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“Questions of Sovereignty, Warfare, and Welfare: Can the Rightless Resist?”

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 Although in recent years, there has been some attention on US prison conditions and immigrant detention, interest has ebbed and flowed. Perhaps because of this variation, there has been a lot less focus on protest in these spaces. I believe that this can be partly attributed to the fact that resistance takes an *embodied* form—from lip-sewing to hunger strikes to cutting to suicide attempts, which may not always be recognized as protest. The failure to see protest in spaces of confinement is also due to the political *context* of protest—these spaces, particularly when they are in “segregated units” (forms of solitary confinement and/or super-max spaces) or in immigrant detention, are uniquely rightless, even in a representative democracy. Whether the detainee is a prisoner or foreigner, their treatment in these instances is closer to that of enemy than potential citizen. While political power shapes and influences these spaces, it is not the power of the welfare state, governed by the rule of law, but the warfare state, which operates in legally lawless ways. The combination of bodily protest, invisibility, and sovereign power can blind us to the fact that resistance is still possible in these spaces and that sovereign power can be shifted and reconfigured through this protest.

 Michel Foucault has famously argued that in modernity, power is a relationship and that resistance is built into this relationship. Furthermore, he contends that power is most often “productive” in that it creates, names, and focuses attention on groups even if the subjectivities formed by this power matrix are the result of normalization and hierarchy. He notes, however, that he is only analyzing the possibility of a give and take that could amount to resistance in relatively democratic societies (or: liberal representative states with market economies). Although Foucault’s conception of power is a challenge to the ideas of his contemporaries, a key commonality is that the “political” is only possible in relatively free circumstances. Despite significant differences, authors like Sheldon Wolin and Hannah Arendt similarly view the “political” as a realm of relative freedom, requiring access to public space and with the possibility of communicating a group or individual’s dissent to a plural demos. This is true even as the same authors have recognized that the states in which politics occurs and dissent is relatively normal (again, the welfare state) also exercise a form of sovereignty in war, at borders, and with prisoners and detained immigrants or foreign enemies that may be legal but which does not follow the rule of law or protect inalienable rights (the warfare state).

 A space of rightlessness in which individuals have no “right to rights” would accordingly be interpreted as a depoliticized site in which resistance cannot be expected. This view interprets certain spaces as absolutely rightless and total in its effects even as the same authors—particularly Foucault—also conceive of power as a web, with shifting hierarchies and intersecting subjectivities. In this paper, I suggest how this view of sovereignty—as total in its aims, absolute in its effects, vertical in its direction, and entirely visible and open—does not fit modern US power conditions in these sites. This is not a rejection of Foucault, but perhaps an expansion of his terms and understanding of power as immanent and relational, even in the sovereign context.

I am interested in these two spaces—the prison and immigrant detention—because they are not normally recognized as being under the purview of the warfare state. However, I argue that with shifts in prisoners’ rights from at least the 1990s on and the devolution of the plenary power doctrine to the states in anti-terror policing in the 1990s, there is no longer a solid edifice of inmates’ rights or even minimal constitutional protections in the immigration context. At the same time, as conditions have become more rightless than in the past, there have still been acts of resistance—from suicide attempts to hunger strikes, even the most rightless individuals resist their circumstances. And even despite the dominating presence of state agents, these bodily protests can lead to positive outcomes if not policy changes. The key question is not if the rightless can protest, but *how* they protest, *why*, and what this means about theories of sovereignty in an ostensibly liberal representative state such as the United States?

 If we acknowledge the growing tolerance of non-rehabilitative prisons, increased numbers of segregation/solitary units, and the rightlessness of immigrant detention,[[1]](#endnote-1) we should also consider how these shifts are bio-political in treating the confined as part of a sub-species. But they are also bio-political in gradually replacing the substance of the political—which may have once been concerned with the educational levels and psychological well-being of the confined—with a more fatalistic set of policies aimed at destroying their minds and allowing for the deterioration of their bodies.[[2]](#endnote-2) However, even in these circumstances, the rightless resist often at the level of the body, theatricalizing biopolitical treatment and norms but also redirecting these powers, challenging them, and questioning their unstated force.

 I first explore recent history leading up to the “crimmigration” state, which has not only led to high levels of incarceration and detention, but also increasingly rightless circumstances (relative to the 1970s through the early 1990s) and the convergence of these two areas of law enforcement. I then examine the concept of sovereignty, linking it to Foucault’s notion of bio-power as well as Frantz Fanon’s work on anti-colonial protest and Achille Mbembé’s work on state sovereignty and “necro-protest.” I follow this section with a discussion of some cases of refugee protest and Chelsea Manning’s suicide attempts, examining public and scholarly reactions to bodily protest. In the last section of this paper, I conclude by discussing why we should consider embodied protest as a meaningful and powerful form of protest that alters the

contours of sovereignty, even if only at its edges. The work of James Scott and Charles Lee is helpful in understanding why embodied protest is necessary in an undemocratic and yet highly political context. I also suggest, drawing on Jacqueline Rose’s claim that female suicide bombing is a form of “intimate embrace,” that these cases passionately gesture outwards, seeking connection with a *demos* that refuses to listen or otherwise denies its complicity in these entrapping conditions.

*historical background*

 In this section, I provide some background about the legal roots of mass detention policies that began in 2003 as well as a historical sketch of relatively recent changes in prison policies.[[3]](#endnote-3) US immigration policy as we know it today is rooted in decisions made by the Supreme Court in the Chinese Exclusion cases, which together formed the beginning of the plenary power doctrine. This doctrine has mostly designated foreigners “non-persons” at the federal level since the late 1880s. What this means is that federal immigration policies and enforcement are largely immune from constitutional scrutiny and therefore, immigrants are not merely rightless but legally non-existent. However, throughout the twentieth century, the Court ruled that states have no such power over resident foreigners and must provide constitutional protections, if not rights. So, when immigrants set up residence in a state, they were persons before the law and at least had protective rights—while border entrants or foreigners who traveled were forced to deal with a more arbitrary and unconstitutional state power. This dual system changed in 1996 with transformations in welfare and the beginning of anti-terror legislation. While this did not give states total power in matters of immigration, it *did* diminish personhood rights of foreigners at the state level and technically made immigrant detention possible at a mass level.

 To put it differently, immigrant detention was only “legal” at the federal level because it violates several key constitutional protections (from habeas corpus to due process to equal protection and so on). Foreigners were often detained at the “border” (Ellis Island and Angel Island were two key sites) but could not be detained at the state level for immigration-related matters. In 1996, this changed as foreigners lost personhood rights in anti-terror policing and welfare changes. However, mass immigrant detention was not practiced until after 2003, as 1996 laws were not evenly or ever enforced (as authors often explain, they were largely “dormant”). Today, immigrant detention is a key feature of immigrants’ lives and is practiced regularly on border entrants, asylum seekers, unaccompanied minors, and foreign residents who have been put into removal proceedings.

Detention centers are possible because of the non-personhood of detainees, which can mean no judicial review, no right to counsel,[[4]](#endnote-4) and the possibility of indefinite detention.[[5]](#endnote-5) Detainees do not have the guarantee of full due process rights,[[6]](#endnote-6) equal protection, or even habeas corpus rights.[[7]](#endnote-7) Furthermore, detainees have no right to a jury of their peers, certain judicial processes can occur without the foreigner even being present,[[8]](#endnote-8) and their friends and family (not to mention any lawyers or non-profits involved in their case) do not have the right to know where they are being imprisoned.[[9]](#endnote-9) They are housed with prisoners; are made to wear prison uniforms; and are subjected to prison disciplinary methods like solitary confinement.[[10]](#endnote-10) Unsurprisingly—given the nonpersonhood of detainees and the camp-like space that detention constitutes (even in prisons)—human rights abuses occur at nearly every level of treatment, from inadequate or spoiled food to unhygienic or non-existent sewer conditions to the use of rape and torture.

Changes in welfare provisions, decreasing workers’ rights, and broader forms of discretionary policing have also led to a more paradoxical situation for some citizens: they have *de jure* citizenship status but the *de facto* absence of rights in significant areas of daily life. In considering forms of disenfranchisement, it is important to note how the increasing non-personhood of foreigners (moving from the federal sphere to state and local jurisdictions) mutually informs the greater possibility of “civil death” for citizens caught up in the criminal justice system. Post 9/11 changes in paradigms of personhood have links to the past but at the same time, also reshape personhood and citizenship in a national security context.

