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FEATURE

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'This Is Not a Patient, This Is Property of the State': Nursing, ethics, and the immigrant detention apparatus

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Abstract

This paper opens with first-hand accounts of critical care medical interventions in which detainees, in the custody of U.S. Immigration and Customs Enforcement (ICE), are brought to the emergency department for treatment. This case dramatizes the extent to which the provision of ethical and acceptable nursing care is jeopardized by federal law enforcement paradigms. Drawing on the scholarship of Michel Foucault and Giorgio Agamben, this paper offers a theoretical account of the power dynamics that inform the health care of patients who find themselves caught in the custodial scaffolding of a vast immigration and detention apparatus. It offers an analysis of the display of sovereign and biopolitical power over the lives (and deaths) of detainees (Foucault), as well as the ways these individuals are reduced to "bare life" under the political pretext of an emergency or "state of exception" (Agamben). Our purpose here is both theoretical and practical: to better understand the often hidden agency or impersonal "will" exercised by the immigrant detention system, but also to equip clinicians in these and cognate facilities (e.g., prisons) with the critical tools by which they might better navigate incommensurable paradigms (i.e., care vs. custody) in order to deliver the best care while upholding their ethical duties as a care provider. This is all the more pressing because hospitals are not sanctuaries and given the incursion of federal law enforcement agents, nurses may find themselves conscripted as de facto agents of the state.

KEYWORDS

critical theory, ethics, foucault, politics, professional issues

1 | INTRODUCTION

"The scaffold, indeed, when it is prepared and set up, has the effect of a hallucination…. The scaffold is vision. The scaffold is not a mere frame … not an inert piece of mechanism made of wood, of iron, and of ropes. It seems a sort of being which had some somber origin of which we can have no idea; one could say that this frame sees, that this machine understands, that this mechanism comprehends; that this wood, this iron, and these ropes have a will. In the fearful reverie into which its presence casts the soul, the awful apparition of the scaffold confounds itself with its horrid work."

Victor Hugo (Les misérables, 1862).

A young adult in the custody of U.S. Immigration and Customs Enforcement (ICE) is brought to the emergency department by federal law enforcement agents after suffering what is reported as an accidental traumatic injury. As with the others, this patient's wrist band does not bear a name, only the identification numbers assigned by law enforcement. Clinical assessment is inconsistent with reports from the ICE agents and demonstrates instead that no traumatic

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injury has occurred but that the patient has suffered a devastating condition secondary to a severe medical event. Though she/he is unconscious, nonresponsive to verbal stimuli, and requires mechanical ventilation, she/he remains shackled to the bed. Nursing staff request that the shackles be removed in order to physically turn and better treat the patient, but the custodial agent replies that she/he does not have a key and the shackles cannot be removed. Nurses must wait until morning to move the patient. When the patient begins to exhibit seizure activity, and nurses prepare to administer an anti-epileptic agent, the officer states that she/he does not consent to the patient receiving this medication, and furthermore, that nurses are not permitted to administer *any* medications until the forensic phlebotomist arrives to collect a blood sample. When protesting and confronting the unethical delay in medical treatment for her patient due to law enforcement processes, the agent replies, 'This is not a patient, this is property of the State'.

Agents demand to know every detail and report frequently to an unknown individual at the facility all information they can gather about the patient and the clinicians. The patient's condition is determined to be so critical that life cannot independently be sustained. The decision whether to proceed with medical intervention or to terminate care is imminent. The nurse and attending physician state that they must consult with the patient's next of kin or medical decision-maker. State agents reply in no uncertain terms that they are not to contact the patient's family and that the warden will make all medical decisions and sign all consent documents. It is made clear that only the warden can communicate with the patient's family, if and when necessary and appropriate—also conditions to be determined by the warden. The detention facility will decide all matters concerning this patient's life and death, including organ donation. The patient is removed from life support. In due course, the family is notified by the detention facility that care was terminated and that the patient has died. The patient's remains are not returned to the family.

The foregoing is a first-hand account of a state-sanctioned medical intervention reported to the authors—anonymously—by nurses who are fearful but who report witnessing similar transactions frequently. To be clear, we do not claim that this case is representative of all (para)medical interventions in these settings; however, it does offer an occasion to reflect on the power dynamics that inform life-and-death medical and nursing decision-making for those in the custody of the immigrant detention apparatus. From the moment this patient and others like them arrived at the emergency department, it was made abundantly clear: These persons are not patients, and they are property of the State. Significantly, the person described above had not yet been convicted of a crime, nor had they stood trial. Nonetheless, all autonomous decision-making, attendant rights, identity, and personhood—including their relation to loved ones—had been stripped from them, and unto death. Between the dynamic of care versus custody—between patient and property of the State—it is obvious and inevitable that acceptable standards of medical and nursing care will come into ethical collision with custodial paradigms and decision-making, which do not appear to operate within the spectrum of care. Cases such as this one also foreground the ethical stakes facing clinicians who work in these settings, where ethical decisions and the delivery of acceptable standards of health care cannot but be political or politicized acts.

