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Cruel Failures:
Arizona's Prison Healthcare Crisis and The Making of Penal Life

DISSERTATION

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for the degree of

DOCTOR OF PHILOSOPHY

in Criminology, Law & Society

by

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DEDICATION

To

my parents, Bill and Patti

For showing me that you always give more than what you have

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ABSTRACT OF THE DISSERTATION

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In this dissertation, I critically interrogate the nexus between punishment and healthcare. The provision of care is a significant capacity of punishment as it is situated across the founding ideals of the prison, the build-up of mass incarceration, and current political discourse surrounding criminal justice reform and public health. As taken up in the context of Arizona in the early 21st century, this project positions penal care as a means to stage broader debates and interventions in socio-legal studies, critical prison studies, and theories of subjectivity. By approaching a prisoner healthcare class-action lawsuit as a type of archive, this dissertation engages political, aesthetic, and ethical critiques of punishment, suffering, and care. Through an archival analysis of the prisoner rights lawsuit, I read its legal texts and artifacts as a dynamic discourse of institutional catastrophe, biological and psychological suffering, and failed legal reforms. First, I show how the privatization of Arizona's prison health care system not only

reflected broader processes of social abandonment, but reveals the mechanisms and machinations that treat the prisoner's health and life as resources to extract and exhaust. Second, I demonstrate how the prisoner's healthcare claim is in excess to visual depictions and interpretive frameworks of suffering, human rights, and civil death. The repetition of the prisoner's plea intrudes upon the very terms of mastery implied by the image and the subject, confronting us with a much more unbearable expression of life. Lastly, I explore various discourses that bring together notions of care and punishment to think through their structural relationship and what it might mean to respond ethically to the prisoner's demand. Here, I formulate an ethics that is staked on our constitutive failure to prevent suffering and how this might implicate our refusal of penal care regimes.

INTRODUCTION

On September 3rd, 2019, Arizona Department of Corrections (ADC) Director Charles Ryan submitted his five-year strategic plan and budget request to Governor Doug Ducey. Ryan's budget letter goes beyond the routine outline of the department's initiatives and line items, attempting a more forceful illustration of ADC's "critical juncture." For Ryan, the swelling prisoner population of the 80s and 90s and the institutional pressures caused therein is butted against a now "vastly deteriorated physical plant system and staffing levels that are far below required levels." The essential problem for Ryan is the 19% vacancy in correctional staff and the disorder this has caused for the overall functioning of the prison system. Indeed, the number 1 priority listed in the budget request, and without specified amount, is a correctional officer salary increase. The historicism offered by the letter is that of a bureaucracy in crisis by being restrained in its capacity to get the job done and in need of serious reinvestment by the state.

Crisis indeed, but Ryan's attempt at urgency only repeats the negligence and repression of suffering from which his letter is delivered. For within the ten state-operated prison complexes understaffed by guards, Arizona's prisoner population suffer in abhorrent conditions of confinement and exposure to disease, disability, and death. In 2012, 14 prisoners in the ADC filed a class action lawsuit, *Parsons v. Ryan,* in the Arizona District Court by. The complaint detailed a grossly inadequate healthcare system, officials' deliberate indifference to prisoners' suffering, and cruel conditions of isolation in solitary confinement. The prisoner class has been represented by a team of litigants from the American Civil Liberties Union (ACLU), the Prison Law Office Over (PLO), and the Arizona Center for Disability Law, as well as other law firms. Over the past decade, litigation has proven largely futile to secure meaningful, institutional reforms; compliance measures have failed to be enforced, private prison healthcare vendors have

cycled in-and-out of partnership with ADC, and the Federal court has levied millions of dollars in civil contempt fines against the state.

Despite not being mentioned in Ryan's letter, the life of the *Parsons* lawsuit spans his tenure as director. Soon after Ryan's appointment in 2008, Marcia Powell was being held at the Perryville women's prison in Goodyear, Arizona. Awaiting transfer to a different unit after stating she felt suicidal, Powell was placed in a roofless cage with no access to water. She was left alone for over three hours while desert temperatures reached 107 degrees. Guards ignored Powell's pleas for relief from the unforgiving sun, and she was later found collapsed and unresponsive with first and second degree burns over her body, laying in her own excrement. The sun-exposed cage forced Powell's body to retain excess heat, while the psychotropic drugs she was prescribed inhibited her internal temperature regulation. After being transported to the hospital, Powell was pronounced dead after being taken off life support due to complications caused by hyperthermia. The decision to end Powell's life was ultimately made by Ryan, who was made her legal guardian after the hospital was unable to locate any willing next of kin. As Ryan would explain after attending Powell's memorial service in downtown Phoenix, his decision to end her life support was informed by both hospital and prison doctors as the only *humane*[1] thing left to do.

The arrangement of a sun exposed cage with no water, the mismanagement of Powell's medications, and the prison's assumed capability to address mental illness situate the

[1] "'The attending physician in the emergency room," explained Ryan, 'in consultation with the department's doctors, clearly indicated that there was no possibility that life could be sustained, that she was terminal. And the doctor reiterated several times it was inhumane to continue to sustain her life on life support.'" https://www.phoenixnewtimes.com/news/charles-ryan-attends-marcia-powells-memorial-service-says-he-didnt-know-powell-had-guardian-6503748

impossibilities of care in such brutal and degrading conditions. It is not just that Powell was neglected and dehumanized, but that her humanity would only ever be considered through the act of putting her to death within the controlled environment of the hospital. Powell's two deaths[2] – the first being virtual and abject and the other real and sanitized – emerge from within the perverse hybridization between punishment and care. Moreover, Ryan's decision to take Powell off life-support, as well as the eventual filing of the *Parsons* lawsuit illustrates a broader convergence between health and penal regimes that should have us reconsider our accounts of the life in/of punishment. It is here we must contend with the difference between the prison's duty to sustain life *and* its drive towards suffering and degradation. Put differently, it is not so much that prison optimizes life to live or necessarily seeks to kill and make die, but situates an indifference to the very distinction between living and dying.

The tragedy of Powell's death anticipates some of the punitive excesses and spectacular forms of suffering that would fill the pages of the *Parsons* lawsuit. How is it that we understand the life in/of punishment and how might this extend our analytical accounts of 21st century incarceration? In this way, the brutality of penal care, as exhibited by Arizona, should not only have us reconsider the type of life-making at work and how this might subtend analyses of power, resistance, and survivability, but the extent to which suffering and care are so easily juxtaposed; whether the former is in fact the antidote to the latter.

Neferti X. M. Tadiar's (2022) account of *remaindered life* situates the overlaid processes of life's valuation, disposability and superfluousness across global capitalist forms of

[2] This is in reference to Zizek's (1991) Looking Awry: An Introduction to Jacques Lacan through Popular Culture. In it, Zizek summarizes Lacan's differentiation between demand and drive. The demand is mediated by a dialectics of want. The drive, however, is an insistence that persists on until the end. As Zizek reads Lacan, the drive is held in the symbolic domain of being between two deaths where an unconditional persistence may be thought.

accumulation and dispossession. Such processes and protocols of life-making are situated within contradictory and coextensive projects of exploitation, debasement, and exhaustion, which, in turn, reproduces systems of imperial extraction and concomitant regimes of racialized and gendered violence. Tadiar provides a critical account of the ways in which life exists as an interplay of forces that not only produces value and waste, but as a non-productive remainder – an excess – that lingers without being subsumed. It is within the heuristic that Tadiar offers as remaindered life that we might broach the life in/of punishment as that which is both possessed and made destitute. Specifically, what I will elaborate throughout this project as penal life attempts to interpret the disease, disability, and death of the prisoner as both productive of and in excess to the legal regime of punishment. It is by thinking with this notion of penal life that we might mobilize important interventions in the discourse and analysis of 21st century punishment.

In 2018, women at the Perryville prison complex staged a silent protest as part of a 10-year commemoration of Powell's death and celebration of her life. As stated in a letter written by the attendees:

> Ten years ago, a woman sat in a cage in temperatures well over 100 degrees for hour after hour after hour until she finally succumbed to the heat and died. Many people had the chance to help her, but they all ignored her pleas. Her name was Marcia Powell[3].

Such tribute to Powell evokes what Garcia (2008) describes as endless practices of mourning, which does not console grief, but sustains its continuance. The elegiac memory of Powell and the suffering she was made to endure keeps present the brutality and violence that structures the everyday life of the prison (Garcia 2008). During their protest, prisoners stood quietly in a circle

[3] https://elizabethannewood.com/2019/05/22/remembering-marcia-powell/

holding signs that read “We won’t forget Marcia Powell” while correctional officers took their post during the second-shift change. The letter goes on to connect Powell’s death to the ongoing healthcare crisis in the ADC, “We are in danger of dying in a cage like Marcia Powell died ten years ago. We are in danger of dying from injuries and diseases that go undiagnosed and untreated due to substandard medical care.” The linking between untreated diseases and injuries and the unforgiving sun situate prisoners within general conditions of suffering and exposure to premature death. Yet, it is precisely such forms of abject sociality that opens up to the pleading and lamenting of life in its excess. This is not a resistance to the conditions of confinement, but an insistence of life that lingers and cannot be extinguished. As the letter is signed, “Sincerely, One of more than four thousand human beings living in Perryville women’s prison.” Not only is the identity of sender of the letter dispersed across the thousands of women held at Perryville, each being represented in the amalgam of their existence, but the evocation of humanity confronts us with that which remains after having been stripped of civil status and social regard (Tadiar 2020; Smith 2009).

Cruel Failures interrogates the growing nexus between punishment and healthcare regimes as demonstrated within the class-action lawsuit against Arizona’s prison system. As I will show, the provision of prison healthcare provides a theoretically rich terrain to think productively about structural shifts in punishment and mass incarceration more broadly. Specifically, I examine the prison healthcare crisis in Arizona to elucidate how it reflects political, economic, and cultural trends in the making of penal life. Here, penal life is understood not as the quality and suffering of any individuated life lived, but to think through punishment as a sort of lifeforce, which is to say a forcing of life, that materializes through the failed governance of disease, disability, and death. Critical to my study therefore is not so much how

healthcare and punishment might be reconciled or improved upon, but the terms and conditions by which they converge and how this provides theoretical resource in understanding the relation between suffering, degradation, and life-making. In theorizing penal life, I ask what are the contours of its material conditions, the presumptive logics of its discourse, and the very desires to which it is pursued and against which it struggles?

I analyze the life of Arizona's prison healthcare crisis, paying particular focus to the issues illuminated by the *Parsons* lawsuit. As my project will argue, the biological, psychological, and, social life of the prisoner sits at collapsed and contradictory capacities of punishment. Penal health regimes inflict suffering through the very provision of legally mandated care. As a sort of return of the repressed, prison healthcare lawsuits like *Parsons* reminds us of the prison's once imagined capacity to mend the body and heal the soul. What Simon (2013) has optimistically described as a *new medical model* might move us into a post-mass incarceration society capable of acknowledging and addressing the now chronic and geriatric pains of imprisonment. Indeed, the very terms by which we understand the harms of incarceration have been framed in terms of illness and threats to public health. As put on national display during the coronavirus pandemic, however, protecting the health and wellbeing of incarcerated people continues to be undercut by institutionalized indifference and ineptitude (Friedman 2021). If anything, the health status of the prisoner stands in for our own disavowal of precarity and insecurity. Our failure to care for the lives of prisoners reflects back upon general conditions of social suffering that go unaddressed. To the extent that punishment provokes social and political interventions in health and relations of care, how might their failure in the case of Arizona lend insight to our understanding of state power, suffering, and the governance over life in the 21st century?

As a case study, the *Parsons* lawsuit shows how Arizona remains relevant to our understanding of contemporary punishment. Historically, Arizona has served as a foil to progressive discourse on penal welfarism and has maintained particularly austere and harsh commitments to incarceration. Before statehood, the establishment of a territorial prison would precede several other civil institutions in Arizona and contributed to ongoing projects of westward expansion, conquest and racial conflict between white settlers, indigenous tribes and Mexican communities across the borderlands (Jeffrey 1968; Knepper 1989; Lockard 2020). The territorial prison would also initiate the state's enduring use of prison labor throughout the growth and expansion of its modern day prisons, which would align Arizona with Southern penal practices developed in the context of black subjugation and racial violence (Knepper 1989; 1990; Perkinson 2010); Lynch 2010). Moreover, as Lynch (2010) captures in her study on the modernization of the Arizona Department of Corrections, the state emerged as a national trend-setter in post-rehabilitative punishment, demonstrating the significance of the sunbelt region to our understanding of mass incarceration and narratives of penal change. Arizona's warehouse, cheap and mean approach became emblematic of late 20th century incarceration and the state has played a significant role in the ideological rejection of prisoners' rights (Lynch 2010). As the state continues to fail to provide legally mandated prison healthcare, Arizona offers an important site to consider the emergent nexus between punishment and care and how penal discourse and practice continued to be shaped by political and regional context.

By researching and drawing meaning from the *Parsons* lawsuit, this project attempts to elaborate understanding of 21st century punishment. What Seeds (2016) has termed "late mass incarceration" denotes changes and shifts in penal policies and practices around the turn of the new century. As Seeds describes, late mass incarceration is not simply about downsizing prisons

or capitulating to penal imperatives per se, but "comprehensive diagnoses and recalibrations of state criminal justice operations" (592). Key to such calibrations are the simultaneous leniency and harshening of different aspects of penal policy. While Seeds' focus is on state-based changes in sentencing, his analytical insights can be extended to prison conditions litigation as similarly situated attempts at reforming penal practices. For instance, The Supreme Court's *Plata* decision in 2011 not only reasserted the prisoner's right to healthcare, but broke through the legal impediments set by the Prison Litigation Reform Act (PLRA) (Schoenfeld 2016; Reiter 2018) At the same time, scholars have expressed doubt as to the prospect and impact of court-mandated reforms insofar as conditions litigation has often led to an increase in carceral capacities (Schoenfeld 2010). In this way, ongoing prison healthcare litigation like *Parsons* has not led to meaningful institutional change, but reproduced regulatory failure within new terrains of political struggle (Dolovich 2022).

Those writing on the penal field describe the ways in which institutional actors contest and position themselves relevant to each other and their habitual dispositions (Goodman et al. 2017) The notion of the penal field not only helps us to understand the internal dynamics and politics of punishment within states, but the ways in which states become positioned against each other. For instance, while Arizona has sought to draw out and obstruct litigation efforts, a state like Washington has appeared to be more litigation averse, attempting to anticipate and get ahead of such challenges (Reiter 2018). As Ashley Rubin (2021) elaborates, models of punishment form in opposition to each other such that deviant approaches continue because they pose different alternatives. In the case of the Arizona model, it is not so much its deviance and opposition to the broader penal field that we must consider, but the precise way in which it embraces and performs brutality.

Part of what makes Arizona so challenging, yet fruitful as case to critique is the state's unashamed refusal to care about the lives of those it incarcerates. Arizona's pain and shame penal ideology anticipates and absorbs our normative aversion to it. Through public discourse and reaction to Arizona, this is often seen by state's crude commodification of incarceration such as prison facility and service privatization and the contracting out of prisoner labor. As Judge Duncan (2018) lambasted the department for its failure to uphold and enforce compliance measures:

> Defendants' 'good business decision' was to provide incentive payments to a contractor who had already committed to the State to provide that very service and had repeatedly and consistently failed to meet that obligation. The wisdom of a business decision that so rewards a failing contractor escapes the Court but is, for these purposes, irrelevant (17).

Much of the *Parsons* litigation could be mined for such scathing critiques of ADC, as well as harrowing accounts of prisoner medical abuse and neglect. While I also draw upon such depictions throughout this project, here I would like to consider the ways in which the law's admonishment of ADC sustains the very repetition of suffering. That is to say, *Parsons*, in a psychoanalytical sense, presents the perversion of punishment within and before the law. Here, ADC revels in the very failure and impotence of the law to ever enforce its demand. The law's gaze – whether it be to monitor, regulate, or criticize - becomes folded into the very performance of the infliction of suffering. The law is rendered a "corrupted accomplice" whose witnessing and outrage is all but proportional to its powerlessness (Bond 2009: 42). In this way, Arizona provokes us with a sort of desire to be criticized and reprimanded by the public insofar as this necessitates our passive acceptance of penality as such.

As I draw from my reading of penal life in Arizona, the way out of this relationship between punishment and the law is not by reproducing the terms of legal redress and remedy, but in considering the constitutive failure in our capacities to alleviate suffering. The *Parsons* lawsuit discloses to us an institution out-of-joint through which I question maladjustment, not as an aberration, but as an iteration we might relate to differently. In this sense, my use of penal life pushes against notions of health and healing as substantive frameworks of subjectivity and structural change. To think with van Haute's (2005) Freudian anthropology, we might instead consider how perversity and pathology are inherent structures of sociality. That is, the very conditions of our "human illness" is subject to a radical contingency (van Huate 2005: 15). The political and social demands we might pursue under this framing would not be based on alleviating alienation, but formulating collective practices through our alienation. It is to this point that prisoner's plea and complaint provide the most radical form of demands.

I would like to comment briefly on the intellectual project I inherit by studying Arizona punishment and the unique position it holds within socio-legal scholarship. Of course, Mona Lynch's Sunbelt Justice has had immense influence in the field of punishment and society. Sunbelt Justice demonstrated the importance of understanding local context in shaping penal practices, refuted the penal welfare thesis in our conception of penal change, and showed how Arizona not only anticipated post-rehabilitative punishment, but played a key role in the anti-prisoner rights movement and used 8th Amendment litigation to playout battles with the Federal government. It is not only that studying Arizona has provided nuance and variation to our accounts of mass incarceration, but that Lynch's Sunbelt Justice is influential in how it engages political, cultural, and economic structures in complicating and critiquing theoretical frameworks

of punishment. In the case of Arizona, the state has continued to respond to various forms of institutional crises by referring back to its historical roots in austere and degrading punishment. The critical lesson we ultimately draw from Lynch's study of the state is how institutional crisis is never actually abated, but, rather, reproduced anew again and again.

Colin Dayan's The Law is a White Dog shows how we might think against the law in considering the figures of subjugation necessary to its establishment and coherence. While Dayan's thought is not restricted to Arizona as a case study, the brutality of the state's prison system is embedded throughout her writing and reflects the material conditions of some of Dayan's richest theoretical insights on civil death. Here, the cheap and mean penal practices that Lynch identifies in Arizona overlaps with Dayan's analyses of the ways in which persons are ritualistically made and unmade by legal regimes. Dayan's intervention shows how the law is forever haunted by the figures it attempts to repress and burry and which we find alive, yet civilly dead within the prison. In this way, White Dog helps us to understand how brutal prison systems like Arizona are preceded and anticipated by a legal architecture of violence and degradation, which does not carry forward a telos of progression, but a repetition of dispossession. The slave, the prisoner, and the enemy combatant are the lingering mutations of non-persons and through which Dayan locates the historical and global ordering of life.

Again, it is not just that Arizona provides an interesting and novel case, but that it has centered critical interventions in our theoretical and empirical accounts of punishment, the law, and institutional change. I position my own project as extending, in modest terms, Lynch and Dayan's insights. Arizona, as I approach it through the *Parsons* lawsuit, not only continues to provide conceptual resource for our understanding and critique of punishment, but intrudes upon the ways in which we take up and relate to life made destitute. It is the tenuousness of such an

ethical demand that my project stutters to articulate an interrogation of Arizona's penal regime in the 21st century. Indeed, the buildup of the carceral state throughout the late 20th century resounds most forcefully through the remaindered lives and premature deaths left in its wake. Just as we might think generally about the wreckage and decadence of the last half of the 20th century and into The New Millennium - an accelerated wasting of resource and futurity in terms of perpetual war, economic collapse, and environmental catastrophe – I similarly wish to consider how we confront, study, and theorize the wasting of penal life. As I myself have been compelled and possessed by such prerogatives for the past 6 years, I was startled by a question Dayan poses in White Dog, which I must have read over again and again without consciously registering it, yet being haunted by it nonetheless: "What remains once civil has been replaced by penal life." Indeed, it is in reflection of such remains, a ruinous inheritance, that I carry out this project.