Like the history of immigration decisions and policies, the history of the rights of would-be criminals and prisoners has not been uniform, even if certain patterns emerged in the late twentieth century. The 1960s period was characterized by a greater concern for the rights of suspects and prisoners, even though these rights were often ill-defined and contested. Prisons were nevertheless conceived of as rehabilitative and sentences, according to Michelle Alexander, were fairly reasonable (granted with significant bias against the poor and racial minorities). To be clear, what was reasonable was the length of the sentence and the terms of release, even if prison conditions were often abysmal and physical coercion was merely replaced by psychologically cruel techniques of prisoner “neutralization.” Relatively speaking, numbers of the incarcerated were lower: “In 1972, fewer than 350,000 people were being held in prisons and jails nationwide, compared with more than 2 million people today. The rate of incarceration in 1972 was at a level so low that it no longer seems in the realm of possibility…”[[11]](#endnote-11) and sentencing was shorter.[[12]](#endnote-12) With the greater implementation of three strikes laws and increasing penalties for drug possession, by the 1990s numbers of incarcerated had “nearly sextupled” since 1971, bringing the jail and prison populations combined to “nearly 1.7 million” people.[[13]](#endnote-13) States began implementing three strikes laws in the late 1980s and 1990s, with a 25-year to life sentence mandated for the third strike. These mandatory sentences included non-violent crimes, such as petty theft. Additionally, states imposed strict sentencing for gun-related and drug crimes, with anywhere from ten to thirty-year minimum sentences. Life sentences without the possibility of parole also increased.[[14]](#endnote-14)

From the late ‘70s and particularly in the mid1980s, under Chief Justice Rehnquist, prisoners’ rights were also diminished and the conditions of their confinement increasingly dehumanized. As Colin Dayan reports, under his auspices, “a number of cases began to systematically erode the scope of prisoners’ rights claims advanced under the Eighth and Fourteenth amendments. Since then, a conception of prisoners’ rights—the right to some minimal dignity—has lost out to the characterization of inmates as creatures dispossessed of any claims to personhood except what specific laws or regulations deign to confer upon them.”[[15]](#endnote-15) If the personhood of prisoners and former prisoners had been strengthened in the 1960s and ‘70s, more conservative Supreme Court decisions since at least the 1980s eroded the same gains. What occurred was not the erasure of personhood, but its significant deterioration. Forms of “psychic cruelty” are embedded in rules and policies, while standards of cruel and unusual can be weakened, in turn diminishing the legal personality of the offender.[[16]](#endnote-16) These changes occurred, in large part, because of a shift in legal decisions from examining prison conditions themselves to an increased deference to prison personnel’s desire for order. Depriving prisoners of visitation and reading material and increased lengths of solitary confinement were thus not “cruel” or “unusual” if prison personnel lacked the intent to harm prisoners.[[17]](#endnote-17) *Systematically* depriving prisoners of reading material or social contact also undermines notions of “cruel” as the word is linked to “unusual”—as these practices become the norm, they cannot be either.

Prisons aiming at education and rehabilitation were established in the 1800s but as Dayan shows, solitary confinement was thought to be part of this rehabilitative project.[[18]](#endnote-18) The continuation and expansion of solitary confinement has changed in significant ways and is notably a common practice justified by administration and order, rather than as a disciplinary or punitive technique. As special isolation units emerged that placed some prisoners in solitary confinement for lengthy periods of time,[[19]](#endnote-19) the Court allowed the testimony of prison personnel to supersede testimony that challenged the legitimacy of the rules, the empirical basis for these rules (or, lack thereof), and any consideration of the effects of solitary confinement.[[20]](#endnote-20) By arguing that prisoners were placed in “the hole” or in a supermax unit for administrative reasons, any constitutional challenges would be evaded and “By this linguistic sleight of hand, they made the illegal legal.”[[21]](#endnote-21) In this way, efficiency, order and administrative necessity undercut the possibility of challenges based on constitutional personhood. The results have been varied but have included restrictions or total bars on prisoners having any personal photos, any visitation with family or friends (including restrictions or bars on letter writing), the removal of nearly all reading and writing material and the end of GED eligibility, the absence of any spoken interaction with any human beings, and the almost total exclusion of direct sunlight or exercise.[[22]](#endnote-22)

These types of deprivation have largely led to prisoners’ feeling alienated from themselves in a profound way: they often feel that they have lost their mind, they are unable to distinguish between reality and hallucinations, they frequently experience auditory hallucinations, and they feel unable to sense themselves—as one prisoner wrote to Dayan: “’Now I can’t see my face in the mirror. I’ve lost my skin. I can’t feel my mind.’”[[23]](#endnote-23) Administrative segregation is justified as a way to promote order and to correct the worst of the worst behaviors, but “violations” that keep prisoners in solitary are often cries for help, symptoms of mental illness deriving from confinement, poor treatment, and the effects of food and sun deprivation. For these reasons, the conditions themselves can produce the alleged behavior violations. Dayan notes that hunger strikes, self-mutilation and suicide attempts are all logical expressions not merely of the desire to end this torture but to feel again, to regain a sense of self, and as a form of political expression that is otherwise impossible.[[24]](#endnote-24)

 The shift in Court emphasis thus removes any notion of prisoners’ rights, leading to Justice Thomas’s assertion in 2003 that prisoners have *no* constitutional rights except a weak right to some relief from standards of cruel and unusual in the Eighth Amendment.[[25]](#endnote-25) This change was preceded by an increased emphasis on the guard’s state of mind when charged with “cruel and unusual” treatment and not the prisoner-victim, whose personhood has thus been reduced to a mute object.[[26]](#endnote-26) Prisoners were already disenfranchised during and after sentences. The possibility of removal of constitutional guarantees altogether has opened a vast sphere of impunity for police and prison personnel. What this does is to “mobilize this drama of redefinition, where what is harsh, brutal, or excessive turns into what is constitutional, customary, or just bearable.”[[27]](#endnote-27) That is, it is not merely that enforcement, interrogation and prisons have become harsher but that the legal protection of personhood is radically altered as these practices and institutions operate with less scrutiny and oversight.

 The expansion of supermax prisons is one measure of the increasingly normal use of solitary and sensory deprivation in order not just to “control” prisoners’ minds but also to radically alter what and how prisoners think. Dayan assesses the consequences as “cognitive restructuring.”[[28]](#endnote-28)As Hannah Arendt once noted, camps under totalitarian regimes were not attempting to silence or to censor inmates or the subjects outside of the camp so much as to destroy human nature altogether by eradicating human spontaneity. In a similar fashion, U.S. legal decisions and policies lower or even alter the definition of what counts as human. What is disturbing is that with the normalization of these techniques and the use of language that evades constitutional challenges, techniques like solitary or meaningless work or food deprivation are then used in juvenile detention centers, immigration detention, and for criminal suspects who have not been proven guilty. Clearly, relying on “human” rights as an interpretive framework is not referring to a factual state of being or a stable definition of the human (particularly as a solid bearer of rights) but is clearly a concept that is eaten away at and distorted by bio-politically inflected inhumane prison practices.

The erosion of personhood in one area bleeds into the erosion of personhood in other realms of the law.[[29]](#endnote-29) Conditions in solitary units and supermax prisons have important similarities with the dehumanizing aspects of immigrant detention in that both types of site are immune from judicial scrutiny, they do not guarantee consultation with lawyers, and both are marked by techniques of deprivation, light torture, forced medicalization, and forcible cell extraction. Prison sites and immigrant detention are not just similar but have important convergences in the law and shared physical space. In both cases, techniques of control aim at the body to disorient the mind—accordingly, bodily protest reflects and alters these conditions.

 Thus, although hunger strikes, cutting, and suicide attempts in detention or prison are not

new, I believe that we should pay special attention to these forms of embodied protest today. They reflect current conditions of legal dehumanizing treatment and work at the level of state control—speaking to the state, contesting its attempted dominance, and altering its contours even if there are no policy changes. Below, explain how I conceive of sovereignty in relation to these power dynamics and in the following section, I discuss examples of protest that I contend challenge state sovereignty.

~*sovereignty, bio-power, gender*

Authors like Sheldon Wolin have defined “the political” as involving public things, entailing deliberation over community matters, the formulation of rules and order based on the consent of the governed, and the establishment of institutions and leadership positions. [[30]](#endnote-30) Wolin further distinguishes between the “welfare state” (i.e. the state guided by written law and case law) and the warfare state (which entails legally acting outside of the law and using the state’s monopoly on violence against foreigners and citizens deprived of their rights).[[31]](#endnote-31) Only the former is truly political to Wolin, to the degree that the community is involved, power is shared, and true deliberation occurs, while the growth of the warfare state can lead to totalitarian power and the death of the political.

