kind familiar to us in military encounters, and treated Ashley as detainees such as Omar Khadr are treated in the ‘war on terror’. Kinew James was a 35-year-old Aboriginal woman who, at the time of her death in January 2013, had spent half her life in jail, beginning as a teenager. She was often kept in solitary confinement and had threatened multiple times to hang herself. On the evening of her death, she reportedly cried for help for an hour about pains in her stomach. Ignored, she died of a heart attack one hour later. Each of these three teenagers was incarcerated as a teenager and each endured torture and a systematized indifference and brutality defended as necessary. In this article I consider how we might understand the power imprinted on their incarcerated bodies as a collective phenomenon of racial terror, a terror that has a central role to play in the making of modern life. Invited by the editors of this issue of borderlands to consider the work of Joseph Pugliese, I bring Pugliese’s extraordinary attentiveness to the tortured body to my consideration of the role of racial violence and terror in the making of the modern.
Introduction

Omar Khadr is a Canadian of Muslim/Arab origin. Held since 15 at Guantanamo and now incarcerated in Canada, Khadr’s life in prison mirrors the lives of Ashley Smith and Kinew James in many ways. Ashley Smith, a white teenager who had been imprisoned since 15, tied a ligature around her neck and strangled herself as several guards watched and the event was captured on video. Coming to a conclusion of homicide, the inquest established that Ashley was a ‘hard to deal with’ inmate who tried to kill herself several times a day, secreting anything that might be used as a ligature. Smith was nearly always kept in segregation and was often severely restrained. In the last few weeks of her life, guards were instructed by the senior management not to enter Ashley’s cell unless they discerned that she was in imminent danger. In their dealings with Ashley, prison guards often wore combat gear, of the kind familiar to us in military encounters, and treated Ashley as detainees such as Omar Khadr are treated in the ‘war on terror’. For instance, a video captures the teenager duct-taped to the seat of an airplane during an institutional transfer. When she arrives, wearing a mesh spit mask over her face, leg irons and a lead chain, and a ‘body belt’, eight men and women wearing protective suits and combat clothes tie her down and forcibly inject her five times with anti-psychotic medication. Smith was then left on a stretcher in her own urine for nine hours. Kinew James was a 35-year-old Aboriginal woman who, at the time of her death in January 2013, had spent half her life in jail, beginning as a teenager. She was often kept in solitary confinement and had threatened multiple times to hang herself. On the evening of her death, she reportedly cried for help for an hour about pains in her stomach. Ignored, she died of a heart attack one hour later. At a court appearance in 2011 when she pleaded guilty for damaging prison property and assaulting a guard, a judge compared her to Ashley Smith who died in the same prison where James was once held. Kinew James defiantly declared that she was no Ashley Smith. She saw herself as a survivor of the prison system, someone who had earned her high school certificate, and knew that she was strong enough to get out of jail. As she told the judge, ‘I have a lot more strength than she did’ (James in Mackrael Jan 23, 2013).

Each of these three persons was incarcerated as a teenager and each endured torture and a systematized indifference and brutality. In this article I consider how we might understand the power imprinted on their incarcerated bodies as a collective phenomenon of racial terror, a terror that has a central role to play in the making of modern life. Invited by the editors of this issue of borderlands to consider the work of Joseph Pugliese, I bring Pugliese’s extraordinary attentiveness to the tortured body to my consideration of the role of racial violence and terror in the making of the modern.

The impulse to connect these three individuals begins in the technologies of violence used on them and the degree of inhumanity
that each person encountered beginning when they were teenagers. Importantly, the violence each encountered was legally authorized, part of prison policy bolstered by a variety of laws. What gives rise to the moral acceptance of violence directed at these three teenagers? In proposing that we consider race as central to what happens in these prisons, I have in mind that each of the three was evicted from the category of the human, marked, that is, as less than fully human and as belonging to a group against whom violence is authorized and deemed necessary. The treatment meted out to each one secures a social order in which whiteness and rationality are the defining features of citizenship. Khadr and James were racialized but, as I suggest below, Smith lost her claim to an unmarked whiteness when she was considered to be a mentally ill person exhibiting signs of a rebellious femininity, and when she entered the prison, a space that is over-determined by histories of colonialism.

Denise Ferreira da Silva has rightly observed that the condition of modern life is the annihilation of the racial and the cultural, that which is configured as human difference and lying beyond the universal. As she explores in *The global idea of race*, the racial delimits the reach of law and humanity and it is only through the obliteration of the Other that modern man is born, and reason secured as the basis of life (Silva, 2007). Silva stresses that the Enlightenment idea of man as a self-determined subject, as rational and emerging from a state of nature requires for self-definition a constitutive outside, a subject who cannot progress out of nature: ‘while the tools of universal reason (the “laws of nature”) produce and regulate human conditions, in each global region it establishes mentally (morally and intellectually) distinct kinds of human beings, namely the self-determined subject and its outer-determined others, the ones whose minds are subjected to their natural (in the scientific sense) conditions’ (2007, p. xiii). In this founding ontological moment, the racial is born as a constitutive human attribute that marks a different kind of human, one reduced to body and unable to progress out of nature.

Notably, the racial derives its political force from its role in dividing humans. The racial is ‘deployed to explain away the violent deaths of people of colour as endless social scientific evidence renders them not only expected (as the outcome of juridical and economic exclusion) but also justified (as the forecasted end of the trajectory of an outer-determined consciousness)’ (Silva 2007, p. xiv). We cannot understand and end violence without confronting the logic that installs different kinds of humans on a scale of development, and that demands the obliteration of the Other as the condition enabling the self-determining subject’s emergence. Silva’s emphasis on violence against racial Others as constitutive of modernity yields the question that is central to her book, namely, how are modern subjects produced who can be excluded from the universal ‘without unleashing an ethical crisis?’ (2007, p. xxxi). It bears emphasizing Silva’s point that to be excluded from the universal is to be placed at a social and
moral distance from the European. Violence can be directed with impunity at those outside the domain of justice.