My project engages the *Parsons v. Shinn* class action lawsuit as a type of archive. As an ongoing and extremely contentious legal battle that entails thousands and thousands of pages of documents, *Parsons* provides an opportunity to read and analyze the material and discursive production of crises, punishment, and health regimes. Moreover, not only does *Parsons* make available a range of legal documents and reports filed under the formal docket of the case, but brings into consideration other supplemental (non-legal) documents such as investigative news articles, communiques, government reports, and organizational studies produced in relation to the lawsuit.

I understand my archival documents as penal artifacts that constitute a dynamic discourse of punishment expressed through their manifest, latent, and omitted content. By reading my archival documents as penal artifacts, I aim to situate and contextualize the work they do in

producing punishment as a social phenomenon with particular focus given to the significance of penal health regimes (Lynch 2015). In a quite rather literal sense, "punishment is paperwork" (Han 2012: 161). Moreover, the ADC healthcare crisis forefronts the biological, psychological, and social health of the prisoner as a critical project of penality, which has become a significant site institutional and legal struggle. I will therefore read my archival documents inductively and iteratively for the ways in which they construct and facilitate meaning and action related to the care, health, and suffering prisoners (Lynch 2015). Schoenfeld (2016) also provides methodological direction in that documents can be analyzed for the consistency of rhetoric across time and space, especially during times of institutional change or the attempt thereof. While the relative care of the prisoner is by no means a new capacity of punishment, my archival analysis will attempt to elaborate its particular manifestation within Arizona's context, how care has become a site of institutional struggle, and how this fits within broader debates and discourses across the penal field and social science. In doing so, my project will be able to generate theory and critique relevant to the study of punishment and society more broadly (Lynch 2015).

Writing on archival epistemology, Skarpelis (2020: 386)) asks, "how life – whether the life of individuated persons, interactions, organizational activities, or bureaucratic processes – is captured on file and in archives, and how both in turn shape the production of sociological knowledge." As I situate my study within *Parsons*, I trace the life of the lawsuit over 10 years of litigation, which also opens up insights about the organizational changes of ADC, as well as the ways in which the life and suffering of prisoners are depicted throughout the lawsuit. Moreover, I also follow Skarpelis in thinking about the ways in which the textual meaning of archival documents exceed their informational intention. The archive, as it is derived from various

practices of documenting social life, opens up to other critical questions pertaining to power and subjectivity. While Skarpelis is largely concerned with the ways in which the archive is a site of producing and fixing life in particular ways, my encounter with the *Parsons* archive confronts us with the ways in which life is also liquidated, unraveled, and decomposed within documents. This is a critical insight of this project as I contend that the self-contained, anatomical subject of popular conceptions of power is splayed across the text of the law. Apposed to Skarpelis, I question whether we can in fact recover the life in the archive and the ethical demands this poses.

That the law itself may be thought as an archive bears directly on our accounts of law's founding and sovereignty. This calls upon Weber's (1978) notion of bureaucratic authority, Foucault's (2012) study of prison regimes and docile bodies, and, of course, Agamben's (1997) concept of bare life as that which lives in the abandonment of the law of the sovereign. The archive is best thought as the space and memory of sovereignty, As Mawani (2012) helps to elaborate:

> Law as archive is an ongoing state of creation and production through translation, interpretation, elaboration, dismissal and disavowal. Law as archive is always becoming; comprised of the past and opening onto the future, its meanings are indeterminate and open to ongoing continual change (354).

Indeed, the law is that which authorizes state action, the official process by which state actors are challenged or held accountable, or the very terms by which new regimes are established. Here, the issues, questions, theoretical interpretations posed by Arizona's prison healthcare crisis are just as open to the law as archive. Not to say, however, that *Parson*s can be made to say anything, but to understand the ways in which it reflects back upon the openness of the law and how this capacity of the law might be repurposed to generate critical accounts of punishment.

Mawani's reading of law as archive is heavily influenced by Derrida's (1995) theory of the archive as the space of commandment and commencement. It is here that the archive must never be assumed outright, but accounted for in the very reading of archival materials as enacting both memory and forgetting. To begin with *Parsons* commits to an amnesia of law's self-imposed origins while memorializing law's precedent. What Derrida denotes as archive fever speaks directly to this tension of ambiguity between memory and forgetting, destruction and preservation. "The archive takes place at the place of originary and structural breakdown of said memory" (pg. 14). Archive fever, as Derrida elaborates further, is to *suffer with sickness* and to *burn with passion*. That is to say, the archive is forgotten precisely because it remembers on our behalf. As much as the law is utilized to bring prisoner abuse to public consciousness it seems that so often this also permits our continued forgetting of the prisoner's suffering. This is not to propose a sort of politics of recovery, but to embrace that which is interminable and indeterminate in the prisoner's plea for relief.

The prison, similar to Derrida's notion of the archive, expends life as must as it attempts to preserve it. Insofar as the distinction between life and death is primary to our understanding of sovereign power, we might also formulate when and whether such distinctions no longer prove worthy of governance or, rather, the extent to which such distinctions have never actually been operative. The archive "…produces the very thing it reduces, on occasion to ashes, and beyond" (Derrida 1995; 94). How might we read penal artifacts in ways attuned to the preservation and destruction necessitated by the structure of their archiving? This, in part, frames my understanding of penal life as the existence of suffering and death that is kept alive yet forgotten in the law.

I have organized my reading of the *Parsons* lawsuit across three problematics or questions presented in thinking of the law as archive: 1. What is the political critique presented by Arizona's prison healthcare lawsuit? 2. What are the aesthetics of suffering of penal life? 3. How do we formulate an ethical relationship to penal life? It is my exploration of these questions that are the core of the substantive chapters of this project.

The first chapter, Extraction without Reserve: The Case of Arizona's Penal Care Regime, describes the mechanisms and machinations that have produced Arizona's prison healthcare crisis. Here, I focus on the ways in which the privatization of prisoner healthcare in the state of Arizona occurred in the wake of The Great Recession. Privatization overlaid with the filing of the *Parsons* lawsuit and would reproduce various forms of institutional disruption with multiple vendors cycling in and out of contract with the Arizona Department of Correction. By detailing this institutional history, I analyze the privatization of prison healthcare as an iteration of what Ruth Wilson Gilmore (2017) describes as the process of penal extraction. Here, the austerity and profit-generating motives of private prison healthcare are underwritten by treating the life and health of the prisoner as a resource to exhaust and degrade.

The next chapter, Penal Life and Its Drives, reads the prisoner's claim in *Parsons* for its visuality of suffering. Here, I locate the ways in which the prisoner's suffering extends insight and critique of penal subjectivity, the law, and structural violence. As I argue, the very depiction of suffering and abuse in *Parsons* is notable as it presents bodies and minds without distinction. While the law's redress situates an attempt at recomposing prisoners into individuated, self-possessed subjects, I instead read for the ways in which de-individuation and dispossession can provide for a more critical interpretive framework. In particular, I argue that penal life does not so much resist penal power, as much as it intrudes upon the operative categories of subjectivity. I

end the chapter by mobilizing penal life in formulating a critique of punishment and anti-blackness.

The final chapter, No One Cares, provides a meditation on the ethical problems and demands posed by penal life. Here, I situate moments of failed care in the *Parsons* lawsuit with and against sociological, epidemiological, and phenomenological accounts of suffering and incarceration. As I put forth, the failure to care for penal life should have us reconsider any and all demands for remedy and relief. Instead, I offer what it might mean to embrace the constitutive failure of care in forming an ethical relationship to suffering. That is, I consider the key ethical question not whether or if we suffer, but the ways in which we formulate a relationship to suffering.

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CHAPTER 1

Extraction without Reserve: The Case of Arizona's Penal Care Regime

This article engages in a case study of Arizona's prison healthcare crisis in order to interrogate the extractive conditions of penal life. An extreme case of American punitiveness, Arizona continues to offer a counter-image to prison reform discourse. What emerged as a means to reduce rising correctional costs during a moment of extreme fiscal austerity, the privatization of Arizona's prison healthcare system in 2009 has led to an ongoing and costly legal battle over 8th Amendment Constitutional rights violations. As the case of Arizona prompts us, how does the failed provision of prison healthcare open up new analytical insights to our understanding of punishment and penal change in the early 21st century?

Lynch's (2010) study of the modernization of the Arizona Department of Corrections (ADC) shows how a state located in the American southwest emerged as a national trend-setter in post-rehabilitative punishment. Not only did Arizona prove inhospitable to reformatory philosophies of correctional welfare for instance, but embodies the Sunbelt's political landscape of "post-New Deal governance" and a "post-Civil Rights fear of crime" (Lichtenstein 2015: 124; Lynch 2010). As an anti-welfare Sunbelt state, Arizona has historically pursued a no-frills penal regime in which structural contradictions between frugality and punitiveness drove its prison boom (Lynch 2010). We see such dynamics repeating, but with a difference, through the state's prison healthcare crisis. Arizona has selected not to respond to the needs and vulnerabilities of its chronically ill prison population. The state has instead perpetually deferred care through privatization and legal noncompliance.

The devolution of Arizona's prison healthcare system tracks broader processes of social retrenchment whereby vulnerable populations are left to suffer without recourse (Soss, Fording, and Schram 2011; Wacquant 2009). Understood as organized abandonment, as such processes persist into the 21st century, the provision of prison healthcare reflects a sort of relic of welfare now desecrated by neoliberal penality (Wacquant 2009). In the case of Arizona, it is not that the state ever established an adequate standard of care in prisons or a robust welfare system, but that the abandonment of penal care has helped to shore up broader ideological commitments to privatization, austerity, and punitiveness more generally (Cate 2021).

Debates on late mass incarceration have centered the prospects and pitfalls of cost-motivated reform measures (Cate and HoSang 2018; Seeds 2017; Gilmore 2015). Whereas fiscal austerity has led many states to pursue some kind of decarceration reform, Arizona has remained staunchly punitive, focused primarily on cheapening its prison conditions. Not only has the state sustained dangerous levels of staffing shortages over the years and neglected to repair its dilapidated facilities, but the organization of its healthcare system, pre and post-privatization, has been especially dire. What we encounter in The Grand Canyon State are penal care regimes where bodies are left to deteriorate in abysmal conditions, where healthcare staff are overburdened by patient caseloads, and the modest of reforms are thwarted by a "failure of will" (Stern 2019). As I aim to show, Arizona's penal care regime features acute conditions whereby the prisoner's life becomes a resource to degrade and exhaust without reserve. The decomposition and unraveling of prisoners' bodies and minds constitute the scorched and despoiled by-products of extractive punishment, finding resonance with those destituted sites of capitalist accumulation, such as the razed forest, the waste lagoon, or the oil spill.

In 2012, the class-action lawsuit *Parsons v. Ryan (*currently *Jensen v. Shinn*) was filed in the Arizona district court, which documented egregious and systematic failures in ADC's provision of dental, mental, and medical care, as well as in its use of solitary confinement. The lawsuit was brought on by a coalition of legal organizations – Arizona Center for Disability Law, The Prison Law Office and The American Civil Liberties Union – less than a year after The Supreme Court's *Plata* decision. *Parsons* was settled in 2015 and its stipulation entailed over 100 compliance measures to be met at all publicly operated ADC prisons. Due to persistent noncompliance, however, the stipulation was vacated in 2021 and the case moved to trial. As of this writing, presiding Judge Rosalyn O. Silver has ruled that ADC is acting with deliberate indifference to prisoner's mental and medical health needs and therefore in violation of the 8th Amendment[4].

By bringing together such penal artifacts as the *Parsons* litigation documents (motions, expert testimonies, and court orders) state contracts between Arizona and private prison healthcare providers, organizational publications written by ADC, prisoner advocacy groups, and private contractors, and, finally, journalistic investigations, I construct a case study that narrates the conditions and consequences of Arizona's prison healthcare crisis (Lynch 2017). As I began with just general knowledge of the *Parsons* lawsuit, my approach was to craft a timeline of critical moments in Arizona's prison healthcare system. I would iteratively read my documents and then return to my narrative writing to add observational nuance, context, and relevancy. Taking this approach, I was able to identify internal mechanisms and machinations at issue in *Parsons*, which I analyze at length in the sections below. I liken my approach to what Lara-

[4] The court will be appointing an expert to advise on injunctive remedies to resolve the constitutional violations in ADC.

Millán et al. (2020: 356) describe as "positive contingency" in which archival documents are mined for when institutional actors make-meaning and take action in order to resolve institutional uncertainty. Although, as the *Parsons* case presents, ADC has not so much moved from crisis to certainty, but, rather, reproduced institutional unsettledness in various ways (Lara-Millán et al., 2020).

While I believe that most would construct a narrative of events that is more or less similar to mine, my intervention lies in how I read these institutional developments alongside and against the extant literature and theoretical accounts of punishment (Lynch, 2017). As I put forth, Arizona's prison healthcare crisis complicates the decarceration narrative of late mass incarceration, problematizes the role of the law to correct and remedy constitutional rights violations, and illuminates the extractive features of punishment. We should consider the limitations of my analytical approach insofar as artifacts are the debris and detritus of the unrelenting trudge of social forces (Lara-Millán et al., 2020; Skarpelis, 2020). As secondary forms of data, the documents I gather together are inherently constrained in their communicative function, by being generated by social actors with various goals and motivations, and by largely excluding the voices of those who labor and live in the penal contexts in question (Lynch, 2017; Lara-Millán et al., 2020; Lara-Millán 2022).

As Schoenfeld (2016) maintains, a state-level analysis provides nuance and variation within generalized narratives of punishment, as macro structural issues are mediated through localized institutions. While most state-level analyses have focused on the buildup towards mass incarceration of the late 20th century, less attention has been given to specific penal practices (Seeds, 2018). Analyses of penal healthcare has been especially scarce save for Fleury-Steiner's (2008) *Dying Inside*, Simon's (2014) *Mass Incarceration on Trial* and Sufrin's (2017) *Jailcare*.

This case study compliments and extends this research by demonstrating how contradictory imperatives in coercion, cost, and care has reproduced Arizona's cheap and mean penal regime (Lynch 2010).

Arizona's prison healthcare crisis forefronts processes of abandonment with which we must contend in order to understand the relationship between an extractive logic of punishment and the administration of health in prisons. I conduct this inquiry across three parts: Part I situates the debates on late mass incarceration and austerity-driven decarceration reforms alongside issues in prison healthcare. Part II elaborates a theory of penal extraction which I use to analyze the crisis in Arizona's penal care regime. Part III narrates the conditions and consequences of Arizona's prison healthcare crisis. I make the argument that the delay, denial, and disavowal of care contours the features of penal extraction in Arizona. I end the paper by drawing insights from Arizona's extraction of penal life and how this might extend theoretical accounts of punishment and state violence.

I. Late Mass Incarceration

Late mass incarceration reflects a moment of reform efforts aimed at addressing the social ills of the penal state (Seeds 2017). Key among such issues are the exorbitant costs of keeping people locked up, which has spurred policies to downsize prison populations as fiscally motivated measures (Aviram, 2016; Cate and HoSang, 2018). Also understood as decarceration, such reforms have come to reflect new terms, struggles, and orientations within the penal field that might be leveraged for more widescale progressive change (Goodman, Page, and Phelps 2017). At the same time, others remain pessimistic, or at least agnostic, towards the prospect of

decarceration. In the American context, we have entered a sort of stasis in penal expansion, while still maintaining relatively strong punitive sentiments (Beckett 2018; Campbell, Schoenfeld, and Vaughn 2020).

The Great Recession of 2008 is particularly relevant to the sociopolitical context of late mass incarceration (Schoenfeld 2016). Brought on by the collapse of the U.S. housing market and its overreliance on subprime mortgages, The Great Recession devastated the financial health of local governments, as well as global institutions. U.S. states suffered extraordinary revenue loss and incurred immense debt in order to stymie budget shortfall (Thompson and Smeeding, 2013). Austerity measures developed in the wake of the housing market crash motivated many state actors to reduce overcrowded prison populations as mass incarceration had become viewed as economically unsustainable (Brown, 2013; Clear and Frost, 2015). Not to say that economics drove prison reform, but in a much more complicated sense, the discourse of austerity was wielded by state actors to justify reform measures within new terrains of struggle and alliance (Phelps and Pager 2016; Beckett 2018). Cate's (2021) exceptional study of Mississippi shows how prison downsizing has translated into "mass incarceration on the cheap" (pg.1). Mississippi's brand of penal austerity has contributed to understaffing, dangerous prison conditions, weakened oversight, and the retrenchment of public services made reliant upon free prison labor.

Late mass incarceration has also emerged alongside a prison healthcare crisis with the prospect of court-motivated reforms. The 2011 Supreme Court decision in *Brown v. Plata* ruled that California's overcrowded prisons impeded upon the delivery of constitutionally mandated healthcare. The healthcare conditions within California's prisons became so dire that at the height of its overcrowding crisis an average of one prisoner per week died a preventable death

(Simon 2014). As a result of the *Plata* decision, California would have to undergo a wide-scale decarceration experiment. Known as Realignment, California shifted jurisdictional responsibility from the state to the county for low-level, low-risk offenders and reclassified certain non-violent crimes as misdemeanors (Verma 2016).

As Aviram (2016: 273) describes, California's enduring stance towards "savings-oriented correctional reform" was rearticulated post-Recession as financial concerns drove *Plata* compliance measures. Realignment was not only backed by threat of prison privatization, but was formulated through a cost-benefit framework that made counties bear more of the financial burden for their punitive appetites (see also Ball, 2014). Similar to what would come of the Mississippi model, "The California version of cost-centered reform offers very limited respite from several major current [healthcare] issues that can only be regarded as serious human rights crimes." (Aviram, 2016: 274). Indeed, the discourse of penal austerity, as precipitated by The Great Recession and re-packaged under Realignment, can justify worsening prison conditions as much as it can decrease prison populations.

The *Plata* decision reasserted the legal mandate of the prison, to not only control and punish, but to provide care and protect against the needless suffering of prisoners. Yet, it is precisely the irresolvable tension of these imperatives that have manifested a prison healthcare crisis. Not only have prisons consistently fallen short in providing adequate and comprehensive care, but exposure to incarceration bears increased risk for morbidity and mortality in racially disparate ways (Wildeman and Wang, 2017; Reverby 2019). However, the contradictory capacities of coercive care at issue under *Plata* and reiterated by *Parsons* are but contemporary instances of the prisoner's undecided position within the law, what Han (2015: 100) describes as

the "vicissitudes of civil death." Contradictions in costs, overcrowding, and constitutional deprivations only reformulate the structural displacement of prisoners' right and social status.

II. Penal Extraction

The scandal exposed by the *Plata* decision was in the brutal routinization of death in California's prisons (Simon 2014). *Parsons* (2012: 34) presents similar instances of dehumanizing treatment. As one horrifying account from the lawsuit reads:

> A prisoner who needed medical care for gastrointestinal bleeding and an untreated hernia tragically did not receive proper treatment even after Defendants were aware of his problems. His hernia ruptured his stomah lining and he was found dead after 'vomiting up his insides,' according to witnesses.

Such abject suffering should be thought in relation to the broader organization and arrangement of penal life, what Friedman (2021: 694) describes as "conditions where death is by institutional design and prison order is arranged so that people categorized as prisoners die socially, psychically, and physically." Whereas punishment has been considered a means to administrate obedience and enforce docility, we might consider, at a different register, the ways in which it expends the body and mind of productive and disciplinary capabilities altogether (Melossi and Pavarini, 2018; Foucault, 2012).

As opposed to ensuring that the basic necessities of life, health, and well-being are met, what Gilmore (2007) calls the "antistate state" is based on the organized abandonment of social life. Organized abandonment finds its premier expression in the prison and through which, according to Gilmore (2007: 247), investments in land, people, capital, and state capacity are organized to "accelerate the mortality" of the most dispossessed populations. Indeed, it is through the notion of accelerated mortality that Gilmore (2007: 247) conceptualizes racism as

the "state sanctioned and/or extralegal production and exploitation of group differentiated vulnerability to premature death." Punishment makes destitute the potentials of being – not only in terms of the production of and exposure to precarity and vulnerability, but by carrying forward the racial categorization of groups of people and the places in which they live.