This paper draws on the scholarship of Michel Foucault and Giorgio Agamben to offer a theoretical account of the power dynamics that inform the health care of patients who find themselves caught in the custodial scaffolding of a vast immigration and detention apparatus. It offers an analysis of the display of sovereign and biopolitical power over the lives (and deaths) of detainees (Foucault), as well as the ways in which these individuals are reduced to 'bare life' under the expedient political pretext of a state emergency or 'state of exception' (Agamben). Our purpose here is both theoretical and practical: to better understand the often hidden agency or impersonal 'will' exercised by the immigration system and its contracted service-providers, but also to equip clinicians in these and cognate settings (e.g., prisons) with the critical tools by which they might better navigate incommensurable paradigms in order to deliver the best care while upholding their ethical duties as a care provider. This is all the more pressing because hospitals are not sanctuaries and given the incursion of federal law enforcement agents into these settings, clinicians may find themselves conscripted as de facto agents of the state—and accessories to a crime, a real crime (such as criminal negligence causing bodily harm or death) which in this setting, given the victim's immigration status, will nevertheless be seen as legal and therefore as no crime at all. In somewhat more philosophical terms, this paper also addresses what it might mean to deliver care from within the coercive scaffolding of a state apparatus that functions, strategically—at the intersection of (political) power relations and relations of (medical) knowledge—to foster death rather than life.

2 | THE U.S. CONTEXT

To offer some context, it is well known that the surveillance, detention, and deportation of immigrants presenting at the U.S. border and of those who have already crossed into the country are operationalized by both U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP). Both agencies operate under the aegis of the U.S. Department of Homeland Security (DHS). The ICE website states that 'ICE Enforcement and Removal Operations (ERO) manages and oversees the nation's civil immigration detention system, detaining individuals in furtherance of their removal proceedings or to effect their removal from the U.S. after a final order of removal from a federal immigration judge' (ICE, 2020). It may be less well known, however, that every state in the United States hosts at least two immigration detention centers. As of November 2017, according to a Freedom of Information request, ICE operated 1,478 immigration detention centers, a number that does not include border patrol facilities within 100 miles of the border, or hundreds of Bureau of Prisons facilities or county jails contracted to house migrants who have been detained (Detention by the Numbers, 2019). It is not uncommon for those detained for

the purposes of immigration enforcement to require nursing and medical intervention. In a 2019 interview, U.S. Customs and Border Protection Commissioner Kevin K. McAleenan reported that 38,591 migrants were taken into custody at the San Diego U.S. border in 2018 (Stickney, 2019). In the first six months of 2019, an average of 55 people per day in San Diego Border Patrol custody were sent for acute care medical treatment, requiring 5,700 supervised hospital shifts in San Diego County alone (Stickney, 2019). Nationally, there were over 153,000 monitored hospital hours of care for detained immigrants in 2019 (Gomez, 2019). As the United States experiences a striking and continued increase in immigration law enforcement interactions with the general population, we can expect these interactions to result in increased demands for the provision of nursing and medical care.

The increasing rates of U.S. immigration detention are congruent with pervasive mass incarceration and specifically with the systematic detention of lack, Indigenous, and people of color, as well as the mentally ill. Rates of incarceration in the United States are higher than anywhere else in the world: While the United States represents only about 4.4 percent of the world's total population, it houses around 24.7 percent of the world's prisoners (Glaze & Bonczar, 2006). As of 2018, approximately 1 out of every 32 people in the United States is under some degree of criminal justice control (Pew Charitable Trusts, 2018). Over the last several decades, incarceration rates have increased by over 500%, despite an overall decrease in crime rates (Shapiro, 2019). After the Anti-Drug Abuse Act of 1986 came into effect, the incarcerated population rose from approximately 300,000 to over two million (Glaze & Bonczar, 2006). Racial disparities in the U.S. incarcerated population are particularly striking. Black men are incarcerated at more than five times the rate of white men (NAACP, 2019). While research shows that black and white Americans use illicit drugs at fairly equal rates, drug charges are six times more likely to result in imprisonment for black Americans (Goshin, Colbert, & Cloyes, 2015). In fact, if black Americans were imprisoned at the same rate as white Americans, the incarcerated population would decrease overall by more than 40 percent (NAACP, 2019).