The violence directed at Omar Khadr, Ashley Smith and Kinew James, violence that did not unleash an ethical crisis of any major proportion, nevertheless amounts to torture in the eyes of many observers. In the case of Khadr, of course, torture became authorized in the war on terror. Smith and James were held in conditions of solitary confinement that the U.N. Special Rapporteur on torture has defined as torture (Office of the High Commission on Human Rights, 2011). In each case, however, the treatment was permissible and either upheld or not examined as criminal acts, in Khadr’s case at his military trials at Guantanamo Bay, and in Smith’s and James’s cases in inquests, which are not criminal proceedings. While each case has drawn some condemnation, and sometimes in a legal forum (for instance the coroner’s inquest into Ashley Smith’s death came to a finding of homicide), the practices of torture and violence have not been prohibited (Vincent and Zlomislic 2013). Further, as I show below for Ashley Smith, when death is the result of torture, official reports and inquests focus on the idea of self-harm, emphasizing that prisoners who are driven to commit suicide require the special measures of isolation and segregation. We are left, then, with a widespread and systemic brutality that is defended as necessary, a brutality that I propose amounts to racial terror because it evicts from the circle of law and humanity those persons deemed unable to progress into civilization.

Terror and the prison

Torture’s connection to terror is where I begin, and specifically with the space of death, Michael Taussig’s memorable phrase for the place where torture is practised. What draws me to this early work (published in 1987) when I consider the three teenagers is the phenomenon that Taussig sought to explain: the tremendous, excessive violence directed by the English against the Indians of the Putamayo region in the rubber trade in colonial Peru, and the enormity of death of African slaves during the middle passage. Confronted with these historical moments of an overwhelming inhumanity, Taussig proposed that we need a different ‘poetics’ to understand terror and to ‘feel what is at stake, the madness of the passion’ (Taussig 1987, p. 11). Taussig’s injunction that we think through terror as ‘the mediator par excellence of colonial hegemony: the space of death where the Indian, African, and white gave birth to a New World’ pushes me to examine the violence that gives birth to and sustains the white settler state (Taussig 1987, p. 5). If the contemporary prison is the site of excessive violence, what is at stake?

Taussig introduces the space of death by referring to Jacobo Timerman’s Prisoner without a name, cell without a number about
Timerman’s experience in the clandestine prisons of Argentina. In the prison where Timerman was held, torture feeds terror. The military ‘mimic the savagery they have imputed’ to the inmates of death spaces (Taussig 1987, p. 9). Savagery can only be met with savagery. Humans become things and things become human. In the space of death, ‘reality is up for grabs’ and torture is a narrative, the writing of power on the body and on the social body (Taussig 1987, p. 9). I take from Taussig the direction to examine how torture/violence in spaces of terror feeds power, and to thread my way through violence as narrative written on the body but also on the social body, watching how the violence of spaces of terror is spun into a story about care and protection, torturers transformed into rational individuals who are simply keeping us all safe. While the poetics needed to understand the madness of the passion often eludes me when I sit at my computer screening the torture and extreme violence that is practised in spaces of death, acts that are now captured on video and not done clandestinely, I feel the madness of the drive to evict certain bodies from humanity that is the basis of the making of the modern.

In the stories of Omar Khadr, Ashley Smith and Kinew James, terror lives in the prison. Guards and interrogators write a story of power on their bodies through, for example, sexual assault, prolonged isolation and a variety of painful restraint positions. In each instance, the brutality is beyond belief, yet is ultimately defended as necessary. Why was Omar Khadr never seen as a child soldier but instead as a terrorist whom it was permissible to torture? Why did it take eight adults in protective clothing and five syringes of anti-psychotics to subdue Ashley, who can be heard on the video asking in a small voice to keep her dress from moving up her thigh when they held her down? Why didn’t the guards respond to Kinew’s plea for help? For these teenagers, the space of the prison possesses the qualities Taussig identified of spaces of death, namely their hallucinatory, theatrical character. The features of the violence (eight men in riot gear, for instance) hints at theatre, a performance designed to convince those who enact violence that they have become modern subjects who have successfully held difference at bay. If the individuals who enact violence achieve coherence as modern subjects through violence, we should also remember that the violence is authorized. The modern state makes itself through this violence, announcing who is not fully human, and thus who is not entitled to full legal rights. Walter Benjamin earlier described the ‘rottenness’ of the place where violence is joined to reason, as Taussig noted, sharing Benjamin’s sense of what is so visceral and specific about police and prison violence, namely ‘the sacred quality of brutality’ (Taussig 2006, p. 185). Sacred brutality is brutality held dear and considered necessary.

Scholars and activists writing of the United States as a racial penal state have made clear why the state holds dear its prison industrial complex (the United States boasts the highest rate of incarceration in the world, although it possesses one of the lowest rates of crime)
(Mendieta 2004, p. 53). Angela Davis, drawing on anti-slavery campaigner Frederic Douglass and on W.E.B. Du Bois, best articulates the position that today's American prisons merely transferred Black people from the 'prison of slavery to the slavery of prison' (Davis cited by Mendieta 2006, p. 177). The state criminalizes Blacks both in order to benefit from their labour in prison, but also to mark them as racially defective and outside the bounds of humanity and citizenship. Davis saw clearly that the penal democracy that the United States has become, with 13% of the African American male population in prison, not only disenfranchises Blacks and impoverishes their communities but brands Black flesh (in gendered ways), simultaneously establishing that it is permissible to do so. Davis writes of a psychosocial racial contract where White America tolerates a vast prison industrial complex precisely because punishment is meted out largely to Blacks and other people of colour. Her radical critique of penal democracy underscores that the prison industrial complex holds in place white supremacy. An abolition democracy (Davis's term for a democracy that rejects as its basis the reduction of Blacks to bare life) is only possible when we confront the racial basis of the prison system and the state (Davis in Mendieta 2006, p.180). In his own work, Mendieta emphasizes the plantation, the ghetto and the prison as institutions for the spatial containment of Blacks, spaces geared to the maximum exploitation of the slave (Mendieta 2004, p.51). Following Davis, Mendieta notes that the prison 'races' the state, stigmatizing, containing, confining, and encasing Blacks while simultaneously establishing white supremacy, all under the banner of democracy.