Whereas premature death is the material consequence of imprisonment, extraction is the process of accelerating penal life towards its demise (Gilmore 2017). Prisons "enclose people in situations where they are expected, and in many ways compelled, to sicken and so die" (Gilmore 2017: 236) As Gilmore (2017: 234) explains, prisoners are extracted of "*the* resource of life: time." Extraction leaves a "hole in a life" through which carceral capacities, interests, and motivations are replenished and sustained (Gilmore, 2017: 234). Bodies with holes in them - the sick and dying - are the raw material and by-product of the penal state's ceaseless restructuring. Here, extraction should not be thought as a new formation of penal power, but a latent capacity made emergent by the health-based suffering of the prisoner.

Penal extraction also orients the burgeoning, critical scholarship on monetary sanctions. Wang (2018) argues that the carceral system is used to expropriate revenue from socially and racially marginalized populations for the budgetary health of governing municipalities. Page and Soss (2021: 291), focusing on what they term *the predations of criminal justice*, connect the financialization of punishment to "extractive projects that underwrite state development and capital accumulation." Friedman's (2020) analysis of pay-to-stay laws shows how the expansion of carceral power extracts from people money and time to the detriment of their well-being. Such forms of economic dispossession parallel and necessarily extend from the physiological and psychological degradations of premature death.

Penal extraction also shares resonance with Mbembe's (2003: 14) theory of necropolitics, which maintains that sovereign power is expressed and defined by the "…material destruction of bodies and populations." Writing in the context of postcolonial occupation and the modern warzone, Mbembe traces the power to kill and expose life to death to spectacular and exceptional forms of sovereign terror. Comparatively, penal extraction takes as its focus attritional and dispersed forms of suffering, closer in scale to Berlant's (2007) *slow death*. That is to say, punishment exhausts life at dispersed and dilated, but no less brutal scales of state violence. As I will show in the case of Arizona, the delay, denial, and disavowal of care provide acute insights into how penal life is extracted towards death and without reserve.

III. Arizona's Careless Penal Regime

Throughout the mid to late 20th century, Sunbelt states in the U.S. consolidated a national penal politics through which social problems had become interpreted as issues of crime and punishment (Campbell and Schoenfeld 2013). Likewise, the expansion of penal power has also facilitated social ignorance and disregard towards the harsh realities of prisons (Schoenfeld 2018). The political necessities of such carelessness is substantiated by the deplorable conditions of prison healthcare where life suffers without recourse in its own physiological and psychical deterioration. By analyzing the internal mechanisms and machinations at issue in the *Parsons* litigation, I elaborate the contours of penal extraction in the case of post-Recession Arizona. In particular, privatization and legal noncompliance reproduce exposure to premature death through what I identify as the perpetual deferment of care.

Penal Austerity

In the years leading up to the *Parsons* lawsuit, Arizona was reeling from the economic impacts of The Great Recession and the state's political terrain had become seeded by the nativist and anti-government Tea Party movement (Berman and Borns 2012). Arizona was one of the worse hit by the housing collapse, which induced an additional crisis in the state's structural deficit (Murry et al., 2011). The election of Governor Jan Brewer in 2009 would entail an especially conservative agenda and myopic budgetary quick-fixes in the face of a $3 billion shortfall (Berman and Borns, 2012). Brewer entered the national spotlight as the foil to the Obama Administration, having infamously wagged her finger in the face of the President and had joined the 26 Republican states who brought suit over the Affordable Care Act. Most notoriously, Brewer signed into law SB 1070 – the "show me your papers" bill – which targeted Latino communities by making it a crime for any undocumented person to live in the state and allowed public employees to deny services to anyone suspected of being undocumented.

One of Brewer's first acts as Governor was the appointment of Charles Ryan as director of the Arizona Department of Corrections. Ryan had a long 23-year career in ADC prior to his appointment and had already served as interim director in 2002 after the retirement of his predecessor, Terry Stewart. At the time, Ryan had gone on to join Stewart's private consulting firm, which had been awarded a Federal contract to rebuild the Iraqi prison system and advise on the management of Abu Ghraib - the scandalized prison where photographs surfaced of U.S. military personnel abusing and sexually humiliating naked detainees. Ryan's appointment as director of ADC and his connections to the international prison industry should not be overlooked as the *Parsons* lawsuit centers the degrading treatment of prisoners under privatized healthcare.

Between 2000-2008, Arizona's prison growth outpaced all western states, which incurred considerable operations and daily-living costs. By 2009, corrections was the third most expensive item in the state budget, behind K-12 education and healthcare appropriations. Financial anxieties would collate onto prison healthcare expenditures. As Ryan (2009: 2) primes in his first five-year strategic plan submitted to Governor Brewer, the aging prisoner population and the affliction of chronic disease would become an increasingly expensive problem for the state:

> Many of these inmates suffer from the nine chronic high-cost illnesses that contribute to nine out of ten deaths in the United States, including congestive heart failure, chronic lung disease, cancer, diabetes, chronic liver disease, and dementia. As these chronic diseases progress, the amount of care needed and cost of care delivered increase markedly.

The medical concerns of a sick prison population would not be met with an expansion of healthcare services or the decreasing of the prisoner population, but instead, constitute a financial problem in the context of an economic recession. Deficits in healthcare capacity would ultimately motivate privatization, which overlaid with ADC's long ideological reliance upon the private prison service industry to offset correctional expenditures (Lynch 2009).

As Lynch (2009: 130) has described, the harshening of Arizona's penal regime has culminated in prisoners being treated as "transferable expenses whose costs can and should be reduced through whatever modes available to the state." On September 30th 2009, HB 2010 was passed which privatized ADC's healthcare system. The bill placed significant cost restrictions on vendor contracts. Healthcare expenditures could not surpass the department's 2008 fiscal costs and referrals to outside providers could not exceed rates under the state's Medicaid program, Arizona Health Care Cost Containment System (AHCCCS). However, the rise in healthcare

costs nationwide and Arizona's growing and increasingly ill prison population would make the cost-reduction stipulations of HB 2010 untenable (Issacs, 2013).

Not only would prison healthcare privatization be pursued as means to reduce and contain costs, but it anticipated broader austerity measures. In 2010, the state had decided to deny coverage for certain organ transplants - such as lung, pancreas, and some heart procedures - as they were considered costly and ineffective at extending patients' lives (Berman and Borns, 2012). Two people died directly as a result of defunding and another 98 would be left without recourse. As one New York Times op-ed put it, "…[N]o other state in recent memory has made such a numbers-driven calculation pitting the potential loss of life against modest savings" (Sack, 2010). The policy to deny organ transplants would be reversed no more than a year later. Cuts were also made in Medicaid services deemed optional by Federal policy, such as wellness exams, dental care, and cochlear implants.

In 2011, Brewer eventually approved $1.1 billion in spending cuts, which fell predominately on K-12 education, state universities and healthcare relief for the poor. The most egregious cuts were made to AHCCCS, which was considered by Brewer to be the primary cause of the state's financial deficit. A direct result of the recession, costs of and enrollment in AHCCCS continued to rise and the state lacked revenue for increased expenditures (Berman and Borns, 2012). In terms of qualification requirements, Arizona had actually operated one of the more generous state Medicaid systems (Sommers et al., 2012). In 2000, Arizona voters passed Proposition 204, which extended AHCCCS to childless, low-income adults. Funded by a big-tobacco lawsuit settlement, Medicaid expansion had particular financial benefits for southern and rural hospital systems, which served some of the most vulnerable populations in Arizona (Sommers et al., 2012; Langellier et al., 2014; Adler, 2018). In 2011, however, the state cut over

$500 million from AHCCCS, which translated into increased co-pays, penalties, and the freezing of 140,000 childless adults from coverage. Eligibility would eventually be restored and expanded in 2014 once Brewer reversed her opposition to the Affordable Care Act. A coalition of hospital systems and the Arizona Chamber of Commerce had convincingly lobbied the governor's office that uncompensated care would be more costly for the state compared to Medicaid expansion (Adler 2018).

The emergence of Sunbelt penology has reflected broader political economic shifts in the retrenchment of state responsibilities and ideological investment in the free-market (Lichtenstein 2016). As Arizona experimented with the austerity of public life, prisoners would constitute the threshold of abandonment whose care would be viewed strictly as expenditures to reduce. Similar to post-Recession Florida, cost-cutting and penal commitments would only exacerbate dehumanizing prison conditions (Schoenfeld 2018). The brutal economization of prison life would anticipate broader state austerity measures and legitimize free-market principles and anti-government sentiment in the wake of ideological crisis (Wang 2018).

Liminal Care

Transitioning to a private vendor worsened longstanding issues in ADC's healthcare system. Staffing became difficult to maintain as healthcare providers began to vacate their positions out of concern that they would lose their jobs once a vendor had been selected (Ortega 2012). Medical staff vacancies had been an ongoing issue for the department and, along with the push toward privatization, the department's medical infrastructure became increasingly disorganized. By 2011, 22% of all healthcare positions were vacant and a vendor had yet to be awarded a contract (Ortega 2012). Prisoners also faced lengthy delays and barriers to care as providers became overburdened with caseloads and lacked a system to effectively track and

monitor patient treatment. The department would also delay referrals to outside specialists so as to pass these costs along to the eventual vendor (Isaacs 2013).

Staffing shortages, delays in healthcare services, and infrastructural dilapidation effectively placed prisoners in a liminal position between state and private provided care. “In the fiscal year ending [in 2010], Corrections spent $111.3 million, or an average of $3,258 per inmate, on health care, down 27 percent from $140.5 million, or an average of $4,482 per inmate, two years earlier” (Ortega 2012). An instance of scaling back carceral capacity, the delay and denial of services seemed to offer an immediate cost-saving strategy beyond that of contracting with a private vendor.

Difficulties in securing a vendor illustrated the overall underfunding of ADC’s healthcare system. The 2007-2008 fiscal year cost-restrictions were not operationally feasible and it remains unclear why spending limits would be set so low when it was projected that both the prison population and state healthcare expenditures would increase. Due to a lack of proposals, however, the cost-provision of HB 2010 was removed in 2011 and the language of the bill was amended to securing “the most qualified provider.” The bill would retain the provision that payments to outside specialists could not exceed AHCCCS rates, which would later prove problematic in securing community-based referrals. It would still take another year before a vendor would assume operations. For two full years ADC had functionally operated a hollowed out healthcare system.

Exodus of staff, delays and denials in care, and failing medical infrastructure proved especially devasting to the lives of prisoners. Between 2011 and 2012 there were 37 deaths in ADC of which 19 were by suicide. The complete neglect and disarray of ADC’s healthcare system gave it the name of Arizona’s “second death-row” (Issacs, 2013). The catastrophic

conditions set during this period of liminality would disrupt any smooth transition to a private vendor. It was also during this transitionary phase that the *Parsons'* (2012) lawsuit was officially filed, which further documented systemic barriers to accessing care, chronic understaffing, and unsanitary conditions of confinement. The declaration's harrowing description of psychotic decompensation, untreated diseases, and unhealed and debilitating injuries reflect the physical and psychical realities of exposure to premature death.

Vendor Troubles

In the context of expanding systems of control and surveillance, third parties have been granted increased power to meet the needs of incarcerated and supervised populations (Miller and Stuart, 2017). Prison healthcare vendors are examples of such third parties, which heightens an already tenuousness relationship between care and vulnerability (Phelps and Ruhland, 2021). ADC's vendor contract would be structured by what is referred to as a "capitation". Here, ADC pays the vendor a per diem rate for each prisoner, which is based on an estimate of total healthcare expenditures for the year. In order to be competitive for procurement, vendors often engage in a race to the bottom as states are likely to pursue the cheapest of proposals (Gelman, 2020). For the state, capitation allows for a fixed and determinate budget of healthcare expenditures, while the vendor is incentivized to reduce the actual cost of care in order to increase profit margins.

There are two primary ways to reduce prison healthcare expenditures: 1. staff reduction and 2. care denial. In Arizona, both strategies would be pursued. "Privatization is usually embarked upon to reduce prison expenses, with efficiencies induced by financially stressing the service function. For medical care, the most direct way to reduce expenses is to deny, delay, or dilute care" (Zullo, 2017: 96). Not only does capitation further induce the abandonment of care

in prisons, but prisoners' lives become like an extractable resource; health becomes an exhausted remainder of economic gain.

Wexford Health Sources would assume operations in July 2012 as the lowest bidder in ADC's request for proposals. Wexford's three-year contract totaled $349 million, $5 million more per year than what ADC was spending on healthcare at the time. However, the department claimed these costs would be off-set by the employee pensions they would no longer have to pay. ADC collapsed its healthcare division and instituted a minimally staffed Health Care Service Monitoring Bureau. The bureau would be tasked with ensuring contract compliance, quality of care, and assisting Wexford with any other related issues, all of which became matters of contract dispute and grounds for termination no less than a year later.

In August of 2012, no more than a month into their contract with ADC, a series of issues brought department scrutiny over Wexford. Problems ranged from medication delays, insufficient staffing levels, inappropriate incident reporting, and improper emergency response. The very same problems that plagued the department prior to Wexford's tenure. Reports surfaced that a nurse had a prisoner lick powdered medication from their hand after running out of cups and another detailed an outbreak of whooping cough at the women's Perryville prison. The most egregious issue was a Hepatitis C exposure that occurred at the Lewis prison complex. A subcontracted nurse had reused a syringe for a Hepatitis C positive prisoner, which contaminated a multi-dose insulin vial, exposing over 100 prisoners to the virus (Issacs 2013).

ADC assessed Wexford as being in noncompliance with their contract and issued a $10,000 sanction. Wexford did not just refute the allegations, but pointed the finger back at ADC. According to Wexford, uncooperative correctional staff impeded upon their ability to adequately investigate the Hepatitis C exposure. Wexford also identified several questionable

health staff practices well-established before they took over for ADC. These included removal of patient's medication records from storage locations, as well as inconsistencies in updating chronic care data in ADC's inmate health monitoring system (Wexford 2012a).

Wexford also confronted ADC in not being forthwith concerning the overall conditions of its healthcare system, which were assessed by the vendor as failing to meet basic professional standards. As noted by Wexford, "the ADC system is broken and does not provide a constitutional level of care" (Wexford, 2012b: 3). Indeed, Wexford characterized ADC's healthcare system as utterly dysfunctional: having failed to test prisoners for infectious disease, to properly train correctional and health staff, to process thousands of backlogged cases for specialty care, to correctly dispense proper medications and to correct a work culture of unaccountably, hostility, and medical malpractice (Wexford, 2012b). Wexford even went as far to state that everything alleged in the *Parsons* lawsuit was true.

The disputes between ADC and Wexford could not be amended and contract termination was finalized on January 30th, 2013. Wexford would continue to operate healthcare services until March whereupon Corizon Correctional Healthcare would takeover. As the process of termination illustrates, privatization not only consolidates the delay and denial of care, but also its disavowal. Despite being the very cause of contractual dispute, either Wexford or ADC would address or take responsibility for the suffering of prisoners. ADC's catastrophic healthcare system would remain in place and simply passed on to the next vendor.

Failed Transitions

Corizon Correctional Healthcare would transition as ADC's healthcare provider on March 4th 2013, right at the beginning of the *Parsons* legal proceedings. Corizon had submitted a

proposal for services back in 2012 – along with Wexford and Centurion – as the second lowest bidder. Given the urgency of the situation, Corizon appeared poised to lead transition efforts. At the time of its contract with ADC, Corizon was the largest prison healthcare provider in the country and had experiences transitioning healthcare services from Wexford in New Mexico, Pennsylvania, and Wyoming (Corizon, 2012).

The frequency of provider-to-provider transitions, as undergone in Arizona, demonstrate how the prison healthcare industry fails on its own free-market principles. Mechanisms of competition are basically absent as there are too few providers and governments ultimately become dependent upon the industry for service provision (Gelman, 2020). Not only is provider turnover frequent and disruptive to healthcare continuity, but quality of service only ever fluctuates between being very bad to mediocre (Zullo, 2017). Vendors are often marred in some kind of controversy or litigation, but this has no real impact on contract procurement. Just as mass incarceration regulated and concealed the unemployed labor market in the U.S, it has created other opportunities to effectively subsidize failed industries (Western and Beckett, 1999).

In its correspondence to ADC, Corizon emphasized their ability to facilitate a seamless transition of services within 30 days, noting the staff and operational concerns they would inherit. What was described as a *special situation* was going to require revamped personnel training, communication and documentation practices, as well as vast infrastructural improvements. In an effort to retain staff Corizon dispatched transition teams tasked with persuading healthcare workers to remain in their positions (Corizon, 2012). Despite Corizon's transition strategy, fundamental issues persisted. The company struggled to retain and hire staff and actually reduced and eliminated certain positions. By June of 2013, staffing dropped to a deplorable 53% (Wilcox 2013).

The legal proceedings during this time would reveal the troubling state of ADC's healthcare system. Dr. Robert Cohen (2013: 11), who provided expert testimony on behalf of the plaintiffs, described what he characterized as a "failed medical care system." Along with staffing shortages, Dr. Cohen identified outstanding issues in access to care, unkept medical infrastructure, and insufficient oversight and monitoring:

> Corizon, like Wexford and the Arizona Department of Corrections before it, has proved again that where corners are cut in providing medical care by having too few professional staff and an inadequate budget, patients will suffer, and sometimes die, because of systemic neglect. Prisoners are getting lost in the medical care system; their serious chronic diseases are not being followed as closely as they should be; and requests for necessary outside medical consultation are going unfilled.

Through the brutal reduction of cost and capacity, privatization intensifies mechanisms of penal extraction. Not only are prisoners subjected to preventable forms of suffering and death, but the prison becomes reproduced as an organized disaster (Friedman 2021).

Transition, whether that be from public to private or vendor to vendor, would simply be a repetition in failed and catastrophic healthcare. While such inefficiencies might be reason to reject the very terms of privatization, we should consider the extent to which such failure reiterates the prison as a form of civil death. What Han (2015: 96) describes as the prison's legal architecture only ever "establishes the prisoner's precarious if not absent security in bodily and psychical integrity." The failure of privatization in the Arizona case maps onto and extends the repetitions of civil rights violations of prison conditions more generally (Dayan, 2014). Insofar as the prisoner's right is always subject to despoilment, privatization simply inflects civil death with the ideology of capitalist accumulation and brutal forms of extraction. Market failures find their correspondence with the structural failure of the law in what is otherwise the prisoner's perpetual deferment of care.

Noncompliance

Throughout the *Parsons* litigation, ADC would be assessed as lacking the basic components of a bureaucratically managed healthcare system. Issues in medical care spanned problems in mental health treatment, dental care, and the use of solitary confinement. All of which were similarly mismanaged, degrading in treatment, and cause of serious harm and injury to prisoners. While litigation seemingly provided an opportunity for reform, it has been routinely undercut by ADC through acts of willed failure and bad faith efforts.

ADC settled *Parsons* just days before the case would go to trial. A stipulation was approved in 2015, which constructed 103 performance measures (PMs) to be implemented at 10 state prison complexes. The PMs were designed to align Arizona's prison healthcare system with basic constitutional and medical standards, which included things like sufficient staffing levels, timely care and treatment regiments, intake screenings, and prompt scheduling of specialty care appointments. PMs would be set at incremental thresholds where in the first year ADC agreed to be in 75% compliance, 80% by the second year, and remain at 85% thereafter. All PMs would be subject to review by the prisoners' legal team and fines would be assessed by the court if performance measures were not met or fell out of compliance. As a condition of entering the settlement, ADC was able to deny responsibility for its failed healthcare system (Rothschild, 2019).

By 2016, prisoners and their attorneys filed a motion to enforce compliance after ADC failed to reach or maintain critical PMs, which detailed shocking accounts of suffering and death. It appears that ADC's strategy was, in bad faith, to prolong legal proceedings through discovery disputes, scheduling extensions, and faulty remediation plans (Rothschild, 2019). The department would effectively leverage the law in order to repeat the delay and denial of care the

stipulation was designed to resolve. Despite the court's frustrations, its ascription to judicial deference would nonetheless benefit ADC's evasion of oversight and regulation (Dolovich, 2021). It had also come to light that not only did ADC approve an increase in Corizon's capitation rate, but had devised various sanction and incentive schemes to financially induce PM compliance.