Challenging these distinctions, I conceive of both the welfare and warfare states as “political” but not necessarily *democratic.* I dispute the neat compartmentalization between sovereign powers reserved for non-citizens and enemies on the one side and a seemingly non-coercive, democratic set of power dynamics on the other side.[[32]](#endnote-32) When we deny the forms of violence bound up in liberal notions of rights and belonging, we also fail to recognize resistance in sovereign spaces. I understand the term sovereignty to indicate a form of modern power based on the warfare state’s monopoly of violence. This entails the legally authorized use of power, guided by discretion and outside of the ordinary rule of law, which sometimes operates parallel to the welfare state and which often overlaps with it, particularly during times when bio-power is a key power modality. Targets of this power are often legally construed as “non-persons” with no “right to rights.” [[33]](#endnote-33)

I believe that exploring embodied protest in confinement first helps us understand how and why bodily protest may be particularly logical in a biopolitical age (not that it is unprecedented); how this sort of protest can occur in highly undemocratic conditions of captivity—that is, in a context in which sovereign power aims at total control of bodily functions, social interactions, and always threatens the subject with the possibility of coercion and violence; and finally, how embodied protest can alter sovereignty even if it doesn’t lead to clear policy change or measurable forms of institutional change. In examining these ideas, my aim is first to expand the notion of sovereignty to include secondary actors who are encouraged to act like sovereign agents because laws and (lack of) enforcement encourage them to do so and second, to treat sovereignty as a political relationship between the “sovereign” and the subject, even if this relationship is not politically legible in terms of rights, measurable in terms of policy or institutional change, or recognizable in terms of citizenship status.

In contrast to viewing state sovereignty as a power exercised only at the border or abroad, I approach contemporary sovereign power as often deployed on domestic soil and exercised by a multitude of agents and thus, it is fragmented in nature. The fact that state sovereignty is also a relationship between the state and the people is not directly analogous to Foucault’s theorization of a web of power in relatively free societies.[[34]](#endnote-34) Rather, this relationship is marked by highly asymmetric circumstances, due to the state’s monopoly on violence and the legal suspension of the law in immigrant detention. Nevertheless, viewing power as a relationship helps us to acknowledge that resistance can occur, and its features are immanent to these relations. As decolonial authors like Frantz Fanon and Achille Mbembé have argued, embodied protest is psychologically transformative[[35]](#endnote-35) but also entails the possibility of sickness, injury, and death, and thus, is “necro-resistance” (Mbembé, 2003). Fanon contends that a psychological alteration occurs when a subject goes from the position of powerless victim to a warrior, willing to wield tools of violence and sacrifice his/her own life if necessary. Self-transformation occurs in relation to the outside circumstances imposed by the imperializing country—this can be homeopathic, satisfying, and an act of self-sovereignty. “Necro” does not mean futile or invisible but rather, that life itself is at stake. In turn, forms of necro-protest seek to alter the self and to gesture outwards to a public that often disavows responsibility for these conditions and/or pursues forms of denial and projection. Following Jacqueline Rose’s analysis of Palestinian female suicide bombing, I argue below that embodied protest is a passionate gesture towards a public that often reduces these experiences to individual pathology or criminality.

Embodied protest can also appear to be minute to those on the outside of the captive circumstances, which is why decolonial theory is more appropriate to understand these forms of protest than analyses of protest in a context of relative freedom. For example, while Foucault’s concept of micro-resistance helps us to appreciate seemingly trivial challenges to bio-power, this resistance is still situated in a context of greater freedom than the cases I explore.[[36]](#endnote-36) James Scott’s similar analysis of peasant “rebellion” as involving gestures, faces, puns, gossip, and pilfering for example are low-level, but in a more violent and rightless context as with the cases I discuss below.[[37]](#endnote-37) However, to the degree that both authors’ work is androgynous, I hold gender to be a key part of the sovereign power I examine in this paper: gender is not a mere additive to the analysis but a primary consideration in considering how power is deployed.

The feminized subject, I believe, is uniquely viewed as always attached to others and so

her “culpability” in confined circumstances is never purely individual. I use the term “feminized” transitively, to indicate a socio-political process that imputes gendered meaning on a person or his/her practices, without listening to the person or group in question (in this way, it is a form of “speaking on behalf” of others and a contemporary variant of the Eternal Feminine). “Gendered” can mean “female” but can also be feminized (as with a man who sews his lips but who is assumed to be a woman by politicians and the media because women sew). “Gendered” can also mean “vulnerable” due to conflicts over gender assignment (as with Chelsea Manning) such that spatial confinement and medical treatment are arbitrarily provided, producing a crisis for the mis-gendered individual. Feminization and gendering in these cases are clearly political, if not democratic. Embodied protest in captivity is a functioning element of this power relationship, altering the contours of sovereignty through this resistance, whether it be for a moment or whether it leads to longer-term policy change. Sovereign power is a key part of what makes a state a state while the sovereignty of secondary actors acts like a negative civil society reaffirming the violence and inequality of undemocratic governance. Nevertheless, embodied resistance must be viewed *inside* of these relations, offering a more progressive vision of how sovereignty could be deployed.

In the cases I discuss below, all are individuals who are treated as outsiders by the

welfare state. The exercise of sovereignty over these individuals is fragmented because of the multiple agents involved, banal because of its widespread and daily exercise, and biopolitical because of the evasion of the rule of law through criminalizing status. In my revised reading of Foucault’s analytics of bio-power, refracted through Sheldon Wolin’s theory of “the political” and his concept of “inverted totalitarianism,” I believe we should understand bio-power to not simply mean the politicization of matters of biology but also the replacement of “high” politics—such as public value on notions of virtue, merit, societal cohesion, and good citizenship—with “low” politics: a politics of the oikos, a politicization of life-sustaining materials and activities. More simply, an orientation towards high politics has been replaced with a politics largely focused on matters loosely related to “biology” with a normative assumption that this biology is fixed, natural, and self-evident. Accordingly, political matters begin to revolve around who gets access to safe roads, healthcare, or clean drinking water, as a primary focus of politics displacing a focus on who contributes to the political community, who acts democratically, and/or what debates are important for societal well-being? This is not to idealize a politics of virtue but rather to note a change in orientation that does not merely diminish the possibility of a democratic politics aimed at social justice (if this time period or place ever existed) but which affirms biologically deterministic notions of embodiment and normative understandings of class, race, able-bodiedness, heternormativity, gender, and citizenship status.

Bio-power can entail eugenically oriented policies and practices—for example calling

refugees from certain countries “criminals” and “invaders” and materially “proving” this by locking them up in detention encampments—and it reduces the scope of the political, allowing the “nation” (now conceived of racially) to “conquer the state” (i.e. the rule of law and representative institutions) as Arendt once put it.[[38]](#endnote-38) In both Australia and the United States, two countries that arguably criminalize refugees more than most others, bio-political techniques and legal enforcement are evident in the treatment of would be refugees as they are often criminalized and detained in legally lawless conditions even before they have been screened for refugee status. This criminalization, Arendt has aptly noted, is the criminal status of an outlaw—someone entirely outside of the law and therefore, falling under exceptional status, as opposed to the rights of a criminal who is acknowledged as a legal subject of the law.[[39]](#endnote-39) To use the terminology above, these detainees are objects of the warfare state and subject to sovereign modalities exercised as discretion. The type of sovereignty deployed is seemingly low-level and banal, legal and yet extra-legal: control over diet, sleep, and social interaction. Embodied protest in captive conditions is a logical response to sovereign, coercive power and often the only means of resistance available to the individual involved. Below, I discuss the examples of embodied protest.

*examples*

*~refugee lip-sewing*

 In *The Origins of Totalitarianism*, Hannah Arendt argues that the stateless lack the “right to rights” and thus, “their freedom of opinion is a fool’s freedom, for nothing they think matters anyhow…They are deprived, not of the right to freedom, but of the right to action; not of the right to think whatever they please, but of the right to opinion.”[[40]](#endnote-40) Arendt explains how the stateless are free to protest but have no right to be heard, much less to be recognized, as legitimate political agents. The well-publicized lip-sewing campaign by about sixty individuals confined in the Woomera Detention Centre in Australia, in 2002 is evidence of this “freedom” without rights. These detainees were protesting their seemingly indefinite detention as the Australian government temporarily stopped processing refugee applications. These sixty individuals joined others who were already staging a hunger strike.

Arendt’s statement explains how detainees may be “free” to sew their lips together or to write a list of demands to their wardens, but the trouble is that they do not have the right to be politically acknowledged by the relevant state actors who could ameliorate their situation. However, while the state and public may act indifferently to self-harm, confinement is not an indifferent matter to detainees isolated and trapped in circumstances beyond their control—their pain and suffering might only be relieved homeopathically, that is through self-willed, controlled harm. This homeopathic move is an assertion of self and symbolically expresses a form of symbolic communication with the broader public.