As a scholar writing in the settler colonial context of Canada, the space of death and the prisons I consider give birth to the European settler, as human, as emplaced, as owner in the New World. If the founding moment of the settler colonial state is the dispossession of Aboriginal peoples, the genealogy of the prison includes both Blacks and Aboriginal peoples. Indeed, Aboriginal peoples fill Canadian prisons, and the road to prison begins with dispossession, impoverishment, confinement to reserves, residential schools, and to foster care, systems maintained by a prison industrial complex. As with Blacks whose labour and collective stigmatization enriches Whites, a direct connection can be established between incarcerated Aboriginal peoples and land. Settler colonialism is ongoing not only in the sense that the theft of land and resources continues apace. It is also evident in the strong psychic need settlers have to claim their own legitimacy through maintaining that the continent's original inhabitants have all disappeared. The prison industrial complex rests, then, on both the dispossession and continuing efforts at genocide of Aboriginal peoples, and the transatlantic slave trade; each leaves specific traces and interlock in various ways, notably in the technologies of violence visited on prisoners and in the white settler social order that each sustains. When the impulse to incarcerate is manifested in a 'war on terror', these two earlier genealogies, and the white supremacist social order they secure shapes what happens to detainees.
The Captive's Body

Wanting to think specifically of the prison as a space of death, whether Abu Ghraib, Guantanamo, or the cells in provincial and federal jails holding (vastly over-represented) Aboriginal prisoners, I draw upon Allen Feldman’s *Formations of violence*, published in 1991, not long after *Shamanism, colonialism, and the wild man*. Feldman brought me to the *narrative of the body and political terror in Northern Ireland*, the sub-title of his book. Along the same lines as Taussig, he observed that the violence of political terror ‘both reflects and accelerates the experience of society as an incomplete project, as something to be made’ (Feldman 1991, p. 5). Tortured bodies circulate as political text. We can consider the body as a spatial unit of power, the site ‘where power takes a place’ (Feldman 1991, p. 3). Violence stages the body as a particular thing, an abject being, mere flesh and not fully human.

What does it mean when a state reduces bodies to ‘the guttural sounds of pain’ (Scarry 1985, p. 57), when, that is, torture is a part of its regular operations? Pugliese invokes Levinas’s concept of useless suffering, ‘suffering experienced at the very limits of the assumable’, that ‘collapses the captive’s body into submission’ (Pugliese 2013, p. 2). Unbearable pain fragments the subject. Pugliese writes: ‘The torture testimonies of the detainees that have survived their unspeakable ordeals and managed to recount their stories are repeatedly scored by this intolerable sense of being condemned within bodies, cells, prisons and a world—all without exit’ (Pugliese 2013, p. 3). Focusing on the body, Pugliese turns to Hortense J. Spillers who has so compellingly described the slave’s body in pain, a body evicted from humanity to the antechamber of the human: ‘Once held captive in the vestibule, the slave can be exposed to a range of violent and fatal practices that are informed by the slave owner’s knowledge that such practices can be excised with absolute impunity’ (Pugliese 2013, p. 45). Spillers’ work enables us to connect torture to everyday violence and brutality and to the maintenance of a white supremacist social order. In her important article, she notes that the socio-political order of the New World is written in blood:

> that order represents for its African and indigenous peoples a scene of actual mutilation, dismemberment, and exile. First of all, their New-World, diasporic plight marked a *theft* of the body—a wilful and violent (and unimaginable from this distance) severing of the captive body from its motive will, its active desire. (Spillers 1987, p. 67)

As I have remarked elsewhere, what is significant for me about Spillers’ remarks about power imprinted on the slave’s body is her understanding of how the body bears the imprint of power *over time*, and long after slavery has been abolished (Razack, 2012). Speaking of African slaves and their descendants, Spillers makes an important distinction between flesh and body, remarking that the theft of bodies
from Africa is preceded by ‘crimes against the flesh as the person of African females and African males registered the wounding’ (Spillers 1987, p. 67). On the slave plantation, the wounding continues ‘as the calculated work of iron, whips, chains, knives, the canine patrol, the bullet’ (Spillers 1987, p. 67). Branding transfers from one generation to another, long after the abolition of slavery. Up to the 1930s, ‘sick negroes’ were brought in for medical experimentation. There was no question of ethics since these ‘procedures adopted for the captive’s flesh demarcate a total objectification, as the entire captive community becomes a living laboratory’ (Spiller 1987, p. 68). The captive’s body, even when liberated, is ‘murdered’ over and over again.

It is this endless branding of the flesh, the site of a total objectification where violence stages the body as abject, which informs how I have understood what is imprinted on Aboriginal bodies and which Pugliese presses me to think of in reference to the detainee’s tortured body. He proposes the term carcass to refer to the ‘captive animal-body quartered in the antechamber of the human’ (Pugliese 2013, p. 46). When he writes of Gul Rahman, a torture victim of a U.S. black site, hung on a meat hook and left to die in a freezing cell, we come to understand the antechamber as a place where death does not even produce a corpse: Gul Rahman’s body has never been recovered and we only know of his torture and death in a secret prison because his name was mistakenly not redacted in an official CIA document (Pugliese 2013, p. 161).

One can read in similar processes done to the three teenagers, an economy of violence that transforms bodies into carcasses, and that clothes itself in law. Bodies are not deposited in unmarked graves but lie in the recesses of public consciousness where they are known as people who have caused their own demise. The ubiquitous phrase ‘self-harm’ rains down in state reports and inquests, for example, and in research (Murdocca, 2013). Although we have yet to hear them, all three individuals spoke of their time in the vestibule. Significantly, only Omar Khadr has survived and yet he is the only one who has experienced what is recognized as torture. We are prompted then, to consider the everyday violence to which Smith and James were subjected as even more deadly than torture, and to draw a line connecting torture to everyday violence.