ADC was officially held in contempt of court for noncompliance in 2018. In his order, then presiding Judge Duncan (2018: 20) admonished ADC's lackadaisical efforts and their unwillingness to compel Corizon to resolve fundamental issues. "[ADC's] repeated failed attempts and too-late efforts, to take their obligation seriously demonstrate a half-hearted commitment that must be braced. The evidence suggests that the State's recalcitrance flows from its fear of losing its contracted healthcare." At a rate of $1,000 per non-compliant PM, Judge Duncan imposed upon ADC a $1,445,000 fine. However, when ADC renewed its contract with Corizon in 2015, it included an indemnification clause. Not only did this require Corizon to pay all of ADC's legal fees (and those of the plaintiffs' attorneys), but should ADC ever be found in contempt of court, Corizon, would be the one responsible for payment. Indemnification had removed all material incentive on the part of the state to improve its prison healthcare system. Writing on the privatization of prison healthcare in Florida, Schoenfeld (2018) notes that political conflict over rising costs had made these ventures untenable for both governmental leaders and private businesses. In Arizona, however, the state has essentially economized its tolerance for prisoner rights violations.

Compliance continued to prove futile, prompting the court to appoint an expert – Dr. Marc Stern – to review the auditing of PMs and the quality of care provided. While Dr. Marc Stern's report provided the most comprehensive assessment of ADC's healthcare system at the

time, it would repeat the array of issues that had endured over the previous decade such as understaffing, delays in care, and insufficient case monitoring. Not only were critical PMs found to be in non-compliance, but Dr. Stern calculated that ADC's healthcare system was underfunded by a conservative estimate of $84 million, which consisted of gaps in healthcare costs and vendor profit margins. Not only did the Stern report capture the austerity of ADC's penal care regime, but also the crude economic value extracted from prisoners' exposure to premature death (Wang, 2018).

While in the midst of Dr. Stern conducting his report, ADC's healthcare vendor would again be dredged in scandal. A whistleblower investigation revealed that Corizon instructed employees to mislead ADC's audits of PMs. A leaked email described overworked medical staff crying while trying to perform impossible duties for sick and in-need prisoners. "We are all burning out and in desperate need of sufficient staff. We are asking for help not only for us but for our patients" (Jenkins, 2019). The story broke after former healthcare workers testified on PM violations. One health provider stated she was instructed by a doctor to keep a prisoner suffering from a heart attack comfortable and "let him die" after falsely claiming that all the arteries in his heart were inoperable (Jenkins, 2019). In light of these controversies, ADC did not renew its contract with Corizon and instead selected the company Centurion to resume operations on July 1st 2019. Within the span of seven years, ADC would transition through three different health service vendors. The repetition of disruption would prove the most enduring feature of privatization.[5]

[5] ADC has since entered into contract with a fourth vendor, NaphCare. Like its predecessors, NaphCare has a problematic history of providing health services in prisons (Jenkins, 2022).

Despite ADC's bad faith enforcement and Corizon's scandalous dealings, the issue of noncompliance would also feature the limitations of the law to achieve institutional change. Not only would ADC utilize legal proceedings to prolong healthcare reforms, but effectively neutralized mechanisms of enforcement. Civil contempt would all but be absorbed into an extractive matrix of capitation rates, profits, and performance incentives; streams of revenue that circulate by virtue of the prisoner's destitution. As Schoenfeld (2010; 2018) has shown in the case of Florida, prisoner rights litigation has often necessitated the expansion of carceral capacity. Through *Parsons,* however, state capacity has not so much been increased, but kept in a constant state of flux. Prolonged proceedings, repeated vendor transitions, and tenuous PMs demonstrate the ways in which care is only ever yet to arrive, continuously disrupted and perpetually deferred. The diffusion of various interests – the state, the court, and private vendors – features competing motivations and investments that ultimately maintain the vicissitudes of civil death, as well as the extraction of penal life (Han, 2015).

Conclusion

Sunbelt penology set the tone for the U.S. penal order, marked by mass incarceration and the harshening of prison living-conditions. (Campbell and Schoenfeld, 2013). The early 21st century now confronts us with the social wreckage of such unprecedented incarceration, which is presented, in its most visceral forms, by the illness, injury, and death of prisoners (Simon, 2014; Sufrin 2017). Arizona is a notable case as the state anticipated and intensified much of the U.S. punitive imperative. Whereas the state was a pack-leader in the era of post-rehabilitative punishment, Arizona now demonstrates the limits of current prison reform discourse driven by cost-centered and court-motivated appeals (Lynch, 2010; Schoenfeld, 2018). The state has only further

consolidated its cheap and mean penal regime through increased reliance upon private industry and continued disregard for prisoners' rights (Lynch, 2010). In this way, Arizona situates the mutability of penal extraction. Not only is penal life being hastened towards death, but the constitutional provision of care has become a means to expropriate state revenue for private profit.

As Sufrin (2017: 8) notes, "the health status of incarcerated persons is a case study in structural violence." The *Parsons* lawsuit might be thought in this way as the return of the repressed of the penal order and which demands confrontation with and contemplation of the general destitution of social life. Arizona, however, has repudiated the existence of such suffering by carrying out the material destruction of life through organized forms of failure and extractive punishment. What Campbell and Schoenfeld (2013) describe as the carceral rationale of governance seems to have given way to the anti-governance of penality. Perkinson (2010: 10), writing on the failure of rehabilitation and reformist ideals in Texas prisons, notes that punishment has excelled in other ways, such as "fortifying social hierarchies, enacting public vengeance, and symbolizing government resolve." *Parsons* centers not so much state vengeance or resolve, but institutionalized incompetence that exacts tremendous suffering on prisoners. As Judge Silver (2021: 32) laments in the order to vacate the settlement:

> Defendants' failures have led to preventable deaths, possibly including suicides. Defendants' failures have also led to untold suffering by individuals unable to obtain medical treatment…It is impossible to quantify, monetarily, the harms suffered by prisoners because of a lack of adequate health care.

What Barder (2019: 35) calls *unsuitable governance* refers to the infliction of slow forms of violence through the organization of "extraordinary ignorance or carelessness."

Arizona is quite literally a careless penal regime whose prison population has been abandoned to their own biological and psychological deterioration. Here, Arizona's prison healthcare crisis can be extended to thinking about general issues in state violence and the power to kill and expose life to death (Mbembe, 2003) Specifically, penal extraction helps us to consider the everyday modes of death-making that may or may not irrupt into spectacular displays of sovereign violence and brutality. The dispersed and dilated suffering of prisoners in Arizona is therefore implicated within broader, global arrangements of precarious living, where "dying and the ordinary reproduction of life are coextensive" and inscribed by indifference, incompetence, and inaction (Berlant, 2007 : 762; see also Alphin and Debrix 2020; Davies et al., 2017).

Defunding the penal state is not the same as dismantling it (Cate 2020). Here, Arizona problematizes the reformist discourse that characterizes early 21st century punishment. Not only does Arizona's penal care regime illustrate the corruptibility of cost-conscious and court-motivated penal change, it has facilitated a perverse form of decarceration through the wearing down and exhaustion of prisoners' lives. That is, the state is effectively reducing its prison population via attrition, as opposed to release (Friedman 2021). As an extreme case, Arizona is not an outlier, but a condensed version of the regulatory failure of the penal state (Dolovich 2022). Given its particular and historical significance within the U.S. penal field, Arizona's staunch refusal to provide care to prisoners, despite considerable and costly litigation, preserves strategies of indifference that can be replicated by other states and with dire consequences, as already highlighted by the disaster of COVID-19 in carceral institutions (Friedman 2021; see also Reiter 2021).

The unquantifiable and untold harm caused by ADC's healthcare system situates the prisoner whose body and mind are only valued as surpluses to be expended without reserve. To the extent that an austere prison is always desired, privatized or not, the existence of penal life will inevitably frustrate such pursuits. The prisoner's demand for remedy and relief, premised upon an assumed right to care, is therefore always in excess of what the interests in the prison can or will provide. And it is precisely this antagonism between the austerity of punishment and the excess of life that structures the conditions of possibility for extraction. The fantasy of the optimized administration of provision and deprivation, of cost and care, will only repeat the realities of such harm. Rather, the very logic of austerity, in all its forms, iterations, and fantasies must be refused. Where life is priceless, life is priceless[6].

[6] This is an allusion to Ruth Wilson Gilmore (2020) whose abolitionist position might be best evoked when she states "where life is precious, life is precious." I owe this phrasing to my advisor, Sora Han.

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CHAPTER 2

Penal Life and Its Drives

The abuse of life is never due to some withdrawal of law; it occurs always because of a proliferation of legalities and illegalities.

Colin Dayan, With Law at the Edge of Life

It would be as vain to deny the incessant danger of cruelty as it would be to deny the danger of physical pain. One hardly obviates its effects flatly attributing it to parties or to races which one imagines to be inhuman.

Georges Bataille, Reflections on the Executioner and the Victim

As the previous chapter explored, Arizona's prison healthcare crisis features acute conditions of extraction where penal life is accelerated towards death. The interval of lifetime held in-between living and dying, allotted by force to the prison, is understood as that of a resource to degrade and exhaust without reserve. It was my contention that penal extraction proved operative in shoring up political and ideological crises in the state of Arizona, which, in turn, has reproduced legal struggles over what to do with the life of the prisoner.

I have attempted to identify the ways in which the material conditions of punishment give way to a set of physical and psychical realities, which I have loosely referred to so far as penal life. Beyond the internal and path-dependent dynamics of managing penal life institutionally, its

troubling existence might offer a way into interrogating the law's capacity to address suffering, what will be explored here in this chapter broadly as the aesthetics of suffering in the law. The provision of prison healthcare not only reflects the dictates of legal mandates, institutional function and failure, but also the mobilization of the law to address and redress these issues. By taking up the question aesthetics of suffering in the law, however, I attempt to further my reading of penal life in demonstrating how the prisoner's health care claim subverts the presumed categories of the law and the prison. In particular, penal life opens up to an immanent critique of the law and its attempt to respond to, regulate, and remedy the suffering of bodies and minds.

I. An Aesthetics of Suffering in the Law

Nicole Fleetwood's *Marking Time* offers an extraordinary meditation on prison artwork, its conditions of possibility, and the terms by which it advances a critique of the carceral state. Fleetwood organizes her critical curation of prison artwork through the relational notion of carceral aesthetics as a means to "to highlight the materiality, architecture, temporalities, logics, and economies of the production of prison art" (pg. 26). What Fleetwood puts forth as penal space, time, and matter correspond to the conditions and practices that produce carceral aesthetics. Whereas penal space refers to the architecture of confinement and surveillance, and penal time is constituted by durations of waiting and deferral, penal matter not only encompasses the highly restricted and regulated objects within the prison, but the body itself. As a form of penal matter, the body is property, obligation, and intimate possession. We should note here the alienating status of the body as it is subjected to such an indeterminant existence.

Eighth Amendment jurisprudence could be thought within the general frame of carceral aesthetics. Not only can we think about law and its textual and visual production in ways related to aesthetics, but that the law itself deals in penal space, time, and matter. Penal space, time, and

matter situate the very coordinates by which the 8th Amendment defines and regulates existence within prisons. To follow with Fleetwood's thought, the law is part of the prison's hue or that which shades all aspects of prison life. It is under the *color of law* that state officials are both authorized to deprive prisoners of their rights and obligated to uphold the 8th Amendment's negative guarantee against cruel and unusual punishment.

Moreover, carceral aesthetics can be applied to prisoner's rights litigation as it engages in the intentional depiction, portrayal, and narration of suffering. Indeed, it is the same conditions of austerity and premature death that motivate the prisoner's legal claim as much as their artistic practices (Fleetwood 2020). While the prisoner's use of the law might be reduced to that of pragmatic action, it is precisely the creative practices that underlie claiming itself, or rather, pleading, that allows us to consider the introduction of the aesthetics of suffering into the law (Han 2014). The radicality of such a reading of the prisoner's rights claim is that it emphasizes the heterogeneous ways in which pleading subverts carcerality as such. Just as prison art, following Fleetwood, completely throws open the very category of art, so too does penal life disrupt and call into questions the ways in which we look, witness, and spectate upon the prison and suffering.

In a somewhat similar register of inquiry, carceral studies has taken a visual turn to grapple with the procedures and protocols of legibility, representation, and meaning-making that authorize and legitimize the carceral state. As Schept (2016) elaborates, "[v]isuality produces how we read and see images" of state violence (11). Here, the visuality of the prison not only captures the disappearance of those populations who suffer the most from social precarity and insecurity and the mystification of structural conditions that produce social crises, but also the physical locations of confinement and control and their naturalization across landscapes

(Wacquant 2009; Story 2019; Gilmore 2007). "[P]risons and other carceral institutions configures our ability to perceive them, the available vocabularies with which to speak of them, and the contexts in which to place them" (Schept 2014:. 201). While visuality structures the ways in which we look at and see the prison (or not), it can also inform strategies to destabilizing dominant depictions of state power.

Michelle Brown (2014) argues that the suffering of life under the carceral state can generate counter-images and visualizations that critique and confront institutional violence. Such representations of life, purportedly, can transform our own subject positions from that of penal spectators who consume flattened images of crime and punishment to that of critically bearing witness to the degradations and atrocities of carceral regimes. What Brown (2017) further elaborates from Mirzoeff's (2011) "the right to look as the right to the real" concerns manners of looking that "emerge and take up from the lives and histories of those most directly impacted—but in a manner that moves away from a focus on the voyeurism of disempowerment and marginalization toward the systems and structures that condition and legitimate oppression" (161). The potentiality of such visual practices is that they interrupt and disrupt normative discourses and cultural frames of punishment.

We might call into question, however, whether a right to look is the most desirable, or even radical, conclusion for an aesthetics of suffering and the extent to which "the autonomy to arrange the relations of the visible and sayable" (Mirzoeff 2011: 2) is even ever a demand worth making. Indeed, the evocation of right and autonomy, however ethically situated or theorized, seems to reinscribe itself within the duality of carceral logics and their aversion towards the status of the prisoner: right/deprivation, autonomy/dependency. This gets to the radicality of Fleetwood's carceral aesthetics in that the prisoner's practice of creativity within conditions of

unfreedom instantiates a divestment from the rights-bearing subject entirely. As we follow in with the prisoner's legal plea, it is not so much about any one right being established or maintained, but of the openness of pleading itself (Han 2014; 2015).

The shortcoming of the visual turn in carceral studies has to deal with the desire to look completely and fully at the prison. Insofar as looking sustains a fantasy of mastery over the image, the right to look misses the point at which our gaze is called forth by the visual field (Han 2011). Any right to the look is only ever derived from already having being transgressed by the visual. As Corcoran (2020) also notes, the mediation of suffering takes place within a general state of ambivalence. "The power of transgressive bodies to provoke cultural disarray enters into a symbiotic dynamic with political anxiety and authoritarian reaction" (pg. 662). The inherent openness of the visual image of suffering ultimately intrudes upon subjectivity with opaque demands. In this case of penal life, what does it really want from us and how do we provide it? Here, we might counter the right to look and mastery over the image with what Culp (2022) calls the demand for imperceptibility. An aesthetics of suffering in the law is in excess to recognition, which is only ever determined by carceral relations of individuation, separation, and isolation. To be imperceptible, following Culp, is to short-circuit the very modes of representation; to rupture the ways in which we are called to order.

How does an aesthetics of suffering in the law intrude upon our right to look and bear witness? For Garland (2011), the body is both the avowed and disavowed object of punishment. "The problem is that the human body is the unavoidable *object* of state punishment even when it is avowedly not punishment's *target*." (pg. 768). While modern punishment has supposedly moved away from the infliction of corporeal pain and suffering and towards the deprivation of rights, it remains that the liberal subject cannot be divorced from its embodiment. Although

Garland focuses on the political sensibilities of legal reforms surrounding the death penalty, he elaborates that the significance of the *Plata v. Brown* Supreme Court ruling, beyond the decision's upholding of prisoners' rights to healthcare, was that it reasserted the disordered reality of the body within the law. Garland's account situates the condemned body as something as the missing object of the law; something made to repeatedly and relentlessly disappear and reappear. Following Garland, the body is that which liberal punishment cannot escape despite its attempts to move beyond it. The perpetual return of the prisoner's body within the law intrudes upon the very desire of disembodied punishment.

As Garland (2011) helps us to consider, there is a particular insistence of penal life that we find expressed within the law. Prisons would be perfect institutions were it not for the lives kept inside. The struggle over punishment features directly upon the fact that life is forced to be lived according to the failed governance of need, but that the drive of this life to refuse its docility returns again and again. To the extent that all law can guarantee is the repetition between obligation and obliteration, of appearance and disappearance, how might this provide resource for an immanent critique of the aesthetics of suffering? Indeed, what Dayan (2007: pg. 6) refers to as the "compulsive repetition" of suffering in the law departs from any sort of notion of legal progress and instead identifies an undermining force within the law's domain and which the prisoner is burdened to bear in their suffering.

As Fleetwood maintains, carceral aesthetics provides a critical framework to discern the material relations of unfreedom and the particular racial project sustained by captivity. Indeed, the conditions of possibility that surround carceral aesthetics is precisely the long duree of anti-blackness. As Stefano Harney also writes, the prisoner's inheritance is blackness. Blackness, as the unbearable fugitivity of refusal – a freedom dispossessed, as well as dispossessing - upon

which carceral aesthetics glimpses and beckons with blurred resolution and relief (see also Moten 2018). In thinking through penal life and an aesthetics of suffering, we might pause to consider this inheritance of blackness in light of the prisoner as a de-racialized legal subject or, rather, a legal subject whose racialization is always an insinuation before the law. This is to say that the violence of the prison and the figure of the prisoner is borne from the histories and afterlives of racial slavery (Dayan 2007; Han 2015). It is not only that mass incarceration reproduces various forms of social inequality that shape the everyday lives of black people, but that the symbolic and visceral forms of degradation that structure punishment are derived from the repetition of anti-blackness (Sexton and Lee 2006). The critical point, however, is not to analogize penal life to blackness, but to hold ourselves open for whatever might be occasioned by this inheritance. This occasion might be approached by the principle difference between the mastery implied by the right to look and the intrusion of hearing the prisoner's plea, however inaudibly present within the text of the law.

II. Dis-regulated Persons

The *Parsons* v. *Ryan* Class Action Complaint for Injunctive and Declaratory Relief would be filed on March 22nd, 2012, just less than a year after the Supreme Court's decision in *Brown v. Plata*. *Plata* reflected decades of litigation struggles over California's prison healthcare system and overcrowded conditions. The Supreme Court's ruling broke a long hiatus on reviewing prisoner's rights cases, which has spurred major prison healthcare lawsuits across several states. Not only would *Parsons* be the first to follow from the *Plata* ruling, but the plaintiffs would be represented by the same legal rights organizations, the Prison Law Office and American Civil Liberties Union, who had led the *Plata* litigation efforts. The relationship between *Parsons* and *Plata* extends beyond their legal correspondence, however. Not only did

Plata breakthrough the binds set by the anti-prisoner rights Prison Litigation Reform Act, which was ideologically formulated within Arizona, but California's prison system embodied the full realization of the post-rehabilitation ideal that Arizona ushered into the late 20th century, such as warehousing prisoners in considerably severe conditions and reducing costs wherever possible (Lynch 2010; Simon 2014; Reiter 2018).

Plata consisted of a series of cases that dealt with healthcare and conditions of confinement issues in California in which providing prisoners sufficient mental and medical care proved incompatible with the state's warehousing of human bodies beyond physical capacity. Writing on its litigation history, Jonathan Simon (2014) argues that *Plata* reflects the conclusion of critical and unsustainable shifts in punishment over the late 20th century. Accordingly, penological concerns for individual treatment and benefit had been abandoned under the hyper-expansion and cruel neglect of California's prison system.