As a practice of the self, the use of violence can transform the detainee from a witness to an actor, as Fanon has suggested about anti-colonial efforts.[[41]](#endnote-41) This transformation can entail discipline, self-control, and a positive attitude toward the self, even if death is on the horizon. Banu Bargu believes that lip-sewing interestingly brings together distinct techniques of protest: starvation, which “transforms the body” and “diminishes its existence”; silence, which deepens and symbolizes the violence of starvation; and lip-sewing, which, through “visual and visceral demarcation of suturing one’s lips” transforms “silence into an embodied and violent withholding of speech.”[[42]](#endnote-42) Despite this complexity and the communicative gesture that lip-sewing permits, the multiple facets of this one action have been met with more simplistic reactions which have conventionally viewed sewing as a mere addition to the hunger strike.

Lip-sewing forces the public to confront a series of unresolved issues, from detention center conditions to the plight of asylum seekers locked in prison-like spaces for fleeing persecution in their country. However, the powerful symbolism of lip-sewing can lead to public denial, deflection, and projection. As Cox and Minahan argue, the Woomera campaign was distorted to justify indifference to these refugees. Lip sewers were first portrayed by Australians as women, which the authors surmise is because sewing is viewed as a female activity. Second, they were accused of forcibly sewing their children’s lips together, to “exploit” public sympathy. There was also broad public speculation about whether this practice was something Afghanis or Iraqis did due to their primitive culture. These perspectives didn’t just distort the reality of the lip-sewers’ identities and actions but interestingly dismissed and pathologized them through casting them as bad mothers and thus, bogus asylum claimants. In this way, gendering them and falsely claiming that they sewed their children’s lips diverted attention from what was a stark and meaningful gesture—to sew one’s lips to hyperbolize and challenge the law’s attempts to silence them and render them invisible. In considering Cox and Minahan’s analysis, I believe we can see that distortion and projection of civilizational superiority play a key role in diminishing the significance of the embodied protests. In my view, the acts themselves are so meaningful and powerful that the public must project gendering and bad motherhood onto these asylum seekers, divert attention from the stark reality the refugees face, and deny their own complicity with these circumstances.

Their analysis importantly considers protest at the site of resistance—always already feminized lips—that are not passive but productively create a dystopia.[[43]](#endnote-43) However, I do not think that lip-sewing must be interpreted as a form of “masculinist assimilation” and “reinforcement” of speechlessness or “invisibility.” In fact, these conclusions arguably participate in the public’s distorted reaction to this campaign, not to mention being overly tied to a state-centered analysis of power. Ayten Gündoğdu similarly rejects the lip-sewers’ efforts as desperate and futile: lip-sewing is not taking a knee at a football game, for example. One is civil protest as a member of a political community, whose “speech” is meaningful through its properly *political* expression. The other is performed in a legal limbo absent a visible political community and thus is rendered meaningless due to, according to her logic, the non-personhood of the stateless person. For these reasons, Gündoğdu concludes that “it becomes *impossible* to get their utterances recognized as meaningful and relevant speech.”[[44]](#endnote-44) In contrast to Bargu, who interprets these acts as self-sovereignty and parrhesiastic practice, Gündoğdu first ignores the sufficiency of these protests in and of themselves and as a challenge to state sovereignty, even in the absence of policy change. Second, she does not account for the idea that forms of gendering, racialization, and additional dynamics of othering, contribute to a specific set of power dynamics in which bodily protest is meaningful as a way to connect to the public based on these attributes (e.g. as a mother reaching out to other mothers).

 Despite acknowledging that these campaigns *do* draw media attention and can lead to greater awareness of conditions of confinement, she still concludes that they affirm rather than challenge the violent and invisible conditions of detention. Additionally, Woomera detention camp was shut down in the calendar year after the lip-sewing campaign, but Gündoğdu views this as an empty victory since the entire detention system did not shut down. In contrast to these negative evaluations of bodily protest, I believe that lip-sewing provoked significant forms of projection that challenge the conclusion that there was indifference or ignorance.

To the contrary, the detainees’ embodied protest became a subject that was overdetermined—the lip-sewing itself became the focus as the refugees’ stories and pathways to Australia were ignored or effaced. Gendering this activity as ‘Middle Eastern’ and feminized[[45]](#endnote-45) did not render invisible but rather entailed very public forms of denial and a refusal to engage authentically with detention conditions and asylum seekers’ plight. The distorted lens with which Australian politicians and the public viewed embodied protest was a way to homogenize and generalize about what were unique stories of arrival on the shores of this country, which would highlight tensions between individual and self: refugee claims that focus on individual persecution situated in a greater political context. The public’s projection of the meaning of lip-sewing indicated that if they “all” act this way, there is nothing worth considering about each individual engaged in protest.

Importantly, the public reaction depoliticizes their persecution, their flight, and their conditions in detention. It severs the gesture outwards that lip-sewing indicated, cutting off the possibility of recognizing patterns of flight that would make Australia the logical country in which to seek refuge. Rather, they engaged in contradictory claims: the refugees were manipulative and selfish mothers, but they were also a product of their primitive and barbaric culture to the point of being unable to act individually. The binary modes of operation of “good citizens versus bad refugees” and “civilized mothers versus barbaric ones” produced by Australian asylum law and public reactions is further taken to be a problem of the protesters themselves.

 ~*hunger striking mothers*

 While in the United States, public responses to recent refugee policies have been sympathetic to refugee children removed from their mothers, they similarly ignore longer standing policy such that merely reuniting families appears to fix the whole system. What is lost is understanding how the pain of family separation, for example, is inextricably bound up with the lawless conditions in immigration detention and embodied conditions that reinforce rather than resolve loss, distress, and suffering. In US family detention centers, several refugee mothers have reacted to family separation policies and indefinite detention by staging hunger strikes. A significant number of these women have been detained because they are seeking refugee status based on some combination of intimate partner abuse and more public forms of gendered assault by drug cartels. The UN has designated this combination of circumstances “femicide” and they have challenged the US’s arbitrary detention of asylum seekers. Nevertheless, detaining asylum-seekers continues, largely unabated, while the threat of separation from their children in detention is always looming (and has been since the Bush administration). Although the US government recognizes the gendered elements of women and children’s recent flight to the southern border from Central America, vocal conservatives have argued that a good mother would never expose her children to this sort of flight. Accordingly, it is held that because mothers appear “illegally” at the border, they are criminals who can have their children removed from them. Their subsequent detention is taken as material proof of this criminality, which is interpreted as further “evidence” that they deserve punishment and family breakup.

A specific example of this occurred in 2016 when women asylum applicants in detention who were locked up with their children in Texas and Pennsylvania went on a hunger strike. As the women called for legal action to end their unlawful detention, the government issued a gendered threat:

Female asylum seekers held with their children at the Berks County Residential Center in Pennsylvania say they have been ‘pushed to suspend’ a two-week long hunger strike ‘due to threats from immigration officials’. In a letter to reporters, 22 mothers who refused meals to protest their indefinite detention said they were told: ‘If our health is weak, the government can take our children from us and send us to jails for adults.’[[46]](#endnote-46)

Family separation is not a mistake or even a new policy but is simultaneously reducing female applicants to their motherhood status and then attacking the very foundation of that parental connection.[[47]](#endnote-47) Family separation in detention centers, which was often enforced irregularly before Trump, compounds the already traumatic experiences of detained women who fled dangerous circumstances in their home country, often encountered violence on their pathway north, and then must endure yet another set of traumatic and unjust conditions. Immediately separating women from their children, no matter how old, when they are clearly refugees is not merely a political deterrent but deeply bio-political as a eugenic attack on criminalized families. It removes the last thing these families had—each other—in a quest to disrupt and destroy these connections in the name of a purportedly unified sovereign state.

 Challenging the pathologization and dismissal of refugees’ protest, I believe that lip

sewing and hunger strikes offer an alternative perspective of refugee conditions that provide politically symbolic communication to the broader public at the level of the body. These protest methods are meaningful in ways that cannot be appreciated by privileging formal modes of communication and political activity above informal ones. Embodied protest is significant as a form of control over one’s body and affect when the state has sought total control over bodily existence and emotions. As feminized subjects, seemingly passive victims are nevertheless criminalized due to their “bad mothering,” for example—embodied protest hyperbolizes this feminine status by weakening the body and sealing the lips, but also defiantly resisting the myriad forms of social and political control over people construed as feminine quasi-criminals.