Caring for people accused and convicted of crimes is a required duty for many nurses working in acute care settings. Patients in custody, whether convicted of a crime are not, increasingly receive medical care in hospital settings; hospital care accounts for about 20 percent of prison healthcare spending (National Research Council, 2014). Annually, ICE spends approximately $260 million of its $7.6 billion detention and removal budget on the spectrum of healthcare services, including emergency visits to acute care hospitals (ICE, 2019). For the nursing staff engaged in the provision of this care, strict adherence to professional ethics may be challenged by the presence of or interaction with custodial officers. Research conducted in corrections and in forensic psychiatric settings has shown that the tensions between custody and care have a decidedly deleterious effect on nursing practice (Holmes, 2005). Representatives of law enforcement agencies are tasked to keep the patient under strict surveillance, and paradigms of control and punishment can interfere with and thus impede the delivery of nursing care by restricting and altering (or deforming) the nurse–patient relationship. Where the worlds of custody and care collide, nurses may be forced to choose between complying with the demands and constraints put in place by law enforcement officers or to practice nursing according to recognized standards of ethical care. In many cases, nurses are unable to choose because that 'choice' has been made for them.

3 | SOVEREIGN POWER AND BIOPOLITICAL POWER

In *Discipline and Punish*, Foucault (1977) examines how various forms of punishment as manifestations of power came into play across different periods of history. Of particular interest to this paper is the sovereign's historical right to punish, and specifically how this power was applied to the deviant or criminal body. In eighteenth-century France, sovereign power was exhibited in the public square, as a brutal ceremonial act, and as a means by which to ensure compliance by disciplining individuals in the crowd who would take this lesson to heart. The horrifying agony of Damien, recounted here by Foucault, who cites an early account of the execution, is one of many public punishments exhibited by the sovereign:

> On 2 March 1757 Damien the regicide was condemned 'to make the *amende honorable* before the main door of the Church of Paris,' where he was to be 'taken and conveyed in a cart, wearing nothing but a shirt, holding a torch of burning wax weighing two pounds'; then, 'in the said cart, to the Place de Grève, where, on a scaffold that will be erected there, the flesh will be torn from his breasts, arms, thighs and claves with red-hot pincers, his right hand, holding the knife with which he committed the said parricide, burnt with sulphur, and, on those places where the flesh will be torn away, poured molten lead, boiling oil, burning resin, wax and sulphur melted together and then his body drawn and quartered by four horses and his limbs and body consumed by fire, reduced to ashes and his ashes thrown to the winds.'
>
> (Foucault, 1977, p. 3)

Foucault refers to such brutal and public displays of sovereign power as the 'spectacle of the scaffold', the locus of the sovereign privilege or prerogative, and 'the right to *take* life or *let* live', symbolized by the sword (Foucault, 1978, p. 136). By the beginning of the nineteenth century, however, torturous punishments as public spectacle began to disappear. But of course punishment as such did not disappear: It became increasingly abstract, hidden, and secreted in 'a new legal or administrative practice' (Foucault, 1977, p. 8). A new right began to emerge, 'which does not erase the old right but which does penetrate it, permeate it…. It is the power to "make" live and "let" die' (Foucault, 2003, p. 241). This is Foucault's definition of biopolitical power, where power's new

scaffolding—in part legal and administrative—works to 'incite, reinforce, control, monitor, optimize, and organize the forces under it: a power bent on generating forces, making them grow, and ordering them, rather than one dedicated to impeding them, making them submit, or destroying them' (Foucault, 1978, p. 136). If the old power tended toward disciplining and individualizing the criminal body, through the spectacle of the scaffold, modern biopolitical power tends to massify rather than individualize; its target is the 'population'; and its body, its site of application, is the 'species-body'. When the biopolitical paradigm found its way into modern healthcare and corrections systems, it permitted greater efficiencies and economies of scale through bureaucratic mechanisms that include forecasts, statistical estimates, securitization, and metrics, intended to regulate a biological population and to optimize its generalized 'state of life' (Foucault, 2003, p. 246).