As Simon elaborates, the healthcare crisis in California would illustrate how far prisons had veered from any sort of legitimate penological purpose. Mass incarceration had resulted in the confinement of a chronically sick prison population whose physical and psychological illnesses had been exacerbated and left without access to appropriate care. Not only does this ailing population suffer from immense harm, but their deteriorating health status undercuts any justification of their incapacitation for public safety. Part of the fundamental issue for Simon is that "California prison managers came to treat prisoners not as individuals but as a mass that posed such a threat that it could not be differentiated or individualized" (pg. 119). Failure to diagnose, monitor, and treat mental and physiological pathologies would not only violate Constitutional standards, but reflect extreme degradations in personhood characteristic of a "humanitarian crisis" (Simon 2014: 16).

Whereas the *Plata* decision was the culmination of a series of cases, each dealing with a different aspect of deprived prison conditions in California, the legal strategy pursued under *Parsons* would be the combining of all health issues related to mental, medical, and dental care, nutrition, disability, and solitary confinement under the same class-action lawsuit. As opposed to adjudicating these issues one by one, *Parsons* presents us with the complete disorder and disarray of ADC's penal care system. As the complaint contends, Arizona's prison healthcare system is "grossly inadequate and subjects all prisoners to substantial risk of serious harm, including unnecessary pain and suffering, preventable injury, amputation, disfigurement, and death." In *Parsons*, it would be the amassing of catastrophic care that would fail individualize prisoners.

The analytic metaphors that structure Simon's (2014) analysis of *Plata*, "engines of madness" and "torture installment plans", are not applicable to *Parsons* as they evoke a separateness in suffering across the mind and body. The narrative of named plaintiff Mr. Polson in *Parsons* is illustrative as he suffers simultaneously from untreated bipolar disorder, suicidal ideation, permanent hearing loss from ear infections, and broken teeth, amongst other health issues. Not only does Mr. Polson exist in complete insecurity of health, but his suffering is an excess of bodily distinctions.

As depicted in *Parsons*, the individual is not lost in the masses of overcrowded conditions, but unraveled by the disorders of disease. For Simon, the excesses of mass incarceration necessitate a reformulation of penological interests. Hence, a *new common sense* that balances both human dignity and public safety. *Parsons*, however, moves against the very ideals and categories that rationalize the penological as such. The excessiveness of the *Parsons* case is not the lack of care, neglect, and indifference, but that of dis-regulated life: That the

biological health of the body could become so deteriorated, that the psychical wellbeing of the mind could become so decompensated, and that the very distinction between the two could be erased. In this way, Simon's attempt at restoring the penological from the damages of mass incarceration does not resolve the issue. What needs to be considered rather, are the ways in which penological interests become undermined by its own project of ordering life in accordance to the individuated subject.

III. Against Possession

Imprisonment not only entails the deprivation of individually established rights, but discloses what Story (2014) describes as the "ontology of a self-contained subject" (359). The individualizing mechanisms and discourse of punishment, as Foucault (2012) also premised, cohere across social institutions in their rendering and separating out of individualized lives. Incarceration, in this sense, enforces a political knowledge that the world is in fact inhabited by individual subjects, i.e. those who are self-possessed and self-sovereign. Yet, it is precisely the will of such knowledge that destroys its subject of desire. As Story elaborates on the constitutive contradiction of penal power, "It is important to also point out, however, that while violence might characterize the ends, *individuation* defines the means" (360). To put it differently, the discourses and techniques that produce the individuated subject – such as the prison regime or the legal architecture from which derive prisoners' rights – are precisely that which tear it asunder. What Simon critiques as mass incarceration's failure to differentiate individuals speaks to the self-undermining lapse of the subject's ontology, such that it appears lost in the crowd or nowhere to be found.

To read the *Parsons* Class Action Complaint for Injunctive and Declaratory Relief is to, following the teaching of Han (2014), be swept up in a form of sociality that evades the

incarceration of the individual. At issue in *Parsons,* as in any case of the prisoner's claim, is not the mending of the broken promises and reneged obligations of state duty, but the "jouissance of pleading in common." By sharing in their suffering, vulnerability and precarity, the prisoner class moves against the very dictates of possession and individuation.

Indeed, the abhorrence of *Parsons* is precisely that prisoners are not individually treated for their illness and injury. As a result, bodies and minds leak, spill, and unravel from their own self-containment throughout the text. Part of the complaint's logic, in this sense, is to demonstrate the sheer disorder within Arizona's prisons as materialized through the diseased, disfigured, and dying body. Insofar as the rationalization of sovereign power is the capacity to make live or let die what do we make of the material failure of biopower in *Parsons*? That is, Arizona's prison population is not optimized to live nor is its death a passive affair. My read is that the disease, disability, and death at issue in Arizona's prisons revels in the very failure of the individuated subject. That the chaos evoked by untreated and rampant illness in the complaint, as much it moves against the desire of the complete and possessed individual, also upsets the fantasy of complete control projected onto the prison. The carelessness of the prison - its deliberate indifference to differentiation – undermines any and all distinctions in body and mind, life and death. We must think with *Parsons* as a class, which is to say the dispossessed, non-individual, in how biological and psychological suffering decompose into each other. Where the prisoner's interior life and external existence lose distinction (Han 2015).

Here is where we must turn to Moten (2018) whose writing on individuation unsettles the very sovereignty of the law and its enforcement within the prison. Indeed, Moten's poetical insights are derived from a deep engagement with critical black studies, which precedes and anticipates any and all study of the prison. The failure of individuation within the prison is

derived from what Moten (2018) accounts as the unbearable lawlessness of blackness, upon which operative distinctions – self/other, body/mind, anxiety/desire, life/death – are both foreclosed and refused. And it is by taking up Moten's thought that we may (dis)(con)figure the prison within the fugitivity of such refusal.

As Moten maintains, "The memory of impossible individuation's disavowal becomes the repetition of a failure to individuate." What Moten describes as the death drive of sovereignty situates the establishment of the individual subject precisely at the moment of its failure. Subjectivity is always already botched by a primary subjection. In this way, it is the disavowed failure of the individuated subject that sustains the prison as a politico-ontological project. The prison assures us, despite the evidence to the contrary, that it contains individual lives that are fixed in time and space and, in making such a lofty assurance, maintains the very fantasy and desire of being fixed, which is to say corrected, placed (implotted), healed, and self-certain. *Parsons* emerges within another round of repetitious failure, where the possession and constitution of subjects is undermined by the dispossession and destitution of bodies. The description of named plaintiff Jensen within the complaint (*Parsons v. Ryan* 2012) captures such an instance of catastrophe. While recovering from prostate cancer surgery, Mr. Jensen's Foley catheter began to leak and needed to be irrigated:

> When the NA attempted to irrigate Mr. Jensen's catheter, she instead shoved it deeper inside him and twisted it 180 degrees, causing excruciating pain. The improper manipulation of the catheter tore out his internal stitches, and the catheter ended up outside his bladder, lying freely in his abdomen, such that urine drained from his torn bladder directly into his abdominal cavity (23).

This is not an account of a body disciplined into self-possession or whose health is optimized to make live. Rather, Mr. Jensen's body, through its possession and individualization, is manipulated and torn into and so goes the establishment of the self. In this way, the medical abuse inflicted upon Mr. Jensen's body works against the operative categories of confinement. Obfuscated in injury, boundaries between inside and outside are violated and transgressed, the expelling of waste becomes an encroachment of filth.

That we encounter the depiction of such suffering and misery within the law situates an unresolvable tension between what Hennefeld and Sammond (2020) describe as the restoration of the sovereign self and the casting aside of the abject. The disease, disability, and death depicted in *Parsons* provide a substantive rendering of the formalism of the law's sovereignty. The law, by evoking the right, restoration, and remedy of the subject must deal in the sorting through of waste and refuse that are at odds with incorporation. As the *Parsons* (2012) declaration describes:

> Many sections of ADC's prisons are filthy, fail to meet basic sanitation standards, and expose prisoners to serious, and sometimes fatal, communicable diseases. These conditions include urine-soaked mattresses, uncontrolled infestations of vermin, and cell walls and floors covered with black mold or smeared with the feces, spit, and blood of other inmates. Prisoners with cuts or other injuries to their bodies have contracted serious infections from the unsanitary conditions of the prison. A prisoner living in unsanitary conditions in the Tucson complex developed a staph infection but was not examined by medical staff until the infection had spread to his eyes. He now has minimal vision in his right eye and has lost vision in his left eye (36).

The prison's desire to coordinate and control matter, time, and space gives way to a disordered agglomerate of partial objects. Such is the base materiality of the law's investment in the prison. The law attempts to call to order penal matter, to try and

distinguish, yet again, subject from object. Urine, blood, mold, and staph infected eyes are the abject penal matter that accumulate together and lose distinction within what Dayan (2011) describes as the sinkholes of personhood.

Parsons asks that we stay with an instance of life that is sunken, dilapidated, and injured. That is, the injunction and demand made upon us is to stay with the prisoner's suffering, rather than hastily prescribe for and remedy their harm. For it is the very haste, indifference, and carelessness directed at life that is at issue in *Parsons*. Here, we should place emphasis on the fact that the prisoner's suffering is not punctuated by any one moment of neglect and mistreatment, but that life persists precisely through, not despite, such conditions of abandonment and vulnerability. Suffering, as it is materialized in *Parsons* by the deterioration of bodies from chronic disease, the unraveling of minds from treatable illnesses, and the metabolic malaise of solitary confinement, discloses penal life as that which exists as an incessant insistence despite itself.

Penal life irrupts from within the de-individuation of lives and dis-establishment of selves. What Lacan mythologizes as the lamella is the lifeforce sacrificed in the constitution of living subjects, but which returns to disrupt and intrude upon the satisfaction of the subject's completion. Indeed, the lamella names the compulsive drive of life as that which refuses any and all regulation and regiment. As the suffering of destroyed bladders and blinded eyes in *Parsons* puts forth, this is "life that has need for no organ" (Lacan, 1998: 198) in its unconditional plea for relief.

This is not to read into the prisoner's suffering some noble purity, banal resistance, or to lose sight of the structural violence exacted through catastrophic prison healthcare. Rather, it is through such shared instances of degradation that *Parsons* gestures towards the

irrepressibility of life; as that which intrudes upon the smooth enforcement of austerity and deprivation within and outside the prison. An instance of life that exists and persists by and through its demand, which is to say the drive, in the undermining of sovereignty. The prisoner, whose corporal debasement is already a scandal against the incorporated self, returns to frustrate the liberal enjoyment of disembodied punishment.

To return to Moten (2018), "The experience of subjectivity is the would-be subject's thwarted desire for subjectivity, which we must keep on learning not to want, which we have to keep on practicing not wanting, as if in endless preparation for a recital that, insofar as it never comes, is always surreally present" (244). Here we might join in with Moten in thinking about the prisoner's plea for relief as part of the endless recital of refusing to want to be a subject. For it is within *Parsons'* demand for relief that we find ourselves caught looking for subjects where there are none. We might think about penal life's plea for relief as the refusal of individuation and its iterations of subjectivity and sovereignty. This would position the plea as not the affirmation of the aims of individuation, but the dispensing of such desires and demands entirely.

IV. A Civil Death Drive

We are able to read the *Parsons* complaint for the ways in which it gestures towards an immanent notion of penal life. We should distinguish penal life, however, from other theoretical interventions and discourses critically engaged with the suffering of the prisoner within the law. In response to the *Plata* decision, Simon (2013) pronounced a dignity cascade in which The Court's appeal to human rights discourse, through both its written word and appended photographs of prison conditions, would trigger a new common sense of moderate and sensible punishment. Indeed, it is Simon's wager that human rights offers the best corrective to mass

incarceration and the abusive neglect of prisoners' lives. The *Parsons* litigation, however, has been used as evidence against Simon's arguments on dignity (Lynch, 2015) where no feature of Arizona's prison system proves compatible with the promise or dictates of human recognition. As Lynch (2015: 176) poses, "So how can a 'dignity cascade' flow into the 'intrinsically pathological' prison environment that so many millions are subject to in the United States?"

In the 10+ years since the *Plata* decision, there has been evidence that human rights discourse has taken hold in some judicial opinions on prison conditions litigation and Simon (2021) himself has scaled back his optimism for more modest and incremental change. At the same time, a human rights critique has seemed to draw strength and remain relevant in at least two issues related to prisoners' health and well-being. First, social and legal organizations have continued to frame solitary confinement in the U.S. as a form of torture based on the robust scientific evidence documenting its adverse mental and physical health impacts (Haney, 2018). Such arguments have sought legitimacy, in part, through the United Nations' Nelson Mandela Rules and their specific restrictions on prolonged solitary confinement. Another matter is the concept of dual loyalty, which has been developed by human rights organizations to address the role of health professionals in the military. In particular, the so-called moral dilemma of the physician-soldier who must either work to secure victory or care for the enemy. As an academic intervention in the study of prison healthcare, dual loyalty has been used to frame the ways in which providers compromise professional standards and ethics by conceding to the security imperatives of the prison, thereby denying prisoners care and subjecting them to increased harm (Venters, 2019; Augustine et al., 2021).

The *Plata* decision, solitary confinement, and the ethics of care providers helps us to identify a broader discourse that situates the prisoners' mental and medical suffering as human

rights abuses. The appeal and benefit of such a position is precisely the universalist claim of human rights in which all are included and conferred dignity, value, and autonomy. For the prisoner, whom liberal society codifies as a degraded and unworthy status, the medicalization of human rights seems to suggest something about our own generalized precarity and exposure to multimorbidity and premature death under late capitalism. To demonstrate this reality, we need only to recount the persistence of uninsured households and the prevalence of catastrophic health care expenditures or just our living through the SARS-CoV-2 pandemic and the unevenly distributed risks and health burdens placed throughout various segments of the population (Scott et al., 2018; Chen and Krieger, 2021).

None of this is to suggest something along the lines of the power of sympathy, as Simon (2014) puts forth. Rather, we should read the humanist claim as actually widening the gulf between us and the prisoner. Not only does the prisoner's medical suffering allow us to displace and disavowal our own anxieties around vulnerability, but the humanitarian universalist position attempts to do away with the intrusion of the other, to relegate them to a place of granted non-exception (Layton, 2014; Zizek, 2012). That is, the underlying logic of improving prison conditions, reforming solitary confinement, or standardizing medical practice is that society can return to not having to deal with or think about the hundreds of thousands of people incarcerated who languish within normative bounds of humanitized suffering.

The critical issue, however, is not if human rights will take hold or the challenges and concessions to making prisons more humane places, but the extent to which the category of the human is already operative within and therefore necessary to the cruelty of confinement. What seems to be part of the pathology of the prison is precisely the indeterminable status of human life as it is reduced to the barest terms of survival. Insofar as human rights lay claim to that status

of life cast outside political and civil institutions, such would appear to be the obverse of civil death through which legal personhood is unmade and political and civil status is shed. The work of Caleb Smith (2009) is critical here as he demonstrates the ways in which humanity and civil death have always been coextensive projects organized by and through the prison. As Smith discusses, "Before the prisoner can receive the humanizing embrace of the community, he must be stripped down and dehumanized. Before he can be resurrected, he must be made to live out his death." (47). Moreover, not only has the abject suffering of the prisoner motived civilizing missions of building more humane penal institutions, but the oscillation between human degradation and dignity structures the very legal architecture of incarceration. Human rights are the exhumed proclamation of civil death.

The true significance of the *Plata* decision is that it extends the legal architecture and ideological narrative of civil death into the 21st century. As Justice Kennedy writes:

> Just as a prisoner may starve if not fed, he or she may suffer or die if not provided adequate medical care. A prison that deprives prisoners of basic sustenance, including adequate medical care, is incompatible with the concept of human dignity and has no place in civilized society (13).

The logic of this position is not only that the natural existence of the prisoner must be properly administrated and governed, but that this is the *only* form of life guaranteed and recognized by the law. Prisoners may be degraded up until the core essence of their humanity, which is to say their lives may be stripped of meaning and substance. The enforcement of a naturalized existence inflicts a symbolic death, and in being reduced to that which is all too human, the prisoner, to follow Smith's analysis, is reconstituted as a threshold to civility. The *Plata* Court's repudiation of "torture and lingering death" is merely a symptom of the untenable duality of the prison (Smith, 2009). The discourse of human rights does not remedy the suffering of a living death

and, instead, reinscribes the capacity of penal regimes to disfigure and dehumanize within constitutional limits. *Plata* is a repetition of the prison's "promise of human recognition" and its "power to dehumanize" (Smith, 2009: 205). What Dayan (2011: 6) similarly refers to as the "repetition compulsion" of 8th Amendment jurisprudence.

But why do the living dead return from within the law? Prisoners are not so much entombed by the law as Smith would have it, but, as in the careless treatment of the dead, shallowly buried. Han's (2015) corrective reading of civil death situates the prisoner who, by virtue of their legal status, are left to suffer in the excess of desire. For all the law's writing on the basic necessities of civilized punishment, Han identifies the torture of penal life as it retains no means of reception or resolution, but that pleads nonetheless. "The point is that acts, thoughts, and sentiments naturally gush forth from this thing – the prisoner – but foreclosed from an actualized 'human quality,' they continue to well up, a kind of drowning of the prisoner" (109). Penal life, in following Han's clarifying exposition, opens up to an agonizing pulsion of desire within the law. The true torment of civil death is that life does not cease to desire beyond the brutal provision and guarantee of basic human need.

Four years after the complaint and one year after entering into stipulation, the plaintiffs in *Parsons* filed a motion (2016) to enforce the stipulation after continued neglect and inadequacies in Arizona's prison healthcare system. As one vignette in the motion describes:

> REDACTED NAME is a 34 year old man with chronic psychosis and prior suicide attempts…Over a period of several weeks in July and August 2015, his mental health deteriorated dramatically. Staff noted that he was naked, urinating and defecating on the floor, and eating his feces, and characterized him as 'psychotic', 'unstable' and 'delusional.' He was repeatedly placed on and removed from suicide watch…[T]here is no indication that he was ever seen by a psychiatrist, evaluated for medication changes, or considered for inpatient care" (30).

That *Parsons* perpetually deals in the graphic depiction of brutality and neglect restates the plea as the excess of life turned against itself. Such insistence of the plea, the pain of care and relief continuously deferred over the course of years, delayed without the prospect of delivery, introduces a remainder that exceeds any regulation or adequate provision of care. It is the unintelligible intrusion of suffering within the symbolic order of the law that the plea enacts. The deteriorated body and mind of the prisoner are smeared across the text of the law, like a stain that cannot be washed away. We might read the prisoner's plea as not something to be fulfilled or granted, but as that which subverts the law through the persistence of the legal demand.

Penal life does not hold out on the telos of progressive punishment. Rather, it exhibits what we might cautiously name a civil death drive, through which legal recourse is undermined by the futility of legal remedy. As Zizek (1991) poses and answers "why do the dead return? because they were not properly, buried, i.e., because something went wrong with their obsequies" (22). It is the subsistence of a living death that the prisoner inhabits and repeats without waiver. The plea, as it is taken up within conditions of civil death, approximates a sort of universality not unlike human rights. Such universalism, however, is not hinged upon an inherent dignity as Simon might hope, but a far more dreadful condition. The repetition of the plea bears the unrelenting and unbearable real of life that disturbs and impels subjectivity as such (Ruti, 2012).

V. The Penal Life of Social Death

One particularly dramatic moment of the *Parsons* declaration is the narrative of plaintiff Ferdinand Dix. Mr. Dix, a black prisoner who worked as truck driver prior to his incarceration, had untreated small cell lung cancer that had spread to multiple major organs, causing sepsis, liver and kidney failure. Despite having filed numerous health need's request, Mr. Dix's

symptoms went ignored for two years. As described in the declaration, Mr. Dix's liver became infested with tumors, which enlarged to the point of impeding his ability to eat. His abdomen would become "distended to the size of that of a full-term pregnant woman…" (39). After repeated health needs requests going ignored, Mr. Dix would fall into a non-responsive state and be transferred from the Tucson complex where he was incarcerated to the Kino Hospital in south Tucson where he would die days later.