Embodied protest precisely meets and reflects the violence of the state—that is, this

protest fits the context that the state sets while also challenging its attempt to absolutely control the body. I suggest that it is thus a homeopathic assertion of self in circumstances attempting to extinguish this self, its individuality, and its humanity—essentially, its spontaneity. Achille Mbembé argues that if the idea of sovereignty is defined as “self-institution” and “self-limitation” it is also involved in “the work of death”.[[48]](#endnote-48) To the degree that bio-power treats the population as a species, it does so divisively, marking some as too inferior to live, thus deploying “necro-politics.” The resistance of those reduced to a less-than-human status is necessarily “necro” protest because power operates at the level of the body, deciding who lives and who is abandoned to death. In my view, while self-harming protest is admittedly destructive and perhaps “thanatic” or a form of “necro-resistance,” it can also positively alter sovereign power relations, educate witnesses and the public, and draw attention to the stark, embodied, and oppressive circumstances of confinement today. That is, these acts can be simultaneously “pathological” *and* political, destructive *and* positive, self-harming *and* politically agentic. This is because the individual reformulates sovereignty, challenges attempts at absolute control over every bodily movement, and instead exercises control for herself, reminding the state and demos (broadly conceived) that power is a relationship and not a static thing.

Embodied protest may express the deepest pain of a mother separated from her child at the border and the pain and mental alienation of solitary confinement—*perhaps no other protest form is as adequate to the context as embodied protest is*, perhaps no other method is as satisfying. Indeed, in these examples, acts performed in dire circumstances bring attention to motherhood and to the pain of separation from one’s children—embodied protest heightens and alters seemingly fixed and inferior designations of motherhood, gender (mis)recognition, and racial and alienage statuses. It doesn’t merely challenge these statuses but connects them to others, reaching out to the broader public. It is a gesture of an “intimate embrace” that dramatically performs a connection to others through politicizing what has been taken to be depoliticized. If this is a form of “necro-protest,” the broader forces causing pain, silence, and/or death must be dismantled.

~*Chelsea Manning’s suicide attempt(s)*

           Like these women, the case of Chelsea Manning, the intelligence officer imprisoned for

releasing classified documents on Wiki Leaks, is also marked by a significantly unjust and cruel form of gendering and mis-gendering.[[49]](#endnote-49) Manning identified as a woman and suffered from being

placed in an all-male military prison, even as she was perhaps allowed to seek psychological and

medical “treatment” for her “gender dysphoria.”[[50]](#endnote-50) I use scare quotes around these terms to

challenge their pathologizing implications and because it appears that she was not treated

in the way she needed or requested. Manning’s attempted suicide on July 5th, 2016, clearly indicated that her circumstances were unbearable and the government’s response to her suicide attempt was to first forcibly extract her from her cell based on her “resistance” to leaving (she was most likely unconscious).[[51]](#endnote-51) This type of force is frequently used against prisoners, even if they are injured or ill. Using force on someone who has been weakened through her embodied protest is a message to all inmates that their challenges to sovereign authority will be met with brutal force. Ignoring the troubling circumstances that led to her unconsciousness, the suicide attempt was held against her: Manning was threatened with indefinite segregation for the remainder of her thirty-five year sentence and she was also threatened with an additional nine years to her original sentence. Her sentence was already the longest sentence on record for this type of charge. Manning’s suicide attempt may have been enacted amidst depression and the attempt highlights her plight as a “transgendered” subject—the suicide illuminates these facets of her existence rather than transcending them. Indeed, the attempt could also encourage witnesses and the public to further pathologize her.

However, in understanding the pain she had already experienced with repeated periods

in solitary confinement, combined with what amounted to medical and psychological abandonment, her suicide attempt was a demonstration of her sovereignty over herself. The conditions of isolation have often led to attempts at self-harm and suicide in the prison context and at Guantánamo. Self-harming acts in confinement are a response to how the state has brought politics to the level of the body, including the length of time one lives or in which one will die.[[52]](#endnote-52) The circumstances themselves are immanent and self-harm is a logical response to the indifferent and yet cruel abandonment of a detainee who is punished as a political prisoner and as a self-identified woman in an all-male prison. The suicide attempt may appear to simply indicate a death wish, but given the social isolation and brutality she faced, I believe it was a way to control what occurred to her body, to feel something initiated by her, and even to do so safely (that is, in circumstances she created and administered). It was an act of autonomy and sovereignty in a profoundly undemocratic sovereign space. The fact that she then faced a longer term in solitary and an even longer sentence in response to her attempt is clearly unsympathetic but this does not mean that the act was not political or that it didn’t stir up debate and controversy over her circumstances.[[53]](#endnote-53) Obama’s commutation of her sentence was evidence that her bodily protest was in conversation with those outside of the prison walls—he was responding to her attempts at communicating her pain, suffering and resistance to the unjust sentence. However, even if her sentence hadn’t been commuted, the suicide attempt was still an act of political power, if the political is not merely defined in state terms or even in binary terms of success or failure. The fact that Manning could act to terminate her life and end her suffering, the fact that she could assert control over her body and choose her pain, and that she did so as a “transgendered” or “depressed subject” was inarguably a form of resistance and protest. Her embodied protest captured the unresolved issues she was compelled to experience, forcing prison administrators to face these unresolved issues themselves, even if they chose brute force and more imprisonment and torture as a response.

      Manning’s suicide attempt was necessarily individual, but this should not lead to the

simplistic binary of individual as an isolated, private entity in stark opposition to a communal that is clearly public and thus “political.” Again, her attempt was part of a broader trend of suicide attempts in overcrowded, increasingly violent prisons where the threat of solitary confinement (aka the hole) has only expanded in recent years as torture methods have become normalized.[[54]](#endnote-54) The gendered nature of her protest is also part of a more general response to protective segregation and administrative segregation, which seek to isolate individuals for

their own good or for rule-breaking. Dayan, whose work largely focuses on prisoners in solitary confinement and supermax prisons, argues that “hunger strikes are the only weapon these prisoners have left. Legal avenues are closed. Communication with the outside world, even with family members, is so restricted as to be meaningless. Possessions—paper and pencil, reading matter, photos of family members, even hand-drawn pictures—are removed.”[[55]](#endnote-55) Supermax units, which preclude contact with the outside world and even other prisoners, are a site of “cultivated debilitation”[[56]](#endnote-56) in which cutting, suicide attempts, and other forms of self-harm are preferable to passively losing touch with reality. [[57]](#endnote-57)

*conclusions*

In considering these cases, I believe that embodied protest entailing deprivation and

self-harm draws attention to the political dynamics of confinement. Self-harming protest can also politi*cize* otherwise isolated, emotionally sterile conditions that are seemingly apolitical in their extreme rightlessness. These forms of protest confront indifference and attempts to make detainees’ conditions invisible with passion, connection, and political meaning. Even absent policy reform, embodied, self-harming protest *is* meaningful—embodied protest does not have to be formally successful to be politically significant (or to count as political at all). Nor does it need to be made more “legible” for power to be reconstituted. The act itself is located within a relationship of power that is, in fact, “speaking” to the community and state actors. Attention to the embodied aspects of abuse, flight, and confinement challenges the public and policy makers to see beyond written law and empty speeches—hunger, silence, and separation are all things that cannot easily be translated into words. In turn, these protests should be understood as politically immanent, contained within a field of inescapable power dynamics and seeking to create meaning within the given.

To the degree that individuals practice self-harming resistance in confinement, I have

suggested that their motivations are homeopathic and a move towards asserting oneself where the individual has been de-selfed (i.e. dehumanized). Self-harming resistance is something the detainee can initiate and manage. This performative gesture of resistance entails a pain that may acknowledge feeling in a context of abandonment and indifference. In feeling pain through one’s own actions, it can challenge the sort of disrespect that is absolutely dehumanizing; it involves a pain that puts an end to sleeplessness, loneliness, and unwanted physical violence—it is a pain that stops time, that arrests unwanted assault, and that brings a self-fashioned “sovereignty” forward as (again) Bargu contends.

Embodied protest arguably moves the public to more fully understand what is at stake

in detainees’ actions—they must consider the degree of pain that must already be experienced to prefer and even seek more pain and discomfort in illustrating one’s plight. Embodied protest is not necessarily nobler or more self-sacrificing than other forms of protest, but an important political psychology is at work in embodied protest that is irreducible to other forms of protest and dissent. This psychology is at once a gesture of self-assertion and a passionate attempt to connect with others. The public today is not altogether ignorant of what occurs in detention but clearly—in both Australia and the United States—they react in ways that divert from the real issue(s) as public discourse can sink into denial, projection, splitting, and wish-fulfillment. In all of this, one of the most salient forms of denial is ignoring or distorting the deeply bio-political nature of confinement that embodied protest conveys about certain painful truths of racialization, class biases, imperialism, and gendered bias.