Part One: Omar Khadr

On July 15, 2008, Canadians watched on the national news an excerpt of a four day interrogation of Canadian Omar Khadr in 2003 at Guantanamo Bay by the Canadian Security and Intelligence Services (CSIS) (The National 2008).iv The Supreme Court ordered the release of the videotape to Khadr’s Canadian legal team who hoped the tapes would spur outcry and increase calls for his repatriation. As day one of the interrogation begins, we see a young boy whose face lights up when the CSIS agent opens the interrogation with ‘I guess we’re the
first Canadians you’ve seen in awhile’. Omar smiles and replies: ‘I’ve been requesting the Canadian government for awhile’. By day two, Omar realises that CSIS is there not to help him, but to interrogate him. We see him shackled, crying out in Arabic for his mother, and sobbing uncontrollably while showing his wounds. The sixteen-year-old told his Canadian interrogators that he had been tortured and he asked them to protect him from the Americans (Côté & Henríquez 2010). Later on, Canadians would learn that Omar Khadr has been subjected to the torture of sleep deprivation for long periods, used as a human mop to wipe up his own urine, shackled and bound in stress positions for long periods, hooded to simulate suffocation, psychologically tortured (threatened with rape, the destruction of his family, and with the prospect of never returning to Canada), and a host of physical tortures particularly at moments when he was severely wounded. Until recently, Canada consistently refused to seek Khadr’s repatriation and a Canadian court has denied Khadr’s transfer from a federal to a provincial prison rejecting his lawyers’ argument that the Canadian government was illegally holding Khadr as an adult for offences committed as a juvenile (Shephard 2013, A6). Legally, he has also not been considered as a child and thus not subject to the Optional Protocol of Child Soldiers. The information obtained under torture was used in his trial; he has been held in solitary confinement for a very long time; hearsay evidence has been allowed; his defence team has not had access to full information nor have they enjoyed full access to their client (Côté & Henríquez 2010).

Although Canadians boast of their role in the development of the Optional Protocol of Child Soldiers, and point to it as an example of Canadian civility, the argument that Omar Khadr should be considered a child soldier under the Protocol, an argument advanced by some prominent Canadians such as Senator Romeo Dallaire, has failed to win support in Parliament and among ordinary Canadians. What has made the moral acceptance for the torture of a child possible? If the geopolitics underlying the response to Khadr is obvious, the racial politics of the ‘war on terror’ are even more in evidence. The Canadian response to Khadr suggests that torture imprints both his body and the social body with the story of white, Western power, providing Canada with standing in the family of white nations. Khadr, whom Canadians have refused to see as a teenager from Toronto, when cast at his trial in Guantanamo as a Muslim terrorist who will never outgrow his violent tendencies, is part of a story of the clash of civilizations between an enlightened, modern West and a tribal, pre-modern Islam. This racial story underpins the Canadian response to Khadr, whether the public response or the response of the Canadian Security and Intelligence Services (CSIS) as they interrogated him at Guantanamo. His interrogators recognized, for instance, his youth when they offered him teenage fast food and asked him if he misses his family, but simultaneously, they insisted that he was an adult terrorist who was simply withholding information. Pugliese writes movingly of the young boy explaining to
Canadian Security his wounds, showing them the marks on his body and crying ‘I lost my eyes, my feet, everything’. They respond with clinical detachment and indifference, coldly, ordering him to put his shirt back on and to get himself together. ‘Enunciated in Khadr’s cry is the psychic toll of torture, isolation and indefinite detention’, Pugliese remarks. Khadr experiences his body as fragmented, dispersed and lost, a trauma his interrogators refuse to register, as Canadians too have refused (2013, p. 113).

In the space of Guantanamo, reality is clearly up for grabs. Prisoners are not prisoners but enemy combatants, and a child is not a child. Hooded detainees are no longer persons but vegetables. Hooded and kneeling in their orange jumpsuits, they are referred to as ‘the pumpkin patch’ as certain an eviction from the human as any (Pugliese 2013, p. 95). The treatment meted out to detainees in the ‘war on terror’, and the widespread social approval for torture, (in Khadr’s case the torture of a child) is typically understood as a special and recent effect of the war on terror, and therefore unconnected to other cases of brutality. Indeed, few would name what happened to Ashley Smith and Kinew James as torture and see the connections between these two young women and Omar Khadr. In thinking about the collective that is secured through torture, both in terms of the specific subjects and worlds produced, the tortured and the community of the torturers, it becomes clear that the three cases can be connected as instances where terror reproduces the same social order. In each case, the racially marked are evicted from modern life and the European settler, the body that has become mind and is unmarked by excess, becomes the original citizen. We should not be surprised, then, that technologies of violence are so closely related, as are the legal narratives that protectively surrounds them, in Khadr’s case that it is permissible to torture children and adults who are suspected of involvement in terrorism. Khadr, his torturers insist, brought it all on himself, and in any event, as his military hearing outlined, the Muslim child carries the seeds of violence in his blood (Razack 2014). Ashley Smith and Kinew James will also each come to be seen as causing their own destruction, combative, dysfunctional, inveterate self-harming individuals whose end was as predictable as their detention in the first place.

Part Two: Ashley Smith

Ashley Smith died on October 19, 2007 at the Grand Valley Institution for women in Kitchener, Ontario. She was 19 years old and had been incarcerated since the age of fifteen. Ironically, calling attention to the connection between Aboriginal prisoners and Ashley Smith, in his 2008 report, the Correctional Investigator of Canada, Howard Sapers, remarked on an important coincidence that inadvertently confirms the extent to which the Canadian prison is a place saturated with the presence of Indigeneity.
At the time of Ms. Smith’s death, this Office was already in the process of investigating the October 3, 2006 death of a First Nations man who died in his prison cell at a medium security institution. On the day in question, the offender had self-injured and severed the brachial artery in his arm. He pressed his emergency call button to which Correctional staff responded; however, staff failed to provide any first aid/life preserving measures or to monitor him while awaiting the arrival of an ambulance. As a result, the offender bled to death, alone in his cell, before Ambulance personnel could arrive. (Sapers 2008, p. 24)

In 2010, Sapers concluded, Canada’s federal prisons were places of death. Between October 2007 and August 2010, 130 inmates died in federal custody (Sapers 2010, p. 4).