Biopolitics is thus the method by which modern power structures operate to 'ensure, sustain, and multiply life, to put this life in order' (Foucault, 1978, p. 138). A critical element of Foucault's biopower is that it no longer emanates from a central locus of (sovereign) control but is applied increasingly through a *dispositif*—an apparatus, much like a 'scaffold'—where power operates in a diffuse and anonymous manner, legally and administratively, in the quotidian. The work to control and insert bodies into the productive apparatus is operationalized through the vast everyday networks of state institutions, including the army, the police, medicine, and the legal system, in such places as schools, hospitals, and prisons (Foucault, 1978, p. 140). Today this includes immigration and detention centers, which, much like the hospital and the university, are driven by success and productivity targets informed by data-driven quantitative research and population statistics.

It must be observed, however, that biopolitics is a *differential* power relying on—and producing—differential fungibilities of particular human lives: If its focus is on the optimalization of life, from the molecular to the moral, biopolitics is nevertheless the power 'to make live' *and* 'let die'. We return in greater detail below to the specter of 'letting die', which is germane to our case study and which is, moreover, intimately connected to the biopolitical project of 'making live'. In Foucauldian theory, 'letting die' is not quite killing, it is not the sovereign right to 'take life'. Rather, death is 'the counterpart of a power that exerts a positive influence on life' (Foucault, 1978, p. 137); it appears for us as passive death, anonymous, administrative. A death such as this is no death at all, it is death in the name of life, in the service of 'making live'. Foucault describes 'letting die' as 'indirect murder: the fact of exposing someone to death, increasing the risk of death for some people, or, quite simply, political death, expulsion, rejection, and so on' (Foucault, 2003, p. 256).

4 | BIOPOLITICS, BARE LIFE, AND THE 'STATE OF EXCEPTION'

Agamben has expanded Foucault's work on biopolitics, but unlike Foucault, Agamben maintains that sovereign power continues to be pervasive across modern societies and that biopolitical death is essentially sovereign in design and in power—the right to kill. Drawing on juridical paradigms from 1920s and 1930s Germany, Agamben cites German political theorist and Nazi 'Crown Jurist' Carl Schmitt, whose definition of sovereign power is succinct: 'Sovereign is he who decides on the exception' (Schmitt, 2006, p. 5). The 'exception' refers to the suspension of the rule of law—something the sovereign has the God-given right to do, but we must add that this power is also enshrined in the Constitutions of many modern democratic republics (e.g., a 'notwithstanding' clause, or provisions that permit extralegal 'executive orders'). With the sovereign exception, Schmitt had in mind a severe economic or political crisis that would call for the application of extraordinary measures, such as martial law in a time of war, where the rule of law might be (temporarily) suspended in order, paradoxically, to ultimately preserve law and order. Agamben, however, has argued that nominally democratic modern states have come increasingly to use the state of exception as the normal paradigm through which they govern their populations. The state of exception has been gradually folded into a generalized paradigm of security as the normal technique of governing, where, for example, extraordinary rendition and detention become ordinary, almost banal. Any perceived or, indeed, fabricated threat to the life or livelihood of the state's citizens can become a pretext for security measures and decrees, 'justifying' illiberal political policies that spread fear, curtail civil liberties, and erode human rights. The nebulous and overblown threat of terrorist attacks, for example, has been mobilized by states in order to surveil, securitize, militarize, and regulate populations with increasing brutality.

Biopolitics is a differential calculus that decides who we will 'let die', who will remain uncounted. The 'detainee' is yet another symptom and the overdetermined site of such power: U.S. counter-terrorist measures and border security initiatives allow for the detention of individuals and families for long periods of time without trial. This enforcement of 'emergency' powers in the absence of emergency, enacted in flagrant violation of the rule of law, can also be seen in President Trump's declaration of a state of emergency for the purpose of diverting funds to build a border wall supposed to stem 'a foreign invasion of our Southern border' (Fritze, 2019). 'In this sense', Agamben writes, 'modern totalitarianism can be defined as the establishment, by means of the state of exception, of a legal civil war that allows for the physical elimination not only of political adversaries but of entire categories of citizens who for some reason cannot be integrated into the political system' (Agamben, 2005, p. 2). In deciding the exception, the sovereign is both within the law and outside it; the sovereign exception means that the sovereign can enact a system of punishments or constraints on bodies without a trial, suspending the law it purportedly maintains (Colebrook & Maxwell, 2016). Within the state of exception, when a person is cast outside of the bounds of the law she/he is, according to Agamben, 'bare life'.