 As I have argued, gender is not ignored by the demos but projected in binary modes of operation that view refugees as irresponsible mothers whose criminality inevitably ensures family separation and involve imperialistic attitudes towards intimate abuse in other countries. Similarly, Chelsea Manning’s suicide attempts were not invisible or mute but rather exposed a set of unresolved contradictions with multiple points of interest—this was reflected in the mixed public reactions to the attempts. Thus, the problem is not so much invisibility or lack of acknowledgement but the more general refusal to authentically engage with unresolved issues brought up by these cases. This denial is in part, a refusal to designate embodied protest as political, which in turn is bound up with questions of sovereignty. The fact that concerted protest can occur proves that the state’s desire for wholeness and uniform, total power is merely a wish.

 James Scott’s arguments about resistance in a context of rightlessness and the always-looming threat of state violence are highly relevant to all of these cases. Scott notes that banners, written doctrines, and formal protests, in developmental areas are rare and that outright peasant rebellion is ‘suicide’. Instead, peasants choose to gossip, adopt expressions of ignorance or feigned complicity, and/or pilfer food:

Here I have in mind the ordinary weapons of relatively powerless groups: foot dragging, dissimulation, desertion, false compliance, pilfering, feigned ignorance, slander, arson, sabotage, and so on. These Brechtian—or Schweikian—forms of class struggle…require little or no coordination or planning; they make use of implicit understandings and informal networks; they often represent a form of individual self-help; they typically avoid any direct, symbolic confrontation with authority.[[58]](#endnote-58)

The elements of this ‘rebellion’ are applicable to the techniques of resistance in the examples I discuss and why they are “micro” resistance rather than “macro” (i.e. formal protest or all out revolution). On this seemingly lower level of resistance, Roberta Villalón has suggested that in the case of abused foreign women seeking a U-Visa, that even complying with state power constitutes individual agency.[[59]](#endnote-59) This is because government regulations guiding the process are so unrealistic and often challenging for poor foreign mothers with children, that it is a feat to be compliant. Charles Lee has also found the elements of resistance that Scott identifies in the actions of foreign women in captive work environments—from facial expressions to feigned crying, captive workers can exercise resistance to abusive employers through affect, emotions, and refusing to speak when spoken to.[[60]](#endnote-60) While none of these authors is addressing confinement in a prison cell, their alternative views of agency and resistance help us to see that even instinctive challenges to coercion, inequality, and domination can be viewed as political resistance. Gendered embodiment is an inescapable facet of these power dynamics, one which is theatricalized and symbolized by embodied protest.

Although anti-colonial suicide bombing is situated in a very different context, Jacqueline Rose’s insights in understanding female Palestinian suicide bombing are relevant to my reframing of these issues: to Rose, self-harm is not merely a terminal act on the self but seeks to resist bodily coercion, to alter sovereign power in some way, and to passionately connect with others, communicating pain, hatred, and unfulfilled hopes of peaceful co-existence. In suicide bombing, the desire is not to harm the self but to die on behalf of one’s beliefs and to passionately connect with the oppressor who refuses any contact, while also allowing grave harm to occur: “*Suicide bombing is an act of passionate identification—you take the enemy with you in a deadly embrace*.”[[61]](#endnote-61) What is interesting is the desire to connect with one’s enemy at such a level—to fight the violent abandonment one experiences with a messy and destructive response that requires sacrifice and resoluteness. The intimacy of these acts reconfigures relationships in a way that is not cold or indifferent but passionate, attached (if not also lethal), and seeking connection, if only in death. In this way, the act and the consequences are wholly political as the individual who identifies as a victim chooses to die on her own terms. While these motivations are admittedly speculative, I believe that this framing situates self-harming acts in the specific political context in which they occur, rather than pathologizing them and participating in the historical trend of colonial racism, sexism, and class bias.

In the cases discussed above, hunger strikes, lip-sewing, and resistance to an abuser were all performed in deeply political and sovereign spaces—embodied instincts were shaped by political power dynamics. Accordingly, in state-sanctioned detention, every act is arguably political. From when a detainee or prisoner wakes up, exercises, or showers, strict control of bodily movements occurs, mixed with forms of psychological destabilization (including sleep and light abuse, to destabilize circadian rhythms), and the always-present and always-real threat of physical harm. All ensure that protest and resistance will necessarily take a very different form than street protests or taking a knee at a professional football game.[[62]](#endnote-62)

The trifecta of issues of disenfranchisement, silence and speechlessness, and public

hostility or indifference to these protests, is in many senses a broader societal one that is not limited to confinement. When Black Lives Matter protests are viewed as “riots” and Colin Kaepernick’s peaceful resistance is treated as treason, we cannot idealize conventional reactions to civil disobedience practiced by citizens. The historical record shows that we often only value protest long after it has happened and frequently when it is convenient and will not be challenged or tested. Americans’ conflicted and ambivalent relationship with all forms of protest helps us to understand how embodied resistance by the dispossessed and subaltern is ranked even more inferior or threatening. Similarly, the privileging of voice and formal speech implicit in criticisms of lip-sewing and related forms of self-harm are also issues outside of confinement and domestic entrapment. Demands for clear and consistent accounts of abuse, flight, and trauma are not merely unrealistic but obscure unresolved issues in foreign policy and human rights norms that intersect with domestic policy. Alternatively, the continuation of trauma even after a detainee or prisoner has been released problematizes the institutional demand for legally oriented, clear and consistent speech. At the same time, public forms of denial and distortion do not prove that protest was ineffective but highlight the inability to deal with unresolved issues of a clearly societal and not individual nature.

In considering the critiques of and projections onto these protesters, I would also

suggest that a retroactive teleology is at work that demands clear institutional or policy change as the measure of a movement’s success. In measuring the worth of resistance through elite policy change, we not only draw on a formal state-centered definition of the political, we also forget the lessons of Alexis de Tocqueville, Karl Marx and Fanon, among others, that the very act of trying, of creating meaning, of reaching out to others are all forms of agency and resistance to the status quo. When we explore these efforts, we can see that even absent clear policy change, power relations do shift. For example, despite recent reversals, introducing gender-based assault as a refugee category in the 1990s has led to positive changes. These include: changed practices of border personnel and asylum adjudicators when interviewing refugee petitioners, the expanding literature on best practices, civil society actors that are increasingly open to refugee claims based on secondary actor violence, and the positive expansion of these categories to non-domestic abuse cases (specifically, other gender-based assaults and gang-victimization claims). Alfonso Gonzales similarly points out that hunger-striking mothers in detention did manage to educate the public on their conditions and the pain of family separation, as well as procuring shorter terms in detention, even if policy changes were not long-lasting.[[63]](#endnote-63) And Chelsea Manning’s suicide attempt did bring attention to the brutality and isolation of solitary confinement.

These sorts of positive changes occur because when refugees or prisoners resist

coercion and embodied domination, they do ‘speak’ to the state and broader public. In the case of the Woomera lip-sewers, the public’s need to create a powerful counter-narrative to the one indicated by the lip-sewers is not evidence of the stateless’ muteness or invisibility but rather the stark power and simplicity of this form of protest. The public’s need to simultaneously repress this message and project a different set of claims that shore up a nationally-oriented ego justify indifference precisely because the strikes were an obvious manifestation of pain. Today, the more sympathetic outcry over family separation in the US, similarly reflects a set of projections and desire for closure. Purportedly ending this practice then seemingly ended the harsh brutality of a state that locks up refugees and asylum seekers before they have had their stories heard by the proper authorities. The splitting and projection involved in the public’s reaction to these still unresolved conflicts is rooted in gendered significance. In turn, embodied protest starkly exposes the pain and suffering of a mother’s body, a refugees’ political speechlessness, and a whistle blower’s mis-gendering, as these statuses are built into prison and detention conditions.

 The argument that embodied protest is so desperate and emotionally pathological that it

lacks substantive political meaning participates in the same doubly- or triply-conditioned maneuvers traced by Foucault in conceiving of bio-power and its place in modern politics. These shifts entail reducing the political to the biological, such that politics occurs at the level of the body, allowing some to live and others to die. In turn, the treatment of these groups is inextricably connected to practices and norms used on and internalized by American born non-criminal citizens.[[64]](#endnote-64) To the degree that researchers, politicians, and the media ignore these links, they are only recognizing formal, “legally authorized” individuals as political, while the wrath or sorrow of the non-person or prisoner is “emotional” but too informal and thus not political.