Ashley Smith was adopted at 5 days old. It has been speculated by at least one observer that Ashley was of Aboriginal origin but in any event, the Canadian prison she was held in is a space saturated by colonial histories of the incarceration of Aboriginal prisoners, (as I discuss below with respect to Kinew James). By the time she was ten, she exhibited a number of behavioural problems that resulted in frequent suspension from school. By thirteen, she was charged with assaulting strangers, throwing crab apples at a postman, making harassing phone calls, and pulling fire alarms. Soon after, she was diagnosed with a learning disorder, ADHD, borderline personality disorders and narcissistic personality traits, imprecise diagnoses that were refuted by a psychiatrist commissioned by her parents. If there is one moment that marks Smith’s descent into the shadow world of the prison, it is perhaps the moment of this diagnosis (or non diagnosis, as some prison officials would later insist that she had not been diagnosed as mentally ill) after which punishment, segregation and restraint became the state’s main responses to her. Not long after, she was sent to a prison for youth, the New Brunswick Youth Centre (NBYC) on charges of breach of probation, assault, trespassing and causing a disturbance. Here she spent most of her time in segregation. Once in prison, Ashley accrued ‘upwards of eight hundred documented incidents that took place at the NBYC over a three year span’ (Bernard et al. 2008, p. 19).

Like Khadr, Ashley was seldom considered a child. She was housed in an adult facility, in contravention of the Convention on the Rights of the Child. Her disruptive actions and self-harm practices began in prison. Once there, she was transferred 17 times among nine different prisons in four provinces, ending up in a federal penitentiary for women by the time she was 18. Prison services fought (unsuccessfully) to prevent videotapes of Smith from being entered at a coroner’s inquest into her death. When the tapes were shown, few could mistake the excessive show of force directed at a young girl. The excess troubled many in ways that the televised torture of Omar Khadr did not, and was likely the reason why the inquest concluded with a finding of homicide. Canadian newspapers expressed an
outrage that apparently even the Prime Minister shared (Harper 2012, November 1). ‘What they did to that girl is indefensible’ the Toronto Star headlined. The videotapes show a girl duct-taped to an airline seat, ‘trussed up’ in Hannibal Lecter restraints, arms cuffed, head swathed in not one but two ‘spit hoods’ the latter used to protect correctional personnel from prisoners who spit (Birch 2008). Whenever Smith complained that the restraints were hurting (in a ‘little girl voice’, as the Toronto Star put it), prison staff threatened to apply more restraints. Even the co-pilot came out to threaten Smith, warning her that he would duct-tape her face if she continued to complain.

Ashley Smith’s life in prison was marked by this excessive violence, an indicator of the extent to which her jailors felt compelled to imprint their power on her body. As the New Brunswick Ombudsman and Youth Advocate itemized, Smith endured extraordinary restraint measures including the ‘WRAP’ (also known as a body belt) described as a severe form of restraint in which the inmate is bound from head to toe and rendered completely immobile. A hockey helmet is then placed on the inmate’s head (Bernard et al. 2008, p. 26). In Ontario, Smith was kept in a restraining bed three times over an eight-day period. The bed is usually used once a year and most patients are confined to it only once. Like the WRAP, the bed restricts all movement (Vincent 2013, p. A8). These practices of restraint were defended as measures taken to prevent self-harm. Pepper-sprayed, tasered, and assaulted, for the majority of her time in prison, Ashley Smith was kept in solitary confinement, even though, as the Correctional Investigator for Canada noted, it was well known that her mental health deteriorated under these conditions (Sapers 2008, p. 9). As one psychological report put it, she lived in ‘extreme idleness’ locked up 23 out of 24 hours a day. Often without clothing other than a smock, denied blankets, shoes and even tiles from the cell floor, Smith was also not permitted enough toilet paper, soap, tampons or the chance to wear underwear.

Never properly assessed, Smith’s early labels as someone with a mental illness, and her resistance to assaults on her person, plunged her into a state of exception where nothing committed against her could be considered a crime. Diagnosed as manipulative, narcissistic and with a borderline personality disorder and sado-masochistic tendencies, Ashley, one psychiatrist concluded was a fearful, tyrannical child. Another considered that her tying of ligatures was the outcome of a sexual fantasy. Shortly before her death, a psychologist suggested that given the conditions in which she was held, her self-harming practices had to be understood as ‘a desire for sensation’ (Telegraph-Journal 2013, April 16). Smith’s death should therefore be regarded as accidental and not suicide. Self-harm for these medical professionals is understood as a wilful bid for attention or sensation rather than the last resort of someone driven to self-destruction by the intolerable conditions of her detention.
When Ashley was assaulted by prison staff, it was she not they who was transferred. Her stay in the Regional Psychiatric Centre in Saskatchewan where Kinew James met her death, illustrates the conditions under which she lived while in prison. While at the facility (the only psychiatric centre for federally sentenced women and one in which there are only twelve beds for women), a supervisor grabbed her, lifted her off the ground and called her a cunt. He stepped on her head. In another case the same guard reportedly called Smith ‘A f…… animal’ and banged her head on the floor. In this case, after it was revealed that the supervisor intimated his co-workers to falsify reports documenting the incidents, he was fired (Blatchford 2013, April 04; Perkel 2013, April 03; Vincent 2013, April 17). Ashley actively challenged the conditions of her incarceration, availing herself of the few institutional avenues for complaint. She was almost always ignored. Indeed, several of her complaints were found unopened months after her death (Perkel 2013, October 15). In the forensic unit of the hospital five months before her death, a staff psychiatrist wrote in his discharge summary that Smith had ‘reached a point of no return’ (Swaminath in Vincent 2013, p. A8). She was taken back to the prison where she continued to be segregated for long periods without review. Senior management ultimately directed staff not to intervene when she tied ligatures around her neck and they permitted her to retain ligatures in her possession for extended periods of time. When staff directly observed her tying a ligature around her neck on the morning of her death, they waited until she was no longer breathing to intervene. The entire incident was filmed.