The declaration includes a photograph of Mr. Dix as he lays non-responsive in a hospital bed. The scene is framed as if the viewer is approaching Mr. Dix at bedside, as one would visit a loved one during their final days or, perhaps, moments. Mr. Dix's swollen stomach centers the photograph while disembodied hands in latex gloves hold up his hospital gown so to fully expose his bulging abdomen. A dark reddish bruise spans from the left side of his stomach in a leaf-like shape and smaller bruises speckle across his belly. Mr. Dix's face is obscured by the wrists of the person in gloves, his eyes closed and head slightly turned. Various machines, tubes and wires can be traced to Mr. Dix and stand in as his only signs of life. Diagonally located in the background are a sink and bucket, completing the medical infrastructure surrounding Mr. Dix in the scene.

The narrative of Mr. Dix is part of the unremitting portrayal of prisoner abuse in the *Parsons* complaint, yet his is the only account accompanied by a photograph. The photograph is centered right in the middle of the page, interrupting any measured reading supposed by a legal document. Not only is Mr. Dix's abdomen framed as swelling forth from his hospital bed, but as ballooning through the very text of the complaint, like a wound irrupting from within the law itself. One is simply called to look in incoherence.

The photograph inscribes a sort of visual excess within *Parsons*. Not only does it repeat the depiction of Mr. Dix's suffering, it supplements the evidence of cruelty within the Arizona

Department of Corrections. That is to say, the photograph of Mr. Dix does not just stand-in for his treatment, but confronts us with the extreme precarity under which the *Parsons* class exists. Mr. Dix's too late transfer to the hospital reflects back on the less than functional capacities of ADC's healthcare system and enacts the insidious gesture of only allowing Mr. Dix to be cared for once he was close to death or, rather, once he could no longer conscious the relief of receiving care, medical or otherwise.

As a separate legal suit filed by Mr. Dix's mother, and before that of the *Parsons* complaint, states, "There was never any chance for the Decedent and his family members to exchange farewells or have any last words." The haunting implication is that the last remnants of Mr. Dix's desires remain incarcerated in the form of his resounding and unanswered pleas for medical attention. And while it's not unusual for individual lawsuits to precede or be included within class-actions, in the case of Mr. Dix, this only reiterates the insistence of the plea as it unfolds in all its jouissance of complaining in common (Han, 2014). As Mr. Dix's mother evokes, his treatment was "almost criminal in its horridness."

Nothing in the image explicitly suggests that Mr. Dix is a prisoner and instead we encounter him as a patient. This slide between prisoner and patient within the text of *Parsons* reminds us that the prison is never truly located at the margins of society, but that it is constituted through the organization of social relations (Fleetwood, 2020). The absence of the prison from the manifest content of the image should not have us lose sight of its excessive latency.

This is the performative critique of Mr. Dix's distended abdomen in that the prison becomes rearticulated through the trace and evidence of its biological and physiological destitution. Here, the photograph stages its address within the wreckage and emergency of the carceral state where, to reiterate, life is not optimized to live nor death engineered, but that the

very distinction between the two is indefinitely put into question and betrayed by sheer indifference. Perhaps this is the most radical offering of penal life, that its intrusive pleading reveals the utter impotence of the law to ever prevent or redress suffering. That the law, to follow Sarat (2000) always proves too fragile, vulnerable, and lacking in its capacities whenever it is called upon.

But just as the prison is occluded, yet ever present in the photograph of Mr. Dix so too is blackness within the prisoner's civil rights claim. This is the impasse imposed by photograph as we find ourselves called to look upon Mr. Dix at the height of his suffering. It is not only that Mr. Dix's position as a black prisoner functions as the unthought in the narrative of the complaint, but that such a depiction proves paradigmatic of the anti-blackness of the carceral state more generally. Here, we might take up from where Sexton and Lee (2006) write that the degradation of the prisoner "draws its principal affective power and its strictest ideological cast from the deep wells of anti-blackness' (pg. 1016). Indeed, the legal apparatus devised to barely sustain existence within the prison owes its heritage to what Dayan (2007) calls "the ghost of slavery" (pg. 16) and which finds its most premier and disastrous formation in the warehouse prison of the post-Civil Rights era. All this to say that the generic condition of black captivity precedes and anticipates the exceptional conditions by which we encounter and confront penal life.

None of this is to suggest, however, a purposeful denial of the realities of race and incarceration by the legal advocates of prisoners. Rather, it is the pause occasioned by the photograph that we might consider Sexton's (2010) reading of the "political-juridical structure" as not the collapsed distinction between zoe and bios, pace Agamben and Mbembe, but as racial slavery and its afterlives' perpetual mediation of presence and absence, what is also theorized as

social death. It is precisely within these terms that Culp (2022) advances a critical aesthetics of blackness as "trapped between an ontological state of withdrawal and hyper-visibility in marking" (147) and which we find operative in prisoners' rights litigation. In the case of the photograph of Mr. Dix, blackness is evoked only insofar as abject flesh is used as a screen for the generalized degradation of the prisoner class, yet simultaneously repressed in articulating the history of slavery and its relation to the prison. Beyond just identifying the limits of the prisoner's colorblind status in the law, the aesthetics of suffering in *Parsons* exhibits the "constitutive invisibility" (Han, 2011: 519) of punishment in which blackness functions as a point of absence (a blind spot) in our looking.

Here, we should also recall the images of dry-cages and bad beds appended to the *Plata* decision. As proposed, these images, in their most progressive application, might move us spectators towards an active disposition of bearing witness to the humanitarian atrocities of mass incarceration (Simon, 2014; Brown, 2011). The deception of the prison photograph, however, is its espoused realism; that it simply re-presents the degrading and unconstitutional conditions of the prison while omitting its implication in what Fleetwood describes as the racial indexes of the "captive/captured subject" (Fleetwood, 2021: 90). It is therefore "not enough to pedagogically demand visibility and punishment, since punishment and vision are already bound up with pleasure." (Stabler, 2016: 323). That the *Plata* photographs portray emptied cages and an overcrowded rainbow of humanity should have us consider the very absencing of blackness the moment in which mass incarceration would stand trial. Indeed, such absencing extends to the law's disavowal of mass incarceration's stripping away of Black Civil Rights, as well as political critique to push beyond the Black-White binary when it comes to prison reform. It is this not-

seeing of blackness - the ever distortion of its suffering - that structures the prison's cause of desire.

Parsons and *Plata*, as we understand them as pragmatic legal attempts at bringing prisoner abuse to light – purchases in the power of institutional accountability and transparency – extend within a visual economy of recognition ancillary to the hypervisibility and withdrawal of blackness (Culp, 2022; Browne, 2015). Here, the photo-graphy of the law, its *light writing*, is emersed within broader cultural and social arrangements of sight and luminosity that move through and against what Browne (2015: 8-9) might call the epidermalization of dark matter. The critical point settles on how we, as spectators and witnesses, find ourselves inscribed in the light of law when its beacon is cast upon the prison. As Lacan (1998) notes "In what is always presented to me as a space of light, that which is gaze is always a play of light and opacity" (pg. 96). To return to penal life, its pleading presents as an opaque demand out in the open of the law. Pleading for pleading's sake; an insufferable insistence that only ever wills its return and nothing else. An intrusion of the moment at which life and death lose distinction: whether or when the shut eye of a prisoner lying in a hospital bed will open or remain closed. Such moments of anxiety presents as the failure of our right to look and we realize ourselves to always already be caught by the gaze; to follow in the metaphors of the prison, that we are arrested in our movements as subjects.

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CHAPTER 3

No One Cares

Our world is one in which carelessness reigns.

The Care Collective

[W]e are all caregivers now…

Jared Sexton, Antidoting

In this final chapter I continue to interrogate the insights and readings offered by the *Parsons* prison healthcare lawsuit. Specifically, I take up the ethics of care as an oblique, yet crucial question posed by the prisoner's healthcare claim. To do so, I reflect broadly on the relationship between the prison and public health, theories of the penal state, and phenomenological inquiry into the prisoner's suffering. I interrogate these various fields in pursuit of an ethical imperative attendant to the perplexing dilemma posed by carceral care.

As presently articulated, the prisoner has become understood as a subject who suffers by way of their disparate exposure to multimorbidity and mortality. While *Parsons'* impact and influence on the actual provision of healthcare in Arizona's prisons has been marginal at best, the lawsuit has nonetheless emerged within a broader discourse on the health impacts of mass incarceration. What I describe as an epidemiological turn in carceral studies refers to the confluence of social science and public advocacy that have advanced a public health framing of the problem of punishment in the U.S. The appeal of the epidemiological turn seems to be derived, in part, by the prison's concentration of some of the most disadvantaged and underserved populations. Better serving these groups does not only align with public health professional ethics, but would also provide better training and experience to the next generation of professionals (Freudenberg 2001; Dumont et al. 2012). Such sentiment would seem reflective of a biopolitical governmentality in which life is made to live and health optimized. As I have attempted to demonstrate in the previous two chapters, however, the Arizona case presents as an

abject failure of biopower such that the very distinction between life and death is no longer worthy of governance.

Still, the public health discourse of incarceration draws upon old and new articulations of punishment that relate pathology and incarceration in various ways. While some of the earliest imaginings of the prison was that it might heal the body and mend the soul, whether it be through repentance or dutiful work, the warehouse prison of the late 20th century has been described as spaces of rampant disease and death, while the extreme deprivations of the supermax have been shown to causes psychological distress and illness (Drucker 2013; Simon 2013; Reiter 2018). Indeed, whereas the subject of incarceration was marked by their pathology, whether it is an affliction to reform and rehabilitate or a risk to control, the epidemiological turn positions the prison of the 21st century as that which is pathological.

What I would like to explore in this chapter is how the epidemiological turn pivots upon a presumed relationship between punishment and care. While scholars have investigated the contradictions of and problems posed by carceral care at an institutional level, I am more interested here in how the question of penal care mirrors back to us critical and even ambivalent challenges to ethical formulations to suffering. More generally, I find the turn towards public health problematic insofar as its operative idealism and ideology is focused on the alleviation and remedy of suffering as a teleological principle. That is to say, the prisoner becomes a subject who can be healed and cured, which, at its most abstract level, entails an ethics of non-alienation and contentment. Herein lies the significance of the *Parsons* lawsuit in that, despite hard fought legal efforts drawn out over a decade, institutional change and remedy has yet to be secured. Put differently, Arizona's penal regime proves extremely difficult to cure and begs the question as to whether the prison could ever be truly aligned with public health. As I attempt to show in my

reading of instances of failed care in the *Parsons* lawsuit, the case of Arizona provides resources for us to fundamentally reorient our ethical response to suffering. That is, how might we move on by way of "…transforming misery to ordinary unhappiness" (Freud, 2004). In taking up this line of inquiry, I am guided by the question posed by critical black studies as to whether care *is* the antidote to violence. By way of close-readings of sociological, archival, and theoretical texts I interrogate issues posed by the ethics of caring about prisoners.

I. The Epidemiological Turn

Mass incarceration now constitutes a social determinate of health. This is, perhaps, one of the most significant contributions in the study of mass incarceration and the penal state as it centers the harms, social disparities, and burdens of disease perpetuated by the unprecedented expansion of the U.S. prison system over the past 50 years. For instance, research shows that incarceration is associated with increased prevalence of infectious disease, chronic illness, and overall physical and mental deterioration, which has fundamentally shaped health outcomes in the U.S. (Wildeman and Wang, 2017; Acker et al., 2019). Others have gone on to classify mass incarceration as an epidemic given the dire health profiles of prisoners, the overall conditions of prison healthcare, and impacts of incarceration on community health (Dumont et al. 2012). Notable is that many of the conceptual metaphors used to critique punishment and the penal state are framed by notions of illness: incarceration spreads like an infectious disease (Lum et al. 2014; Massoglia, 2008), is comparable to a compulsive binging disorder (Loader 2009; Simon 2010), characteristic of a plague (Drucker 2013) and is experienced like a chronic ailment (Simon 2013; Strong et al. 2020). What we might refer to as an epidemiological turn in carceral studies refers to the refined and extensive understanding of the health impacts of incarceration,

as well as the processes by which health and punishment have become coterminous social problems.

Leading public health organizations and academic associations have also devoted attention to the health issues of incarceration. The Robert Wood Johnson Foundation (RWJF) issued a report in 2019, Mass Incarceration Threatens Health Equity in America. Not only does the report provide a broad and descriptive overview of research documenting the manifold problems of health, incarceration, and structural disadvantage, but it ends by calling for the elimination of mass incarceration. Similarly, a supplemental issue in the *American Journal of Public Health*, "Documenting and Addressing the Health Impacts of Carceral Systems", further highlights the significance of the epidemiological turn as a "seismic shift" in the framing of mass incarceration as a public health crisis. As Lisa Bowleg (2020) states in her editorial for the issue, "A critical take on the topic of mass incarceration and health inequities necessarily begins with criticism of mass incarceration as a system of power relationships designed historically to bolster White Supremacy" (pg. 511). Obviously, critique and analysis of the structural inequities and systemic racism perpetuated by mass incarceration are not new or unique to public health. However, racial health disparities are perhaps the severest consequences of mass incarceration, which so vulgarly violates any and all notions of justice, human rights, penological purpose. The significance of public health explicitly contributing to this critique of mass incarceration discloses, in part, the flailing legitimacy of the penal state.

In this way, the epidemiological turn offers a fundamental reorientation in how we might conceptualize and respond to the pain and suffering of imprisonment and the penal state. Not only is the prisoner understood as a subject constituted by their exposure to adverse health outcomes, but that they have been drawn from unhealthy environments and communities whose

life chances and conditions of survival are themselves shaped and implicated by the penal state. That incarceration not only implicates the health and wellbeing of prisoners, but also those outside the prison's walls might intervene upon our relationship to punishment. Whereas part of the ideological justification of incarceration is to keep those deemed dangerous separate from law-abiding citizens, the epidemiological turn helps to show how such attempts at separation and control actually makes society more vulnerable to ailment and affliction.

Prison healthcare litigation has long forewarned the health problems posed by incarceration. As with the *Parsons* litigation, Arizona's prison system has not only proven ill-equipped at providing adequate and basic healthcare, but the complicated health profiles of many of its prisoners places considerable strain on an already dilapidated system. At the same time, however, part of the perspective advanced by the epidemiological turn is that prisons could potentially become providers of community standard healthcare; what some have described as *the opportunity of incarceration* (Massoglia and Pridemore 2015; Dumont et al. 2012). Prison healthcare, despite its inefficiencies, shortcomings, and outright failures, could be salvaged by the constitutional mandate that prisoners have a right to care. What Simon (2013) has called the formation of a new medical model of the prison is premised upon the prisoner's right to healthcare and our shared social experiences (prisoner or not) suffering through chronic illness. Offering the term "correctional geriatrics," it is Simon's hope that awareness of the health impacts of incarceration might promote preventive care, self-responsibility, and family and community involvement. "[The health maintenance orientation places primary responsibility on the person, patient, prisoner, or parolee/probationer to embrace their own health. The most effective regimes will be those that build on and nourish the dignity of the individual." (251).

The epidemiological turn intervenes directly on the ways in which our prison society organizes and provides care, which poses fundamental questions as to how, or whether it is even possible, given our social infrastructure, to care for those who are marginalized and stigmatized. Here, the robust public health oriented research on mass incarceration and prison health care litigation align with a mounting discourse of a politics of care, universalized social services, and harm reduction practices posed as humane alternatives to punishment, surveillance, and control (Chasmen and Cohen 2020).

We should note, however, that the very discourse surrounding care is itself contentious. For instance, the proliferation of practices of self-care largely capitulate to, as opposed to challenge, the terms and conditions of our late capitalist/neoliberal society. Self-care turns on our capabilities as individuals who are able to access and consume healthy commodities, to hand ourselves over to the commodification of health data and metrics, or to fundraise for necessary medical procedures (Hobart and Kneese 2020). Indeed, self-care demands that we thrive, be resilient or become entrepreneurial within the state of our own insecurity, precarity, and vulnerability. In opposition to self-care, collective care engages in radical forms of experimentation in how we might provide each other relief and welfare (Spade 2020). So goes the mutual aid retort, "solidarity, not charity!"

Here, we should also consider the ways in which caretaking has generally been inscribed within the exploitation and brutality of systems of violence and oppression. For instance, Marxist feminists have long demonstrated the ways in which the feminization of care performs the necessary, yet disregarded and unvalued work of reproducing the social relations for capitalist accumulation. What has been termed a "crisis in care" now denotes the strain and unsustainably of such social and economic arrangements (Fraser 2016). Capitalism's relentless

commodification of everyday life leaves us to care for ourselves within the barest and most alienating of conditions. “How frustrating and exhausting then, that our encounters are shaped more like transactions, in which we put each other to work to satisfy what we think it is that we need” (Dowling 2016). While such insights are obviously not specific to prison, we would be right to locate catastrophic prison healthcare as reflective of a generalized crisis in social reproduction conditioned by social precarity, insecurity, and vulnerability.

II. **Indeterminate Care**

The coronavirus pandemic not only put on national display how ill-equipped prisons are at managing the health of prisoners, but outlined the realties and risks we all share living in a careless society. Like many other government agencies across the country, ADC floundered in its efforts to respond to the public health challenges of the coronavirus. In a most dramatic moment, the Prison Law Office and ACLU seized upon what would be their last prison monitoring visit before the Arizona prison system was closed-off to the public after COVID-19 being designated a state of emergency. The prisoners’ attorneys filed emergency motions in response to ADC’s unplanned, understaffed, and dismissive position towards the pandemic:

> ADC and Centurion to date have exhibited no interest in preparing for the tsunami that already is in the community and may soon crash through the prison gates (if it is not there already), swamping the department and its contractor’s ability to respond and protect the lives of those in its custody (2020: 14-15).

The emergency motion would go on to outline various public health measures for the court to compel ADC to take, such as prisoner education of COVID-19, to coordinate with community hospitals, and to reduce the population of prisoners considered high risk. In her ruling, Judge

Silver (2020a) noted that "Defendants' past performance, coupled with an unprecedented public health crisis, does not inspire confidence in their ability to meet this moment", but ultimately ruled against the emergency motion, stating that it was beyond the limited scope of the stipulation. Still, the court asserted that ADC would be required to provide care for all ill prisoners, whether they were infected with COVID-19 or not.

In a separate, but related discovery dispute over ADC's COVID-19 testing and infection data, Judge Silver (2020b) ruled in favor of the plaintiffs stating that such information was well within the bounds of the stipulation. While Silver's (2022: 3) order notes that COVID-19 data is not unlike any other medical information that ADC would be required to hand-over, she, again, makes reference to the department not being prepared for the "grave threat facing the prisoner population." As Silver puts forth:

> So while the Stipulation does not require the creation of plans to prepare for any particular disease, Defendants' response gives the impression that they are willfully blind to the Stipulation's raison d'etre—which is to provide for prisoners' health care through diagnostic testing and treatment (3).

Despite the PLO and ACLU's warnings and Judge Silver's misgivings, COVID-19 would spread throughout ADC and claim the lives of dozens of prisoners. And it would be over a year after the onset of the pandemic that the stipulation would be rescinded for chronic noncompliance and the *Parsons* case would go to trial.

As one might draw from the crisis and emergency posed by COVID-19, not only is the prison unable to guarantee the health and safety of prisoners, but that the law is similarly ill-equipped to protect and prevent prisoners from suffering. Indeed, part of the overall lesson learned from the Arizona case is how little legal contempt and reprimand can do in upholding prisoners' rights or bringing about institutional change. At the same time, I want to sit with this

moment in which all that can be done by the law is acknowledge and document catastrophe as if one can only anticipate suffering without being able to intervene. The key presumption of the epidemiological turn, as distilled by the politics of care, is that we can arrange our social institutions and capacities to provide relief and welfare. I want to consider, however, that the ethical issue is not whether we suffer or not, but the ways in which we, as in our collective capacities, relate to suffering.