 In these circumstances, embodied protest may “speak” more loudly than any protester

with a bullhorn because it directly challenges state sovereignty and discretionary power over the body in circumstances of near total power. The challenge is successful insofar as it *can* occur, even in the worst circumstances. It brings attention to other forms of sovereignty that are not state-centered. It is in no need of interpretation—it *is* political—but the circumstances which make it political (and thus gendered, racialize and based on alienage, class position and a myriad of other vulnerabilities) must be contested, made more visible, and be recognized for their attempts at linking a broader public to the individual detainee/prisoner. They are an attempt at an “intimate embrace” not just of love and seeking connection but also hate and deep pain. As researchers who know about these circumstances, we are the audience and we are the community that is being embraced—the key is to act on this acknowledgement.

1. Since at least the mid1990s in the prison context and the turn of this century in the immigration context. [↑](#endnote-ref-1)
2. As Colin Dayan argues in *The Law is a White Dog*, (Princeton: Princeton University Press, 2011) and in more recent work. [↑](#endnote-ref-2)
3. I examine these two histories and their increasing convergence in much more depth in my recent book *Arendt, Agamben and the Issue of Hyper-Legality: In Between the Prisoner-Stateless Nexus* (Routledge, 2019). [↑](#endnote-ref-3)
4. The problem is that most cases are more successful with legal help. In terms of refugees, Acer and Magner argue that “lack of legal counsel must be rectified” and that about 84% are currently underrepresented; their success rate would triple if they secured counsel. Eleanor Acer, Tara Magner, “Restoring America’s Commitment to Refugees and Humanitarian Commitment,” *Georgetown Immigration Law Journal* 27 (Spring 2013): 445—484. [↑](#endnote-ref-4)
5. Although the Supreme Court ruled in *Zadvydas v Davis* (2001) that detention should be reviewed after six months and should not be indefinite, it has more recently ruled in *Nielsen v Preap* (2019) that indefinite detention is permissible if the individual has served a criminal sentence. [↑](#endnote-ref-5)
6. As Dow notes, “although the administration uses detention as a deterrent to other potential asylum seekers, in violation of international refugee norms—and uses detention more generally to coerce a range of noncitizens to drop any legal claims they might have and to leave—this cannot be ‘punishment’ because, if it were, the detainees would have certain due process rights.” Mark Dow, “Designed to Punish: Immigrant Detention and Deportation,” *Social Research* 74, no. 2 (Summer 2007): 533—546 (see 534 in particular). Further, immigrants are not protected from cruel and unusual punishment. See Juliet P. Stumpf, “The Crimmigration Crisis: Immigrants, Crime and Sovereign Power,” *American University Law Review* 56 (2006): 390—393. [↑](#endnote-ref-6)
7. On this more general lack of any constitutional rights, see Dow, “Designed to Punish,”; Kevin R. Johnson, “The Forgotten ‘Repatriation’ of Persons of Mexican Ancestry and Lessons for the ‘War on Terror,’” Fifteenth Annual Dyson Distinguished Lecture, *Pace Law Review* 26, no. 1 (Fall 2005): 1—25; Kevin R. Johnson, “Race and Immigration Law and Enforcement: A response to Is There a Plenary Power Doctrine?,” *Georgetown Immigration Law Journal* 14 (1999—2000): 289—305; Monica Varsanyi, editor *Taking Local Control: Immigration Policy Activism in U.S. Cities and States* (Palo Alto: Stanford University Press, 2010). [↑](#endnote-ref-7)
8. See Acer, Magner, “Restoring America’s Commitment to Refugees and Humanitarian Commitment.”. [↑](#endnote-ref-8)
9. Acer and Magner, “Restoring America’s Commitment to Refugees and Humanitarian Commitment.” They discuss the disadvantages of facilities located in remote areas, which can mean a lack of access to legal counsel, court, and asylum offices. The use of prisons, uniforms, and shackles all violate UNHCR norms. [↑](#endnote-ref-9)
10. All of which violate United Nations protocol—see Acer and Magner, “Restoring America’s Commitment to Refugees and Humanitarian Commitment.” [↑](#endnote-ref-10)
11. Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* introduction Cornel West (The New Press: 2012), 8. [↑](#endnote-ref-11)
12. However, as Marie Gottschalk notes, things were changing at this time: “the race to incarcerate began in the 1970s at a time when the U.S. economy was mired in stagflation.” Marie Gottschalk, *Caught: the Prison State and the Lockdown of American Politics* (Princeton: Princeton University Press, 2015), 25. [↑](#endnote-ref-12)
13. Elliott Currie, “Crime and Punishment in America,” *New York Times* Book Review section, 1998, http://www.nytimes.com/books/first/c/currie-crime.html. [↑](#endnote-ref-13)
14. Rebecca Thorpe, “Perverse Politics: the Persistence of Mass Imprisonment in the Twenty-First Century,” *Perspectives on Politics* 13, no 3 621 (2015): 618—637. [↑](#endnote-ref-14)
15. Dayan, *The Law is a White Dog*, 78. [↑](#endnote-ref-15)
16. “Psychic cruelty” is Dayan’s phrase in *The Law is a White Dog*, 78. [↑](#endnote-ref-16)
17. There has been a similar shift in judging the use of police force and killing, from some standard of reasonableness according to an average person to a much more ambivalent set of standards according to the perspective of a police officer. See Leonard Feldman, “Police Violence and the Legal Temporalities of Immunity,” *Theory and Event* 20, no. 2, April 2017: 329—350. [↑](#endnote-ref-17)
18. On rehabilitation in 19th c. U.S. prisons, see Ashley T. Rubin, “The Consequence of Prisoners’ Micro-Resistance,” *Law & Social Inquiry* 42 no. 1 (Winter 2017): 138—162. [↑](#endnote-ref-18)
19. While the average time in solitary in some prisons is about two years, in supermax prisons, prisoners can be held in isolation for decades. [↑](#endnote-ref-19)
20. Dayan, *The Law is a White Dog*, 78—79: so “These legal opinions construct a legal person who thus stands in a negative relation to law, with a status so degraded that psychic violence and sensory deprivation continue to pass constitutional muster. The judicial logic relies on the ‘subjective’ expertise of prison administrators and ‘deference’ to their special knowledge.” [↑](#endnote-ref-20)
21. Dayan, *The Law is a White Dog*, 79. [↑](#endnote-ref-21)
22. One recent issue is the proposal by some prisons to replace in-person visitations with video visitations. Prisoners have protested this sort of curtailment of their already-limited contact with the outside world. See “Video Visitation,” Prison Policy Initiative website, n.d., https://www.prisonpolicy.org/visitation/ which has a variety of links to article and more in-depth research on this subject. See also Bernadette Rabuy and Peter Wagner, “Screening Out Family Time: The For-Profit Video Visitation Industry in Prisons and Jails,” a Prison Policy Initiative Report, January 2015, https://static.prisonpolicy.org/visitation/ScreeningOutFamilyTime\_January2015.pdf. [↑](#endnote-ref-22)
23. Dayan, *The Law is a White Dog*, 80. See Lisa Guenther, “Subjects Without a World? An Husserlian Analysis of Solitary Confinement,” *Human Studies* 34, no. 3 (Fall 2011): 257—276. See also Keally McBride, “Incarceration and Imprisonment,” *Law, Culture and the Humanities* 6, no. 3 (2010): 341—353. McBride accounts for resistance and agency, even in dire circumstances, but her essay could also be interpreted as arguing that prison and solitary confinement are salutary. [↑](#endnote-ref-23)
24. Dayan, *The Law is a White Dog*, 86—87. Concerns about Chelsea Manning’s suicide attempt in August of 2016 were similarly interpreted as a way to feel again and to exert some control over her life. See also Banu Bargu, “The Silent Exception: Hunger Striking and Lip-Sewing,” *Law, Culture and the Humanities*, 2017: 1—28, available at: httpedups://www.academia.edu/34613817/The\_Silent\_Exception\_Hunger\_Striking\_and\_Lip-Sewing. [↑](#endnote-ref-24)
25. *Overton v Bazetta* (2003)—the Court upheld broad restrictions of inmate visitation rights in this case; Dayan, *The Law is a White Dog*, 101. [↑](#endnote-ref-25)