The order not to intervene resembles the torture memos Pugliese has analyzed. For instance, the torture memo prepared by Bybee spelled out a range of violent practices that can be performed as long as they do not result in death. In Pugliese’s words, in the memo ‘torture is officially sanctioned along a continuum of carefully managed intensities, punctuated by levels of pain that the torturer knows must not push the victim over a fatal threshold’ (Pugliese 2013, p. 163, italics in original). Similarly, testimonies from Ashley Smith’s jailors make it clear that guards were instructed not to enter Ashley’s cell unless they were sure that she was no longer breathing. They were told that they risked being disciplined if they entered Ashley’s cell to cut her ligatures. Told to wait for imminent danger, one manager told the Inquest, she could understand how one would interpret this as waiting for Ashley’s death. Guards were specifically instructed not to show warmth since this rewarded Smith for her attention-seeking behaviour: at the time of her death, guards had been sent no less than 38 memos warning them against intervention (Perkel 2013, September 25). A ‘Use of Force Trainer’ brought in to instruct guards on how to manage Ashley was firm: as long as she was breathing, there was no point entering the cell. Ashley Smith, he said, would likely die from death by misadventure anyway (Blatchford 2013, February 01; Blatchford 2013, February 20; Vincent 2013, May 17).
If the excessive force directed at Ashley Smith reveals society as something that is being made through the prison, we can only conclude that for the state, it matters deeply that the body of a girl classified as unruly be controlled by eight men and women in combat suits wielding syringes. Terror sported its underside of reason: she had reached the point of no return; we could not control her. Feldman describes the performance of rituals of power and 'the instrumental staging and commodification of the body by political violence' (Feldman 1991, p. 8). Others discuss the wounded body as text (Mbembe 2003), the branding on flesh (Spillers 1987), the writing of a story of power on the tortured body and on the social body (Scarry 1985). Ashley Smith’s body is what Feldman has described as ‘the raw ingredient’ from which the state manufactures power: ‘The surface of the body is the stage where the state is made to appear as an effective material force’ (Feldman 1991, p. 115, italics in original).

It is possible to see the state’s treatment of Ashley Smith as an instance of what Carrington has called penal welfarism, ‘a form of justice administration that combined assistance and rehabilitation with punitive sanctions for non-compliance’ and that targeted the children of the ‘unruly, unchaste, unlawful, and primitive’ (Carrington 2011, p. 33). Writing of the Australian state’s pre-occupation with strengthening and purifying the social body, a pre-occupation that led to the criminalization and punitive treatment of state wards, unlawful non-citizens, and the children and youth of Indigenous peoples, Carrington argues that we should see immigration restriction, Aboriginal protection and child welfare as projects emanating from the Australian state’s particular history of needing to overcome its convict history and the dispossession of Aboriginal peoples. While I am also driven to see the powers imprinted on the flesh of the three teenagers discussed here as emanating from the white settler state’s particular historical investments, the intensity of the violence gives me pause. It reminds me to read the power written on these bodies as the making of subjects who can only know of their own racial power through violence. In this way, the founding violence against Aboriginal peoples functions not simply as one instalment in a continuing history of diverse forms of violence, but as the source of the compelling need for settlers to write their power on bodies evicted from the category of the human. Racial power must be inscribed on all those deemed to be outside the human, regardless of their various routes of eviction from the circle of humanity.

Pugliese reminds us often in State violence and the execution of law that the violence directed at inmates must confirm their status at the limit point of humanity. It must reduce the inmate to flesh and bring them to the brink of death. Always attentive to technologies of violence, he writes of different modalities of violence as they emerge, for instance, in the duct taping of an individual’s head. There is instrumental violence.
produced by the direct application of tools and technologies—such as cables, pliers, electrodes and so on—onto the body of the victim in order to inflict pain. In this case the duct taping of the detainee’s entire head directly produces a terrifying sense of asphyxiation. Gratuitous violence is a type of supplementary violence that results indirectly, after the fact of the application of instrumental violence. In this instance, the instrumentalized application of duct tape was principally driven by the desire to silence and subjugate the detainee. The ripping off of the duct tape and the tearing of his hair and beard will generate a violence that is wanton, augmenting the pain of having one’s facial apertures sealed up. The end result is to confirm the detainee’s status as subjugated object of violence. (Pugliese 2013, p. 28)

The inmate who cries out, as Ashley did, ‘I can’t live here anymore’ is then deemed to self-harm, the practice that prison services define as ‘the intentional, direct injuring of body tissue without suicidal intent’ (Sapers 2013, p. 7, citing the policy of Correctional Services Canada). Instead, Pugliese proposes that we make explicit that prisoners are deliberately driven to the end point where death is the only option. We should therefore regard self-harm as a type/form of ‘corporeal insurgency’ (Pugliese 2013, p. 3). He offers the example of the detainee Mohammed Bashmilah who cuts himself to write in his own blood that he is innocent. Bashmillah ‘insists on marking the materiality of a torn body recalcitrant to the law’s demand for acquiescence’ (Pugliese 2013, p. 3). The tortured ‘violently re-make their bodies into their bodies’; it is all that is left to them (Pugliese 2013, p. 4, italics in original).

For Ashley Smith, this was surely the case. As the extreme measures of self-harm suggest, Smith was desperate to protest her helplessness and to become a subject, even if this meant her death. In this respect it is useful to reflect upon what is secured when prisoners are subjected to solitary confinement. As Lisa Guenther powerfully argues:

Solitary confinement works by turning prisoners’ constitutive relati

Prisoners driven to this point share with the suicide bomber the willingness to face annihilation in pursuit of self-esteem. As Ghassan Hage argues of Palestinian suicide bombers, the paradox of seeking self-esteem and social capital through death is resolved when we consider the lack of opportunities available to Palestinian youth in life (Hage 2003). Our gaze should not remain on the suicide bomber’s agency in death, Hage warns, but rather on the social conditions that
close off all other possibilities of being. Seen in this light, self-harm and suicide bombing do not arise in pathology but are instead responses to the state’s deliberately planned annihilation.

**Part Three: Kinew James and the Colonial Present**

There is very little information available about Kinew James. The media reports that at 18, Kinew James was sentenced to 6 years for manslaughter (killing a violent partner), arson and uttering threats. She remained in the prison system until her death at 35. A type one diabetic considered mentally unstable, James was frequently in conflict with guards. Kept for long periods in solitary confinement, she often threatened to hang herself and engaged in self-harming behaviour. James alleged that guards at Grand Valley Institution in Kitchener, Ontario, smuggled in drugs and cigarettes in exchange for sex (Mackrael 2013, Jan 23). Enduring similar prison conditions to Ashley Smith, James too was driven to register her own life in death.