In her study on jailcare, Sufrin (2017) identifies the indeterminacy of care and carceral systems in which compassion and affective relationality emerge within spaces of violence and degradation. As Sufrin notes, "This disturbing coexistence reminds us that vulnerability and care are core dimensions of social life, even in harsh institutional settings" (233). We might extend Sufrin's account to the inter-institutional dynamics at work in *Parsons* where the court, law offices, private vendors, and prison administrators are involved in some capacity in the caring of prisoners, however limited or problematic. The Care Collective's (2020) etymological breakdown of *care* traces its meanings with such words as concern, sorrow, grief, and trouble. There is an ambivalence at the very heart of care that we should keep in mind and which Sufrin helps us to consider in the context of carceral institutions. As The Care Collective goes on, "This reflects a reality where attending fully to the needs and vulnerabilities of any living thing, and thus confronting frailty, can be both challenging and exhausting." Again, our ethical commitments should not be derived by how we juxtapose care and suffering, but how we come to terms with – perhaps how we become troubled by – the suffering constituted by our caring practices.

The connections between the prison and population health leads us directly to the important interventions and critiques offered by the study of poverty governance and the penal

state. It is not only that these theories attempt to layout the ways in which marginalization is produced and managed, but help us to think through our social relations to suffering. Wacquant's (2009) neoliberal penality thesis holds that, under crisis conditions of capitalist accumulation and social inequality, the state governs through dual projects of workfare and prisonfare. That is, prisons and public aid have been mobilized to manage and neutralize socially insecure groups, while expressing individualistic notions of worthiness and deflecting generalized anxieties through affirmative displays of state authority.

What Wacquant (2009) theorizes as an "assistantial-correctional mesh" reflects the recalibrated bureaucratic field of neoliberal statecraft: "The incipient 'penalization' of welfare matching the degraded 'welfarization' of the prison" (Wacquant, 2009: 291). The penal state does not provide "poor relief", but, rather, "relief from the poor" (Wacquant, 2009: 295). In this way, Wacquant helps us to consider how care and punishment are bound together and infused in their deployments and rationales. What is otherwise known as institutional hybridity (Pifer, 2022). Indeed, it is precisely within this notion of hybridity that we might locate our ethical relation to suffering at a structural level.

Recent scholarship has attempted to expand upon as well as think against the hybridization of the neoliberal penality thesis (Stuart, 2016.) For instance, carceral and care institutions, such as police and paramedics or county jails and public hospitals, vie for resources, legitimacy, or avoidance of duties and responsibilities through their management of the most marginal populations (Lara-Millàn 2021; Seim 2020) Accordingly, bodies get shuffled, redistributed, or reclassified in order to abate various forms of institutional conflict and crisis, as well as disappear social suffering from public consciousness in reproducing the status quo (Lara-Millàn 2021; Seim 2020; Pifer 2022).

At the same time, it might be more accurate to state that social suffering is not so much disappeared nor crisis resolved, as much as they are deferred, displaced, or disavowed. This gets to the critical, yet understated insight of the carceral-care scholarship: It is not only that social suffering persists, but the very conditions in which populations suffer are themselves indeterminant and interminable. Under this reading, the very terms of one's experience of suffering is no longer guaranteed, but subject to the alienation of institutional uncertainty. While hybridization is presented in this way as a form of institutional adaptation to conflicting imperatives of governance, it is also reflective of the inherent ambiguity and ambivalence of care to which our theories and ethical accounts of punishment should attend. Put differently, care and suffering are always ambivalently situated practices and experiences to which our social capacities might only reformulate in difference.

What DiMario (2022) writes about as palliative governance offers a novel attempt at thinking with and beyond the hybridization of punishment and care. DiMario's conceptual and theoretical interventions are generated through his ethnographic work volunteering for a mobile syringe exchange clinic that services homeless populations in Los Angeles' Downtown Skid Row and Hollywood areas. As DiMario gathers from his observations, exchange workers do not try to compel or persuade people from using intravenous substance, but simply provide resources for them to participate in safer forms of substance use. In their interactions exchange workers also attempt to attenuate clients' contact with the criminal justice system. Here, exchange workers are characterized by trying by lessen peoples' risk of illness, injury, and death, which DiMario extends in thinking as a form of palliative governance.

Accordingly, palliation is a form of "governance through failure" where "bare, biological life" is kept alive, but able to be provided little else (23). For DiMario, palliative governance

emerges from the competing and contradictory imperatives of carceral and paternalistic institutions, but is not constituted as some blending of the two. Rather, palliative governance compensates and/or mitigates the failures of the other sectors of governance, but operatives nonetheless according to its own imperatives, logics, and grounds of struggle and contestation.

While DiMario's theory of palliative governances is conceptually intriguing we would be right to question the extent to which it constitutes a unique category of statecraft or is just an emergent feature of social governance at odds with paternalist hegemony (Wacquant 2009). Moreover, we should firmly press DiMario on his use of Agamben's notion of bare life and whether its clumsy application ultimately detracts from the analytical usefulness of palliation. Despite embodying the most brutal forms of dispossession within the marginal zones of our late modern metropolis, the homeless are not *homo sacer*; they do not exist outside the law, but within a proliferation of uncertain legal statuses. Moreover, it is precisely the homeless' internal relation to socioeconomic contradictions that render them so anxiety inducing and therefore subject to punishment, paternalism, and/or palliation. The suffering of the unhoused reflect back the precarity and vulnerability we all inhabit and which our exposure to may always increase in severity despite all our rights and legal guarantees.

Still, can we think with palliative governance apart from keeping bare, biological life alive? Here, we might draw from Jamieson Webster, whose writing on the psychopharmacology of everyday life shares in themes and problematics addressed by DiMario's ethnographic study. "The opioid crisis enacts the paradox of a society that seeks to annihilate pain as quickly as possible, even as it refuses to care for or attend to it and its underlying causes." (Webster 2018: 2) While DiMario is not studying the opioid crisis exactly, he would seem to agree with such sentiment as he notes that palliative governance is used to supplement other forms of institutional

failure: “not to alleviate suffering and poverty but to regulate it within a tolerable range, without seriously challenging its racist and capitalist roots.” The harm reductionist who DiMario studies and their clients who partake in any effort to flee or escape from pain (drug use or otherwise) share in palliative acts as the end result is to dull the pain, while doing nothing of suffering. Although DiMario views palliation as a stopgap measure in lieu of more structural change, it is precisely that the radicality of such structural change might prove all too painful for our palliative dispositions (Webster 2018; Han 2021). The critical point here, however, is that palliation is not about keeping biological life minimally alive, but a cessation of life entirely; “no body, no drive, no pain, no helplessness, nothing.” (Webster 2018: 2). Note that this ceasing of life should not imply death, but that the very distinction between life and death is no longer worthy of governance.

As DiMario concludes, “…I concede palliative governance must be approached with cautious skepticism. However, I would rather live in a place that palliates than a place that does not, and I believe most of the exchange workers I studied would readily give up their jobs if it meant they were no longer needed” (25). As if palliation is the only ethical response to institutional failure. As if not palliating means we do nothing to address harm. Indeed, we live in what Byung-Chul Han (2021) calls a *palliative society* where our lives our oriented towards the avoidance and aversion of any and all pain. However, DiMario seems to concede more than what he cares to realize in taking such a position. The other side of the palliative is permissiveness, such that we may do as we please without the risk of pain and suffering (Han 2021) Insofar as we are all palliative subjects, how assured can we be that harm reduction is truly for the other? In taking away the other’s pain do we also not wish to remove the pain their immiserated existence

causes us? In this way, palliation may have less to do with reducing harm and alleviating pain as much as it has to do with screening the realities of suffering, otherness, and difference.

III. Subjective Alienation

When ADC entered into stipulation with plaintiffs to improve the provision of healthcare, it did not take long for the department to be held in non-compliance. From 2014 when the stipulation was finalized to the Court's vacating of compliance measures in 2021, ADC did not once maintain a standard provision of health care. During this period of time, there were two separate instances of a prisoner filing a pro se motion warning the court of their looming death. The first was written and submitted in 2017 by Walter Jordan, 67, who was diagnosed with cancer. Jordan's "Notice of Impending Death" entails a short, hand-written paragraph in which he addresses delays in his cancer treatment and states that "I may be luckey to be alive for 30 days." As part of addressing his delayed treatment, Jordan includes the names of other prisoners in his unit who are similarly suffering. "All these are inmates denied treatment by Corizon Among others and all falling, yelling, screaming of pain." Jordan died a little more than a week after his motion was officially filed by the court.

Dr. Todd Wilcox (2017), the medical expert for plaintiffs, issued a written declaration to the court after reviewing Jordan's medical records. Accordingly, Jordan ultimately died from a treatable form of skin cancer that become so widespread and aggressive that it penetrated his skull and entered his brain. Along with such incomprehensibly mismanaged care, Dr. Wilcox notes that Jordan suffered from excruciating pain for which he was prescribed an ineffective and potentially toxic combination of Tylenol and Codeine. As Dr. Wilcox notes, "Mr. Jordan's

experience in medical care was sadly predictable because ADC's specialty care, pain management, and preventative care systems continue to be dysfunctional" (7).

Just more than a year after Jordan's pro se motion, Richard Washington, 64, wrote the court, "Notice I am Being Killed." In his motion, Washington states that ADC and Corizon stopped providing him medication for his diabetes, liver condition, and blood pressure issues. "My greatest fear is that I'm going to die more sooner than later should this treatment – or lack thereof – continues." Similar to Jordan's notice, Washington provides the names of other prisoners also not receiving adequate medical treatment: "With me at the forefront there are a copious number of others with a various plethora of conditions and illnesses that very." Washington's notice was dated December 12th, 2018, but it was not officially processed by the court until February 6th of the next year. Washington, however, died January 31st. His pleas of murder would only ever be posthumously received. Investigation into Richard Washington's notice and treatment would ultimately be opened up as a new civil action separate from *Parsons*.

As Pitts (2018) describes in their critical phenomenology of carceral medicine, the prisoner-patient is not simply violated of their rights, but their subjectivity is alienated temporally and relationally. The delay and denial of care for Jordan and Washington not only facilitated the extraction of their life (as I discussed previously) but exposed them to protracted forms of biological and physiological deterioration. As suggested by both prisoners' notices, their relationship to time collapsed into the dreadful anticipation of their own death. That Jordan never received standard care for his cancer and that Washington's treatment for his chronic issues would just abruptly end reflects the ways in which the therapeutic relationship in prison is undermined by indifference and disregard (Pitts 2018). The prison is vacated of meaningful interactions with providers and neither Jordan or Washington could actualize themselves as

active agents in their own care. To follow with Pitts' (2018) incisive language, both prisoners became passive bodies abandoned to the worsening of their diseases.

It is precisely such catastrophic cases as Walter Jordan and Richard Washington that the epidemiological turn seeks to understand within a broader frame and context. As case studies, Jordan and Washington's preventable deaths prompts us to consider what an ethical response to such suffering can and should be. To this point, I would like to turn to a more engaged reading of the critical phenomenology of the prison and its presumed relations of care. To do so, I take up the work of Lisa Guenther whose philosophical writings have motivated new and innovative understandings of prisons, embodiment, and suffering. In particular, Guenther's (2013) Solitary Confinement: Social Death and Its afterlives offers a meditation on the phenomenological violence of solitary confinement and how the practice of confining prisoners to such extreme conditions of deprivation elaborate philosophical insight and inquiry. While Guenther's focus is directed primarily at solitary confinement her insights can be extended to the harms experienced under carceral medicine (Pitts 2018). That solitary confinement constitutes a particularly brutal form of assault on the prisoner's mental and physical health implicates it in how we conceptualize, address, and build ethical practices of care (Kupers 2017). As I attempt to argue, the type of alienation Jordan and Washington confront us with is not beholden to their particular position as prisoners, but gesture towards a more universalist position.

IV. The Ethics of Unhingement

Guenther's interrogation into the violence of solitary confinement is oriented towards the state of "becoming unhinged." (xii). As Guenther puts forward:

> Solitary confinement deprives prisoners of the bodily presence of others, forcing them to rely on the isolated resources of their own subjectivity, with the (perhaps

> surprising) effect of eroding or undermining that subjectivity. The very possibility of being broken in this way suggests that we are not simply atomistic individuals but rather hinged subjects who can become un-hinged when the concrete experience of other embodied subjects is denied for too long (xii).

What Guenther describes as conditions of self-betrayal, solitary confinement turns capacities for social relationality against the self. To be unhinged is to be forcibly separated from meaningful interactions with others and therefore denied the fundamental aspects of consciousness, which, in turn, manifests as the psychotic symptoms so often associated with prolonged isolation and also known as SHU syndrome (Grassian 1983; Haney 2018; Kupers 2017). By reading the vast documentation of the harms of solitary confinement alongside various philosophers and traditions of phenomenology, Guenther explores the ways in which isolation destroys the interrelationship between self, other, embodiment and world. That the mind, body, and spirit become subject to such various forms of breaking, whether it be due to solitary confinement or deplorable healthcare, denotes the prisoner's position as one of generalized unhingement.

In order for us to relieve and redress the suffering of solitary confinement, Guenther offers the notion of "hinged (inter)subjectivity" (xiii). It is in recognition of the harms of solitary confinement that we must ensure that concrete experiences with others are restored and able to proliferate in their capacities for embodied meaning:

> In this sense, body, thing, and other are not separate substances that exist first for themselves and only later enter into relation with each other; rather, they are mutually constitutive relata for whom the relation comes first; a separate identity emerges only through divergence (179).

Mending the brokenness of intersubjectivity requires retrieval of what Guenther borrows from Merleau-Ponty as *sharing a world in common*. To be (re)hinged is to be able to locate oneself within an unfolding horizon of shared embodiment with others.

As Guenther prompts, how is it that we formulate ethical relations with and modes of conduct towards the prisoner whose social relations and obligations have been vacated? To tend to these ethical problems, Guenther takes up Levinas' notion of the one-for-the-other. Accordingly, our encounter with the other discloses that social relations constitute all ethical foundations. "[T]he other has *put me in question* and challenged me to question myself" (pg. 233). It is through this point of questioning that we may interrogate who it is that we are, how we have come to justify taking on of such an identity, and the extent to which the other suffers as a result of our *arbitrary freedom* (234). To be put in question in this way precipitates an experience of shame insofar as shame is the means by which we confront ourselves and the consequences of our freedom. "But shame does not destroy my freedom; it merely commands me to justify this freedom and to invest it in ethical responsibility." (234). Ultimately, such an act of ethical reduction, being one-for-the-other, can restore the conscience of our shared humanity: our world in common.

It is notable that Guenther draws perspective of the one-for-the-other through the provision of care in the prison. One particular instance is the California's prisoner caregiving program called the Gold Coats. Gold Coats are prisoner caretakers who are paired with a fellow prisoner with dementia or Alzheimer's so to provide them living assistance and companionship. Gold Coats go through extensive training in order to provide such intensive, hospice-level care. The Gold Coats was started as a response to California's aging prisoner population and limited capacities to provide geriatric and palliative care. The program is often touted for its cost-saving

benefits (caretakers are paid $50 a month) and reflects the stark realities faced by an exceedingly grey and feeble prisoner population.

Guenther, however, makes the attempt to read in-between the Gold Coats economic and stopgap functions for how caretakers are able "to engage with others as responsible subjects and to explore their own emotional and ethical vulnerability in relation to others" (249). Accordingly, it is this form of relationality that should be the point of the prison for Guenther, "a chance and challenge to repair one's relations of responsibility to the near and the far, to strangers and to kin" (251). As Guenther sees it, prison caregiving substantiates a meaningful, embodied encounter with the other who calls one into question, unlike the isolating experience of solitary confinement. Here, we should also briefly recognize Guenther's discussion of the palliative as establishing an authentic encounter with the other as offering deeper analytical insight than DiMario's more limited view of keeping the other minimally alive.

Guenther's philosophical insights on solitary confinement attempt at addressing unhingment as a type of wounding of the subject. Ethical responsibility to the other opens ourselves up to their questioning, which, in turn, allows us to repair and mend the pathologies of isolation. To continue to eschew our being one-for-the-other is to "condemn ourselves as well as others to more or less extreme forms of social and civil death" (245). In this sense, what Guenther ultimately offers is that ethical responsibility, forms of being one-for-the-other, offers a sort of antidote to the violence of being unhinged.

Still, Guenther's phenomenological project is staked upon the presumed and problematic opposition between care and suffering. I would like to think through the ways in which an ethical position to suffering must deal directly with our failure to care for each other and which the prisoner's healthcare claim brings to bear in the most radical ways. Here, I take as motivation

Sexton's (2021) *Antidoting* essay in which he poses "how do you prevent caring-about from being conflated with or subsumed by caring-for?" (11). Here, Sexton's prepositional distinction completely unsettles Guenther's being one-for-the-other. Caring-for denotes relations of acquisition or belonging to. I care for you in that you or my mental image of you belongs to me. You, the other, are for the continuity and coherence of my self-image. In this way, our being one-for-the-other does not establish a shared sense of responsibility as much as foreclose what we find so disturbing and strange in the other and, therefore, what we find so contemptable and uncanny in ourselves, but which we cannot escape. What Sexton refers to as the antithesis of our ego.

That our relations of care are organized in terms of denying the other-ness of the other is precisely why they cause so much damage. The prisoner stands in as the inflection and embodiment of the other's abjection to which we care for in the most brutal and unethical of ways. Caring-about, however, speaks to matters of concern, as well as movement and proximity. I care about you such that my concern necessarily implies our separation and hence our movement towards or away from each other. To follow with Sexton, my caring about you makes no claims upon you or investments in you. "The confrontation with the other's other-ness places the lack of the social bond to the fore; a dimension of disharmony, or 'non-rapport' co-existent with [enjoyment] (Vanheule 2002: 270-1). My non-imposition is an embrace of my impotence to ever prevent your suffering, which is always already implicated in our shared and estranged alterity.

What I find so generative about Sexton's intervention is that it offers an ethical rewrite of caring relations that begins with our unhingement from each other. Formulating an ethical position within these terms would not attempt at mending or repairing this wound or acquiescing

to its disavowal, but, rather, relating to our unhingement differently. This is what I take to be the most important lesson of my reading of the *Parsons* lawsuit: the prisoner's suffering should ultimately not compel us to cure or remedy harm, but radicalize the conditions by which we suffer together. While the prisoner's healthcare claim involves practical provision of treatment that should and must be provided without contingency, it nonetheless substantiates a general condition of suffering we might consider in formulating an ethics of failed care.

Here, there would be no remedy to the crisis of care under neoliberalism and which is reflected in the prison healthcare crisis. What we might think through, however, is the radicality of being vulnerable, precarious, and insecure together; the lack at the core of our collective bond. Insofar as we embrace these conditions of being, not in terms of their imposition, but as our only form of social inheritance, we might therefore reformulate our ethical position to suffering and care. Specifically, it is not that we should attempt to dismantle unjust systems so that we may build properly adjusted social institutions of provision and relief, but that we should inhabit radical forms of maladjustment in our practices of dismantlement.

Jordan's and Washington's death letters can be thought along an ethical relation to unhingement in that both prisoners stage multiple failed encounters in their epistolary motions. That their constitutionally mandated care has been suspended and their letters arrive all too late to prevent, delay, or even register their deaths insinuates for us the incapacity of the law to care for the lives of prisoners. When Walter Jordan writes "I may be luckey to be alive for 30 days" and Richard Washington states "My greatest fear is that I am going to die more sooner than later…" confides to their addressee an acceptance of suffering held within the demand for care. The bleakness of these assertions – alongside the brutality implied by having to estimate one's own mortality – underlines the failure and finitude of any ethical bearing towards care and life.

We become, in this way, disarticulated from Jordan and Washington as the other. Not only in that their letters stand in for them, but that their handwritten trace within the law inscribes a repetition of our impotence to heed to their pleas. Jordan's "Notice of Impending Death" and Washington's "Notice I am Being Killed" haunts us with a failed awareness and consciousness, our non-noticing, of their dying lives again and again. Jordan and Washington write and are writing us into unhingement – of separation from and alienation with each other, ourselves, and what it might mean for us to inhabit such an existence together nonetheless.