26. On these dynamics, see Dayan, *The Law is a White Dog*, 181—186. [↑](#endnote-ref-26)
27. Dayan, *The Law is a White Dog*, 80. [↑](#endnote-ref-27)
28. Dayan, *The Law is a White Dog*, 100. [↑](#endnote-ref-28)
29. As Juliet Stumpf and other crimmigration scholars have demonstrated. See Stumpf, “The Crimmigration Crisis.” [↑](#endnote-ref-29)
30. Sheldon Wolin, *Politics and Vision* (Princeton, 2004). [↑](#endnote-ref-30)
31. Sheldon Wolin, “Democracy and the Welfare State: the Political and Theoretical Connections Between Staatsräson and Wohlfahrsstaatsräson,” *The Presence of the Past: Essays on the State and the Constitution* (Baltimore: Johns Hopkins Press, 1989). [↑](#endnote-ref-31)
32. To be clear, this is not a criticism of Wolin who similar conceives of overlaps between the two powers. [↑](#endnote-ref-32)
33. Hannah Arendt, *Origins of Totalitarianism*, (HBJ, 1979). [↑](#endnote-ref-33)
34. Michel Foucault, *The History of Sexuality, Volume I: An Introduction*, trans. Robert Hurley, (New York: Vintage Books, 1980). [↑](#endnote-ref-34)
35. Frantz Fanon, *Wretched of the Earth*, (Grove Press, 1963/2004); Achille Mbembé, “Necropolitics,” trans. Libby Meintjes. *Public Culture* (2003) 15 (1): 11—40. [↑](#endnote-ref-35)
36. Foucault, *History of Sexuality*. [↑](#endnote-ref-36)
37. James Scott, *Weapons of the Weak*, (Yale, 1985). [↑](#endnote-ref-37)
38. Arendt, *Origins*, 275. [↑](#endnote-ref-38)
39. Arendt, *Origins,* 286. [↑](#endnote-ref-39)
40. Arendt, *Origins,* 296. [↑](#endnote-ref-40)
41. Fanon, *Wretched of the Earth*. [↑](#endnote-ref-41)
42. Bargu, “The Silent Exception,” 11. [↑](#endnote-ref-42)
43. Drawing on Irigaray’s “feminist morphology,” Cox and Minahan suggest that the lips as a site of resistance are bound up with presuppositions about the lips as gendered and always half-open, thus defying unwanted closure or appropriation (see also Wendy Brown, “Where is the Sex in Political Theory?” 1987). As Irigaray portrays the lips in this way, she creates a utopian vision that is intended to dislodge and mock phallocentrism. Lip-sewing, the authors claim, contrastingly creates a dystopia. It “is not only an act that draws attention to the silencing of voice but also does so through reducing the plurality of the half-open mouth to the (more masculine) singular. It displays the pain of a return to the phallocentrism of this singularity, and to its assimilative processes” (296). In this way, in contrast to “an ironic tactile utopia, what was created at Woomera was a tactile dystopia that reconstructed feminine morphology. What lip sewing produced was, literally, “a closed, single mouth—a grotesque masculinity in Irigarayan morphology.” (297) In doing this, however, they argue that this embodied protest “reinforced…the invisibility of the refugees.” (297) Julie Wolfram Cox, Stella Minahan, “Unravelling Woomera: Lip Sewing, Morphology and Dystopia,” *Journal of Organizational Change Management* 17, no. 3(2004): 292—301. [↑](#endnote-ref-43)
44. Ayten Gündoğdu *Rightlessness in an Age of Rights*, (New York: Oxford University Press, 2015), 261. [↑](#endnote-ref-44)
45. See Edward Said, *Orientalism* (New York: Vintage, 1979). [↑](#endnote-ref-45)
46. Alfonso Gonzales, “*Derechos en Crisis*: Central American Asylum Claims in the Age of Authoritarian Neoliberalism,” *Politics, Groups and Identities*, May, 2018: 1—19. [↑](#endnote-ref-46)
47. Elise Foley, “Mothers in Immigrant Detention Vow to Continue Hunger Strike Until They’re Released—Or Dead,” *Huffington* Post, August 16, 2016, https://www.huffingtonpost.com/entry/mothers-immigrant-detention-hunger-strike\_us\_57b3698be4b04ff883990132. [↑](#endnote-ref-47)
48. Mbembe, “Necropolitics,” pp 13, 16 respectively. [↑](#endnote-ref-48)
49. In this section, I am referring to her previous imprisonment. She has since been re-imprisoned as of March 8, 2019. [↑](#endnote-ref-49)
50. See Ashley Fantz, “Could Bradley Manning Become ‘Chelsea’ in Civilian Prison?” CNN, August 23, 2013, https://www.cnn.com/2013/08/23/us/prison-sex-change/index.html and Nick Adams, Director of Transgender Media & Representation, “Tip Sheet: Transgender Terminology and Tips for Covering Chelsea Manning,” May 9, 2017, <https://www.glaad.org/blog/tip-sheet-reporting-chelsea-mannings-gender-identity>. [↑](#endnote-ref-50)
51. ACLU, “Government Continues to Deny Manning Access to Health Care,” July 28, 2016, <https://www.aclu.org/news/chelsea-manning-faces-new-charges-indefinite-solitary-confinement-related-suicide-attempt>. [↑](#endnote-ref-51)
52. Regarding one suicide attempt (by Mohamed Jawad) at Guantánamo, military attorney Darrel J. Vandeveld commented: “…I obtained a copy of the Detainee Incident Management System (DIMS) records maintained by JTF-GTMO (Joint Task Force-Guantanamo). While reviewing the records, I noticed that they referred to a suicide attempt by Mohammed Jawad on December 25, 2003, which he sought to accomplish by banging his head repeatedly against one of his cell walls. The records reflected 112 unexplained moves from cell to cell over a two week period, an average of eight moves per day for 14 days. Upon further investigation, we were able to determine that Mr. Jawad had been subjected to a sleep deprivation program popularly referred to as the ‘frequent flyer’ program. I realized that Mr. Jawad had been telling the truth. I lack the words to express the heartsickness I experienced when I came to understand the pointless, purely gratuitous mistreatment of Mr. Jawad by my fellow Soldiers.’” Vandeveld resigned his position because of this controversy. Source: David Frakt, “The Closing Argument at Guantanamo,” The Mantle, May 6, 2013, http://www.mantlethought.org/international-affairs/closing-argument-guantanamo. [↑](#endnote-ref-52)
53. Note: she received the longest sentence for leaks in comparison to other leakers—see Missy Ryan, Sari Horwitz, Julie Tate, “In Manning Clemency Call, Obama South to reduce Sentence Viewed as ‘Nuts,’” *Washington Post*, January 18, 2017, <https://www.washingtonpost.com/world/national-security/in-manning-clemency-call-obama-sought-to-reduce-sentence-viewed-as-nuts/2017/01/18/75b629d8-dd98-11e6-acdf-14da832ae861_story.html?utm_term=.6779ff7cdfbf>. See also: Alex Emmons, “Chelsea Manning Sentenced to Solitary Confinement for Suicide Attempt,” *The Intercept*, September 23, 2016,<https://theintercept.com/2016/09/23/chelsea-manning-sentenced-to-solitary-confinement-for-suicide-attempt/>. [↑](#endnote-ref-53)
54. Emanuella Grinberg, “Prison Suicides Are on the Rise Nationally and Its Pretty Bad in Massachusetts,” *CNN*, April 19, 2017, <https://www.cnn.com/2017/04/19/health/prison-suicides-massachusetts-trnd/index.html>. [↑](#endnote-ref-54)
55. Colin Dayan, “Barbarous Confinement,” *The New York Times*, July 18, 2011, 19 (op-ed section), A19, <http://www.nytimes.com/2011/07/18/opinion/18dayan.html?_r=0>] [↑](#endnote-ref-55)
56. Dayan, *The Law is a White Dog*, 86. [↑](#endnote-ref-56)
57. Dayan, *The Law is a White Dog*, 86—87. [↑](#endnote-ref-57)
58. James Scott, *Weapons of the Weak: Everyday Forms of Peasant Resistance* (New Haven: Yale University Press, 1987). [↑](#endnote-ref-58)
59. Roberta Villalón, “Passage to Citizenship and the Nuances of Agency: Latina Battered Immigrants,” *Women’s Studies International Forum* 33 (October 12, 2010): 552—560. [↑](#endnote-ref-59)
60. Charles Lee, “Bare Life, Interstices, and the Third Space of Citizenship,” *Women’s Studies Quarterly* 38 (1/2), Citizenship (Spring/Summer 2010): 57—81; Rhacel Parreñas *Servants of Globalization* 2nd ed. (Palo Alto: Stanford University Press, 2015). [↑](#endnote-ref-60)
61. Jacqueline Rose, “Deadly Embrace,” *London Review of Books*, November 4, 2004,https://www.lrb.co.uk/v26/n21/jacqueline-rose/deadly-embrace; see also Mbembé, 2003, pp 35—39*.* [↑](#endnote-ref-61)
62. As Henry David Thoreau argues in “Civil Disobedience,” even the dissent of a “majority of one” has great political and moral import, if the source of this rebellion represents broader political inequalities and coercion. [↑](#endnote-ref-62)
63. Gonzales, *Derechos en Crisis*. [↑](#endnote-ref-63)
64. Stumpf, “The Crimmigration Crisis.” [↑](#endnote-ref-64)