James’s life was filled with the everyday colonial violence Aboriginal scholar Patricia Montour described as ‘a cyclone of pain’ (Monture 1995, p.170). At a press conference in 2011, James’s lawyer told the media about her ‘tragic upbringing’. Born in Portage la Prairie, Manitoba, she was apparently turned over to foster care when her alcoholic mother left and her father could not cope with five children. From the sparse news reports, it is possible to glean a few details about James’s life as an Aboriginal person. For instance, James’s lawyer tried to persuade her to prepare a Gladue report, a background report on how her Aboriginal history might serve as a mitigating factor in her sentencing. James apparently rejected this option open to her as an Aboriginal offender and thus a member of a historically disadvantaged group. James was not without a sense of her history and culture, however. In the newscast featuring her mother sorting through family pictures in preparation for her memorial, we see a child’s drawing of a rainbow with the words Treaty 1 printed on it (for an explanation of Treaty 1 see Cloutier 1957). From James’s mother, Grace Campbell, who describes her daughter as ambitious and spiritual, we learn that ‘Kinew means eagle. Her name is Ke-She-Ba-Nodin-Nuke-Kinew, that means Eagle in the Whirlwind’. Her mother emphasized that Kinew only ever talked about school and university and had completed some online courses at Athabasca University (Noel and Seglins 2013).

Of Kinew James’s treatment in prison, the facts are equally sparse (an inquest and various investigations are currently under way). Fellow inmates told the Elizabeth Fry society that she repeatedly pressed her distress button and cried for help. Attempting to assist her, inmates pressed their own distress buttons but all were ignored and guards turned off the distress call button. The inmates noted that a nurse peeked in once and told James to drink water. James had had a series of altercations with guards and a record of becoming angry
when, for instance, her shoes and sweatshirts were taken away, or when she was told that she wouldn’t be getting any mail. Kinew James’s life and death in prison illustrates several characteristics of Aboriginal inmates who die in custody: lives filled with poverty, ill health and historical trauma (as the child of or the survivor of residential schools, for instance), early incarceration that often increases with time spent in prison, and a profile of mental and physical ill health, a profile that is easily annexed to legal explanations for why prison officials were justified in acting as they did. Most of all, the circumstances of James’s death, where her jailors display a stunning indifference to her suffering, are similar to the vast majority of Aboriginal deaths in custody (see Razack 2012, 2011a, 2011b).

Inquests and inquiries tell a codified story about Aboriginal death, a story that never alludes to the colonial present although it sometimes begins with an acknowledgement of a colonial past and to the damage suffered by, but crucially not done to, Aboriginal peoples—a strange kind of colonization without colonizers. The story that is told in law is one about the ‘disappearing Indian’. Aboriginal people are scripted as people who (mysteriously) cannot survive the modern era. They self-harm, turning most often to alcohol but also to drugs. Frequently exhibiting mental illness, and perhaps even trauma (from having to deal with modern life, and not from having to deal with colonizers), they end up in prison, a dying race whom it is impossible to help or harm (since they are dying anyway, how would we recognize harm?) Fulfilling this logic, I can already hazard a guess about what an inquest into the death in custody of Kinew James will likely conclude.

James will be found to have a record of acting out—of ‘crying wolf’. It will be noted that she was often aggressive and those incidents that landed her in court in 2010 for assault will receive full play. We will learn that over-stretched guards could not possibly respond to her every cry. The coroner will conclude that some procedures for response could be improved but the practices of extreme restraint and segregation will not come under intense scrutiny. They will be justified by the logic that James was violent. There will be no exploration of why Kinew James might have ‘acted out’. Her medical records will be examined and we will learn that between her type 1 diabetes and her ‘mental instability’, the latter always undefined, James was simply someone whom it was hard to help, someone who had to be controlled for her own good. While this coronial response is in keeping with the dynamic present in inquests which scholars have described as ‘speaking ill of the dead’, in cases of Aboriginal death, the impulse to blame the victim draws strength from a wider social narrative that the land belongs to white settlers because its original inhabitants are dead or dying (Scranton and Chadwick 1986). The neglect that ended James’s life sustains this conviction.

The inquest will not see James’s cell for the vestibule that it was, where a violent branding of the flesh will have turned the human into
carcass, but we can begin to trace the beginnings of this process of objectification seared on flesh of which Spillers writes for the descendants of African slaves. We can attempt to prepare a (necessarily speculative) Gladue report not, as her lawyer suggested, for the purpose of sentencing, but instead to show the arc of violence in her life. We can draw on the statistics about the over-representation of Aboriginal women in prison,\(^9\) Aboriginal children in foster care,\(^{x}\) the rate of sexual violence directed at Aboriginal women (Human Rights Watch 2013; Canadian Feminist Alliance for International Action 2012), and the ongoing violence bequeathed by residential schools, to note that James’s situation is a collectively shared one. The ongoing poverty, violence and crisis in Aboriginal communities rounds out the Gladue profile, establishing that Canadian society directs a considerable structural and gendered violence against Aboriginal peoples, a violence that law authorizes.\(^{xii}\) Perhaps nothing reflects the intensity of everyday colonial violence as does the high rates of Aboriginal suicide in Canada, the highest in the world.\(^{xiii}\) As with self-harm, suicide on this scale illustrates the paradox of choosing death as the only viable option for registering life.