Jordan and Washington sent their letters from the same East Unit in the Arizona State Prison Complex, Florence. Neither name or reference the other, but that the letters are so similar in their address, concern, and tragedy makes it so that one haunts the other. In this way, these letters are not iterations of tactic, but imprints and impressions of what we might name, reading both letters together, as a *screaming plethora of illness*. And is there not a better way of describing what I have struggled to conceptualize and theorize so far as penal life? Here, Jordan and Washington demand not only that their illnesses be treated, but express their own caring about the screaming plethora to which they are a part. Writing from positions of immanent death, Jordan and Washington exhibit the ethicality of unhingment. By expressing their concern for other prisoners in their unit, both letters simultaneously embrace their own lack to prevent or alleviate the suffering of the other. In doing so, both motions leaves us to consider what it means to practice caring *about* penal life. Our failure to care for each other also means that we do not sacrifice one in order to save ourselves. As we may elaborate from the screaming plethora of illness, it is not one who suffers and, therefore, it must not be one who cares. Indeed, no one cares about prisoners, which should precisely be the determination of our ethical position to such suffering. And in not being one to ourselves – by being radically alienated from oneself and the

other – we may disinvest from making any claim on the other in caring about them. In the most practical of terms, any sort of treatment would be unhinged from any requirement, conscious or otherwise, that the other reflect who we desire them to be.

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CONCLUSION

In a seemingly peculiar moment, Republican Arizona Governor Doug Ducey boldly declared in his 2020 State of the State address, “we’re shutting down a state prison.” That facility was the historic Florence prison complex, which was built in 1908, almost entirely by prison

labor, and had signaled a shift in Arizona punishment that would resound throughout the 20th century. As Lynch captures in her history on the ADC, the building of Florence would anticipate the modernization and bureaucratization of Arizonan punishment, while maintaining harsh and austere disciplinary practices.

While the Florence prison reflected Arizona's cheap and mean penal philosophy, these same principles would also motivate its closure. Governor Ducey (2020) touted that closing Florence would save the state over $270 million in costs. The Governor's office decided that in lieu of building a new Florence prison or renovating the old one, 2,700 prisoners would be transferred to the La Palma Correctional Facility in Eloy, Arizona. Those on death row would be moved to the Eyman prison - also located in the town of Florence - and the remaining prisoners would be moved to other private prison facilities or county jails around the state. All that would remain operational at the old Florence prison would be its recently renovated execution chamber. Arizonan Democrats criticized the plan for moving prisoners to privatized facilities, which, according to their analysis, would be more expensive than keeping them incarcerated at a publicly operated prison (Jenkins 2022a). Moreover, the city of Florence stressed the impacts of job loss on revenue and infrastructure. Not only did the prison offer the town employment, but came with monies for various public projects, not to mention the use of prison labor throughout the town (Florence 2020).

While the state's prison population had remained relatively stable in the decade overlapping with *Parsons*, it recently reached a 20 year low. Although there are less prisoners overall, there are also less correctional officers and health care staff. The vacancy of staff and ADC's non-competitive salary rates has provided some of the most recent backlash against the department. Arizona remains as a prison system operating within various forms of crises, which

has only been ideologically attenuated by an increased reliance on the private prison industry, the exploitation and profiting of prisoner labor, and an historically bloated operating budget of $1.5 billion.

Reflective of Lara-Millàn's (2021) notion of redistributing the poor, issues of fiscal austerity and legal crisis are no doubt at play. The extent to which shutting down the Florence prison complex was also motivated by the *Parsons* lawsuit has not been made explicitly clear. However, the Florence complex had proven to be one of the more problematic and challenging facilities to align with the court mandated reforms and the redistribution of prisoners to private facilities would arguably place less demand on the provision of health services in the state's remaining 9 public prisons. Just as the state has continued to invest in for-profit prison healthcare the La Palma transfer is another means by which public revenue and surplus populations become recirculated towards capitalist accumulation (Gilmore 2007). The most egregious aspect, however, is not so much the explicit profiteering on incarceration, but, rather, the stark reality that what remains to be de-socialized and expropriated by neoliberalism is the carceral state itself. That is, what Arizona continues to demonstrate is a political desire to be freed from the obligation to care for the lives of prisoners. That all of what would remain of the Florence prison would be its death chamber – the capacity to flood the prisoner's existence and drown it out[7] - is perhaps symbolic of the state's general disavowal of penal life.

Despite now a decade of litigation, the *Parsons* class-action lawsuit has yet to secure any substantive institutional reforms. In the Fall of 2021, a three-week trial was held after the stipulation was vacated due to chronic noncompliance by the state. Judge Silver would

[7] This is taken from the journalist Jimmy Jenkins' (2022b) first-hand account of the execution of Frank Atwood. Atwood was one of the first prisoners to be put to death at Florence since the complex being decommissioned.

eventually rule that the Arizona Department of Corrections was in violation of the 8th Amendment, acting with deliberate indifference to the harms caused by the lack of adequate healthcare. Silver's ruling, while again admonishing ADC for its harmful practices, lackadaisical efforts, and inane legal arguments, provides perspective on the increased confluence between carceral and care regimes. As Silver (2022 : 20) quotes Dr. Todd Wilcox, plaintiff expert, at length:

> [ADCRR's] problems appear to be the result of a combination of factors, including inadequate staffing, inadequate physician-level attention to problems, and poor attitude of medical staff, which probably is itself related to inadequate staffing and demanding workloads. In addition, the electronic health record in use within the ADCRR is poorly designed and greatly impairs the clinician's capacity to synthesize a comprehensive picture of a patient's healthcare.

Indeed, the prison is no longer assessed solely by its ability to incapacitate prisoners, but the extent to which it organizes personnel, infrastructure, and resources in the delivery of various forms of care to prisoner-patients.

Silver also devotes significant portions of her ruling recounting the tragic circumstances of prisoners who have died or have needlessly suffered due to catastrophic healthcare conditions. The cases Silver includes are devastating, yet familiar in terms of the abuse and negligence that has been inflicted on prisoners and documented throughout the life of the lawsuit. As Silver (58-9) summarizes in her description of the failures and brutality of Arizona's medical care system:

> A prisoner such as Johnson may present with ongoing and consistent complaints that need expertise to accurately assess and diagnose. Instead, the complaints may be ignored until they are too serious not to require intensive intervention, often when it is too late. Or a prisoner may present with recurrent complaints of pain that, if properly diagnosed, could be remedied with no long-term effects. But such a prisoner may end up like A.D., suffering from lifelong disabilities because

> multiple providers failed to diagnose him accurately. A prisoner facing death might be in obvious need of pain medication. Instead of providing relief, that prisoner may be treated like Boldrey, ignored and left to waste away in extended horrifying pain. A prisoner might obtain inappropriate medication to treat a condition, such as Nusz did. When that medication causes obvious, life-threatening side-effects, providers might increase the dosage, ensuring death. Or a young prisoner may present with complaints of testicular pain, as Ashing did. Staff might then inexplicably assess his grip strength and, even if some treatment is provided, they will ignore obvious signs of painful distress that merit emergency action. No legitimate humane system would operate in this manner.

It is in all these ways and more that prisoners may suffer. Such status of life is obviously not optimized to live nor its death a display of sovereign might and power. Rather, we are continuously confronted with the ways in which delay, indifference, and incompetence degrade and exhaust life; where living and dying are made coextensive (Berlant 2007). And while we might read the law for the ways in which it archives the disease, disability, and death of the prisoner, we must also contend with the ways in which such documentation also necessitates a form of forgetting (Derrida 1995). That *Parsons* is a decade in the making would likely surprise the average Arizonan resident. The law enjoys in the aversion of Arizona's penal system on our behalf.

Overall, this project has set out to interrogate the *Parsons* litigation in Arizona as a means to consider the political, aesthetic, and ethical questions posed by 21st century punishment. How is it that we make meaning of the Arizona case as I have examined it? First, my work broadly reaffirms Lynch's (2010) study of Arizona punishment insofar as prison conditions litigation provided state and correctional leaders a venue to double-down on its pain-and-shame approach, while completely rejecting Federal oversight and authority. While the rejection of Federal authority has not been openly hostile, it has come in the form of the state attempting to prolong

legal proceedings in bad faith or devising ways to pass the costs of civil contempt onto its private vendor.

As of this writing, the court is in the process of considering more intense injunctive remedies. We may speculate with fair accuracy that Arizona will only continue to challenge and frustrate legal interventions. Whether *Parsons* will follow the course of *Plata* and Arizona's prison healthcare system will fall under Federal receivership seems more and more as a possibility. However, such measures will likely reset the stage for renewed legal battles and the continual delay of care, thereby testing the limits of the law even further or, in what would be the cruelest form of irony, lead to the overturning of the *Plata* decision.

Arizona's prison healthcare crisis was precipitated in part by the consolidation of penal austerity in Arizona post-Great Recession. The state orchestrated the deferral of care and capacity through the privatization of prison healthcare. By extending these institutional mechanisms and machinations to Gilmore's notion of penal extraction, Arizona presents important theoretical challenges to our accounts of punishment and penal change. First, prisoners' exposure to premature death is at odds with regimes of discipline and docility in the Foucauldian sense. That is, penal life is extracted of productive capacities through which bodies are not rendered docile, but accelerated towards diseases, disability, and death (Foucault 2012). Moreover, penal extraction also departs from more Marxist analyses in that the prisoner does not generate value through compelled forms of work, but, as Gilmore (2017) puts it, through forced inactivity (Melossi and Pavarini 2018). While Arizona's penal regime has long relied on prison labor to build prisons and produce cheap goods and services for both the state and private contractors, the issues raised by the *Parsons* lawsuit helps to situate the extraction of prisoners' surplus-value (in the Marxian sense) as ultimately auxiliary to the extraction of their life-time.

Finally, while penal extraction is in many ways compatible with Wacquant's (2009) neoliberal penality thesis, as refracted by the Arizona case, it poses some important rewrites. Namely, Arizona is not situated within a context of welfare retraction and penal-fare expansion. Instead, Arizona's prison healthcare crisis anticipated other forms social insecurity that the state would vacillate in and out of; expanding care in some ways and retracting it in others, but only by means relative to a generalized condition of precarity, insecurity, and vulnerability. In this way, the prisoner does not retain a sort of degraded access to conditions of social relief as Wacquant might put it, but, as Dayan (2014) also describes, is situated at the threshold of weakened legal protections and extended forms of social abandonment to which we are all contingently subjected and subjugated.

As I have also described, the cost-savings to the state, the profits of private vendors, and the fines levied by the court ultimately circulate by virtue of the extraction of penal life. *Parsons* demonstrates the ways in which the law becomes appropriated into regimes of extraction and slow death. The material realities we confront reflect how waste, surplus, and excess prove necessary to the political economy of punishment (Gilmore 2007). That is, the prisoner, as a status of surplus-life, becomes positioned as resource to extract without reserve. In this way, surplus is not put to use to abate institutional crisis and secure state legitimacy, as some penal field theorists might argue, but enacts a non-productive expenditure of power, capacity, and subjectivity that, as the Arizona case presents, refashions crises anew. As Nerferti X.M. Tadiar (2022) also describes, life-making attenuates both the preservative and destructive capacities of capitalist production.

Here Arizona's prison healthcare crisis bears all the ideological trappings of the cost-reduction critique of late mass incarceration. Not only can efforts at defunding and decarcerating

prisons reproduce cheap and mean forms of punishment, but we should also be wary of formulating political demands that acquiesce to neoliberal logics of cost, commodification, and capital. While something like Aviram's (2015) notion of Humonetarianism might have fallen out of fashion, the terms of its conceptualization remain relevant to our critique of the critique of contemporary punishment. It is not simply that, in the spirit of strategic compromise, Humonetarianism concedes to capitalist logic in securing prison reform, but, rather, capitulates to the ways in which life and economic value have lost distinction under penal regimes of capitalist accumulation. The key point that Aviram and other theorists of neoliberal punishment miss is that the economization of life ultimately gives way to its exorbitant disposability. That the desires of austerity will ultimately revel in the enjoyment of waste.

Theorizing from the conditions of penal extraction, I have attempted to think through how suffering becomes aestheticized within the law and how this might open up for a radical reading of the prisoner-subject and its destitution. Drawing on the prisoner's legal plea in the *Parsons* lawsuit, I do not read penal life as engaging in acts of resistance, as much as pulsive forms of insistence despite conditions of extraction. More precisely, penal life intrudes upon any smooth operation and continuance of the prison. We might think about this intrusion literally in terms of the *Parsons* injunction into prison healthcare operations and what has led in the case of Arizona to increased monitoring by plaintiff attorneys, judicial admonishment, a growing, but still nascent, grassroots political response in the state, and, more generally, the irruption of the prisoner's suffering into public consciousness. As I have argued, the prisoner's intrusive plea unsettles the operative categories of punishment: individuation and possession. Here, the depiction of suffering in the *Parsons* lawsuit does not confront us with the violence of the denial of individuated and possessed subjectivity, but the very violence of their imposition.

It is through my theorization of penal life that I have also extend analytical accounts of civil death. As I put it, penal life is not so much entombed in the law, as it is shallowly buried. Penal life returns by and through the law, compelled to undermine any semblance of being put to rest. What I have tried to articulate as the drive of penal life helps us to grapple with the dialectic between the prisoner's plea for relief and the failure of legal remedy as attested throughout 8th Amendment jurisprudence and, again, embodied by *Parsons* lawsuit. That is, part of the suffering of penal life is that its pleas necessitate the repetitious failure of the law. Here, notions of civil death largely only account for the body as an obliged remainder to feed, clothe, and care for in the barest of terms possible. Penal life, however, is that which insists in spite of need. A life compelled, in the most unbearable of ways, to never subside in its overexposure to suffering. Not only does penal life perform a critique of law's impotence, demanding that we begin from the premise of law's constitutive failure and how this would subsequently index social relationships more generally, but that the symbolic death of the prisoner should have us reconfigure subjectivity as such. That is, penal life ultimately beckons towards a universal position. Not one of human dignity, but of the unrelenting, irrepressible real of life. The indefinite and perpetually contingent forms of suffering that can be carried out against the prisoner are reflective of a form of life that does not yield. The drive of penal life does not present as some substantial content, but the emptying out and destitution of the subject (Lacan 1998; Millar 2021; Zupancic and Terada 2015)

What is our relation to the suffering of penal life? To consider ourselves either uncritical spectators or humanitarian witnesses/observers does not go far enough. Part of the intrusion of penal life is that it unsettles ourselves as subjects. In being called to look or confronted by the prisoner's suffering we must consider how our own subjectivity is always already destituted.

That is, our looking is never carried out by our own volition, but by the ways in which we are compelled by the law itself. We are not individuated and possessed lookers, but who find ourselves only to be arrested by and within the image of suffering. It has been my contention that penal life does not only bring to bear the visuality of suffering, but that the prisoner's inheritance of blackness inscribes such depictions within racial discourses. That the prisoner's lawsuit might be posed as a colorblind or race-neutral claim within the law reflects the attenuation of the presence and absence of race as already operative to our critiques and accounts of punishment.

While scholars have critiqued the capacity of the law to secure meaningful reform, especially in the case of prison conditions, the prisoner's plea situate other capacities of the law that we might continue to consider and engage. As Constable (2011) writes on legal speech-acts, what gets said in the law, its interpretation and response, is always open-ended and undecided. "Claims on behalf of and within the "system, " as well as claims made against it, appeal however silently, however strategically, however hypocritically to justice (Constable 2011: 636). It is in reading the *Parsons* lawsuit and the claims made by penal life that we might generate, embody, or, already find ourselves swept up in other means of pleading together in determining or refusing what justice might mean. To follow with Han (2014), it is through pleading that we might change our habits of assembly.

Finally, and in building upon these previous two chapters, I consider the ethics of care in response to the prisoner's suffering. As it has become possible to speak of an epidemiological turn in prison research, we are faced with what to do about the health implications and consequences of mass incarceration. I have tried to write through my wariness of public health discourse as it strains to address the structural conditions and realities of suffering. I have tried to consider whether the prison should be thought as a particular instance of extreme indifference

and neglect or whether it illuminates something fundamental to our caring relationships in general. That is, as we might glean from the prisoner's status, it is not about whether we suffer or not, but considering how we might relate to our suffering differently. Here, I have offered the Arizona case not just as an extreme instance that allows us to diagnose some latent quality of our present moment, but that which refracts and interrogates the presumptive logics of critique.

Let me be clear that relating to our suffering differently does not mean that we continue to deprive prisoners of care and treatment, devastate communities of color through the life-shortening effects of the criminal justice system, or live under the brutal commodification of everyday life. Indeed, these systems of violence and degradation must be refused outright and without concession. The ethics I have been trying to pursue demarcates between contingent and constitutive suffering. As Todd McGowan (2016) frames his critique of capitalism, the truth of capitalist subjugation is not that we are turned into alienated subjects who would otherwise have access to plenitude and fulfilment, but that we are alienated under capitalism from having any sort of relationship to our alienation in being subjects. McGowan (2016 :14) writes, "If we recognized that we obtained satisfaction from the failure to obtain the perfect commodity rather than from a wholly successful purchase, we would be freed from the psychic appeal of capitalism." Here, I find the structure of McGowan's argument illustrative in thinking ethically. Insofar as the very means by which we care for each other also produces suffering, we must divest from any illusionary notion of care as being satisfactory or unalienating. That is, we care about each other through our failure to cure. In thinking with the ethics of failed care, we must also not conflate failure of all kinds *with* suffering of all kinds. Indeed, it is precisely through the sociality of failing together that we may refuse the conditions of suffering made contingent upon by possession and individuation.

The kind of ethic I am trying to formulate stakes its position on the ambivalence between care and suffering; that the two are not so opposed as what we might think or want. To put it differently, what do we do if in fact care is not the antidote to violence? In this way, my attempt at thinking through our ethical relation to suffering sets aside the seeming contradiction posed by carceral care and that strikes at the heart of the *Parsons* case. Often the response here is to either reject the notion that prisons can be made spaces of care, to improve the conditions and capacities of care, and/or for institutions to cease practicing dual loyalty. It is this reaction to the contradiction of carceral care and the desire of resolution, cure, and remedy that must be refused in the radical embrace of an ethics of failed care. I formulate this ethics firmly within an abolitionist position that refuses the perpetuation of normativity, normalcy, and continuous improvement; the fantasy of the complete individual (Harney and Moten 2021). Indeed, I ground such ethics throughout the *Parsons* lawsuit where, in the case of the pro se motion, the prisoner's plea always arrives too late. It is in this moment that the *Parsons* begs us to consider how we relate or not to our unhingement or, instead, our incompleteness (Hareny and Moten 2021). As I gather from Han (2014) yet again, abolition takes up "a pathological being in catastrophe" and which the existence of penal life occasions us to consider through the openness of suffering and the dehiscence of self and other.

Throughout my time reading and writing about punishment in Arizona, I have often been reminded of Jem Bendell's (2018) meditation on deep adaptation and the somber realities of climate change and environmental collapse. As Bendell urges us, we must embrace the irreversibility of the damage we have done to the Earth before we go about forging new ways of relating to looming catastrophe. It is precisely that we will fail to prevent catastrophe and suffering that we must accept and bear in all its intensity, melancholy, resentment, and

indifference. While the crisis of prison healthcare is not the same as complete environmental catastrophe, the latter is no less implicated by the former. As already seen in Arizona, issues regarding extreme heat and water shortages within its prisons gesture towards the challenges and catastrophes of climate change that we are all fated to experience. Perhaps more directly, however, as mass incarceration constitutes a social determinant of health, there too is an irreversibility already set in by the exposure of communities and the generations of people they hold to multimorbidity and premature death.

While discourses surrounding public health, the politics of care, and legal reform might be less willing to deny such stark realities as the disease, disability and death of the prisoner, they are nonetheless caught in the reaction of recovery. Although I would like to avoid rehashing a politics of mourning, I am drawn to Garcia's (2008) reflections on loss and elegy among New Mexican drug users. "But what if we conceive the subject of melancholy not simply as the one who suffers but, rather, as the recurring historical refrains through which sentiments of "endless" suffering arise? How to attend to these wounds?" (722). Indeed, attending to wounds, of our own and each other's, does not mean healing or closing them. Perhaps similar to the status of penal life in Arizona, our woundedness - our vulnerability, precarity, and insecurity, which is to say our lack – throws us into relations of suffering without end, but that can always be attended to otherwise.

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