How do those considered surplus, and human waste—waste that Bauman notes is the deepest meaning of colonization (Bauman 2004, p. 6)—inhabit the space of death? Prompted by Ashley Smith’s death, the Office of the Correctional Investigator, Howard Sapers, provides an answer. On September 30, 2013, the Office released a report entitled *Risky business: an investigation of the treatment and management of chronic self-injury among federally sentenced women*. Sapers interviewed eight women, of whom seven were Aboriginal. Selected for research purposes because they were ‘deemed to be the most high risk and chronic self-injurious women in the federally sentenced women population’, the women shared a collective profile that goes beyond their racial origin. Of a median age of 25, all the women were survivors of physical and sexual abuse; all had spent time in group homes or foster care; all were diagnosed with a mental disorder and six had spent time in a mental health or psychiatric institution prior to their incarceration in prison; three had fetal alcohol syndrome; all ‘self-injured’, using ligatures or inserting foreign objects into their bodies. All had a history of suicide attempts. The Office of the Correctional Investigator examined the visitor’s log and found that most of the women had very few visitors. Taking the trouble to note that one woman had not even had a visitor for 13 years, the Office informs us of their almost complete social isolation. The social isolation produced by the prison itself is in plain view, but goes unremarked upon. All of the women had time added to their original sentences, many were transferred several times. All were kept in solitary confinement, often under the euphemism of ‘clinical seclusion’. The Report documents that little medical care was provided, the prison viewing the women primarily as security threats. All the women self-harmed the more that they were isolated (Sapers 2013, p. 26, para. 73).
From birth, the eight women began a slow and inexorable journey to the vestibule, the anti-chamber where death is not the end of a life but the production of a corpse (Pugliese 2013, p. 122). Minds disintegrate when bodies imprinted with early abuse and poverty end up in prison. Having reached the place of no return (a label many will earn in prison), it is no small irony that as research subjects, the women would be asked to consider their situation as one marked by chronic self-harm, and that we will only come to know them as authors of their own demise. Kinew James was one of the eight women interviewed by Howard Sapers. Holding on to her humanity until the end, she participated in the investigation on condition that she was named in the report. Asked how the prison should respond to women who self-harmed, James suggested counselling but also ‘self-soothing stuff’. Remembering that she had been given a chocolate bar as a reward for not self-harming, she suggested that even a chocolate bar could be of some help. ‘It doesn’t even have to be just a chocolate bar’, she added. Six months later, Kinew James was dead, her own cries for help ignored in the psychiatric unit on the prairies where she had been placed. Sapers informs us in a footnote that her death was not due to self-harming.

The branding does not end in death. The narrative about self-harm in inquests, inquiries and official reports such as Sapers’ research study and the annual reports of the Office of the Correctional Investigator, sweeps away the force imprinted on prisoners’ bodies by guards and medical personnel. It leaves out the blocking of exits, the assaults on minds and bodies. ‘Carcass is that object-thing’, Pugliese writes, ‘that will not be liberated or redeemed, and for whom, as in Gul Rahman’s case, no justice will be served’. He is insistent:

I deploy the uncompromising term ‘carcass’ in order to disrupt the hold of residual humanisms that would demand of the victim, who has been stripped of every possible vestige of personhood, the exercise of some redemptive agency in the face of the most horrific of situations. …To demand and extract agency from the victims of fatal torture regimes would be tantamount to inflicting upon them yet another level of (symbolic) violence, by imposing upon them a redemptive narrative that is undone at every turn by their torture, death and unceremonious dispatch to unmarked graves. (Pugliese 2013, p. 168, italics in original)

Conclusion

The human body is continuously made to bear the imprint of power, the marking on flesh that law considers legitimate. The prison is only one of the places where society marks the limit of the human and the limits of justice (Silva 2013). As the life of Kinew James illustrates, the eviction from the category ‘human’ begins in colonialism when the conquered are declared always already dead or dying. Nothing is owed to a disappearing race for who can stop the march of progress, least of all from a community of ghosts? The modern settler state
inherits its technologies of torture and terror from the moment of its inception. It is not surprising that the prison, now filled with Aboriginal bodies, is a place structured to create the fragmented human who must then be destroyed. The colonial world, Fanon remarked, is made up of the native’s sector and the settler’s town but while the two confront each other, ‘There is no conciliation possible, one of them is superfluous’ (Fanon 1961, p. 4). It is this colonial logic with its superfluous bodies that gives rise to the space of death where the tortured bodies of those evicted from humanity give birth to the modern state. From the endless streams of photos and films of torture at Abu Ghraib and Guantanamo to the present day when accounts of prisoners’ last moments are shown on the nightly news as part of the proceedings of inquests, inquiries and trials, we are inundated with narratives of torture and violence and their images of full-blown theatricality. One can easily become inured to torture and prison violence, believing that such violence is simply a feature of our age, a necessary technology protecting us from unruly bodies. Indeed, the words and images themselves seem to make the case for the savagery of the Other, a savagery that we believe must be matched by our own. If we understand these practices of violence as terror, we can begin to grasp the work they collectively do in the making of the modern state, and resist the impulse to view them as isolated or specific instances of violence. To make sense of the torture and extreme violence directed at three teenagers in an era of drones, we will need to think through terror, as Taussig advises. The torture and violence imprinted on the bodies of the three teenagers compels us to analyze the connections between colonial, settler and neo-colonial contexts across spaces. Torture travels easily across the globe because it is endemic to the colonial. We will need to confront the racial impulse that courses through multiple technologies of torture and violence, the making that is, of the category of the human and non-human.

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**Notes**

i This was not the first time Ashley was placed in a body belt. (See Bernard et al. 2008, pp. 21, 22, Blatchford 2013, 20 Feb, Dalton 2010, Zlomislic 2009, Perkel 2012, Humphreys 2011).

ii The paragraph that follows is taken from Razack 2012.

iii I am grateful to Leslie Thielen Wilson for this insight.

iv The following two paragraphs are excerpted from Razack 2014.
See McGill 2008, p. 103. Although there has been only this one reference to Ashley Smith’s origin as Aboriginal, there is a long-standing connection between children in foster care and Aboriginal peoples. Notably, today there are more Aboriginal children in foster care than there were children in residential schools. See Blackstock 2003.


A restraining mask is like a muzzle popularized in the movie *Silence of the Lambs* about serial killer Hannibal Lecter. The mask is now widely sold on Amazon and other spaces.

According to documentation of institutional psychiatrist Dr Jeffrey Penn who saw Smith in December of 2006 (Vincent 2013, 25 March).

A Gladue report is a pre-sentencing report that can be requested when sentencing an Aboriginal offender under Section 718.2(e) of the Criminal Code. The Court is directed to consider principles of restorative justice. For an excellent scholarly analysis of Section 718.2(e), see Carmela Murdocca, 2013b, *To Right Historical Wrongs: Race, Gender and Sentencing in Canada*, UBC Press, Vancouver.


See, for example, Murdocca 2010.

According to Health Canada, rates of suicide and self-harming practices are the leading cause of death for individuals from First Nations communities aged 44 and under. Further, suicide rates for Inuit youth are 11 times the national average, representing one of the highest figures globally, (‘Mental health and wellness promotion factsheet’, *First Nations and Inuit Health, Health Canada*, viewed 15 August, 2013, http://www.hc-sc.gc.ca/fniah-spnia/promotion/mental/index-eng.php)
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