The roots of our modern concept of 'life' were articulated by the ancient Greeks using two words, *zoē* and *bios*. *Zoē* 'expressed the simple fact of living common to all living beings (animals, men, or gods), and *bios* … indicated the form or way of living proper to an individual or a group' (Agamben, 1998, p. 1). Said another way, *zoē* and *bios* marked out a distinction—lost today, Agamben claims—between

bare biological life and political life, where the latter hinges on the human capacity to speak and to be represented and recognized in the public sphere. Agamben traces this distinction to Aristotle, who first identified humans as 'political animals' who have meaningful language. Indeed, it is by virtue of language that humans are able to participate in the *polis*, ensuring a person's political representation within the city-state (Aristotle, 1992). By contrast, *zoē* is bare life identifiable only in its organismic or biological capacities. If, according to Agamben, this distinction has been lost through history, he nevertheless claims that *zoē* 'remains included in politics in the form of the exception, that is, as something that is included solely through an exclusion' (Agamben, 1998, p. 11). As we noted above, for Agamben it is the sovereign who decides on the exception, and therefore the sovereign who can place an individual outside or beyond the law, expunging the political life of the individual (which might include, e.g., the rights of citizenship) and reducing him or her to bare life or '*homo sacer*'.

Homo sacer is a figure of Roman law meaning the accursed or sacred man who is outside the law and is therefore someone 'who *may be killed and yet not sacrificed*' (Agamben, 1998, p. 8). This means that such an individual, reduced to bare life and stripped of rights and political representability, can be killed with utter impunity—a crime that is no crime at all because the 'victim' does not figure as a rights-bearing political subject, but only as an object, a piece of property. The *homo sacer* has been sovereignly removed from the standard bounds of law as an exception and is therefore abandoned by both legal and divine standards. The Nazi concentration camp is Agamben's privileged example of the sovereign exception. He argues that the concentration camp has become the *nomos*—Greek for 'law' or 'custom'—of every modern state government, a space of sovereign exclusion that is, paradoxically, a necessary inclusion. As the 'inclusive exclusion' or 'exclusive inclusion' (Agamben, 1998, p. 21), the concentration camp, the refugee camp, and the detention facility are the very exclusionary domains that constitute the internal logic of state power—that which must be excluded in the name of life and security, and therefore that which is implicitly included as the very pretext, the very condition of possibility, of state authority. Through the figure of *homo sacer* we can see, Agamben argues, that the state of exception is now the rule: His bold and disarming claim is that all modern states are structured according to the logic of the camp. In Foucault's terms, 'For millennia, man remained what he was for Aristotle: a living animal with the additional capacity for political existence; modern man is an animal whose politics places his existence as a living being in question' (Foucault, 1978, p. 269). The camp, the detention facility, hospitals, and international borders and customs halls are places where the sovereign exception comes into play and one's political existence, rights, and livingness are exposed as bare biological life. These sites are 'zones of indistinction', 'ambiguous zones', or 'zones of indifference' (Agamben, 1998, p. 25; Agamben, 2005, p. 2, p. 23) in which one's ordinary political rights are suspended and one's existence is threatened by exceptional powers that have become routinized, normalized, and justified as a feature of 'homeland' security. These are thresholds where inside and outside, public and private, and legal and extralegal blur into each another.

5 | THE SCAFFOLD AS APPARATUS

In Victor Hugo's ominous description of the scaffold, we imagine an almost hallucinatory apparatus, a whole that exceeds the sum of its parts. More than wood, iron, and ropes, the scaffold is set up in the public square as a vision, a sight to be witnessed, with a kind of agency that also sees, comprehends, and exercises its will over all who behold it. It is the emblem of Foucauldian sovereign power, intended to remind all subjects that the sovereign holds ultimate dominion over their lives. Hugo's description also calls to mind Jeremy Bentham's panopticon, realized in late-nineteenth-century prison architecture (and to this day), which Foucault similarly describes as a vision and way of seeing, or more precisely, 'a field of visibility': 'He who is subjected to a field of visibility, and who knows it, assumes responsibility for the constraints of power; he makes them play spontaneously on himself; he inscribes in himself the power relation in which he simultaneously plays both roles; he becomes the principle of his own subjection' (Foucault, 1977, pp. 202–203). The panopticon is the apparatus of disciplinary power, individualizing the body of the condemned, coercing this person to police her/himself. The scaffold and the panopticon are apparatuses that exert a disciplining force, a will, over everyone who is held in their 'gaze'.

Even so, a great deal separates Hugo's scaffold from Bentham's panopticon: We have moved from the ostentatious public display of classical sovereign authority to a torture that is no longer quite public, but simultaneously private and privatizing; the ceremonial has been supplanted by a different kind of scaffolding, a term which today we might use somewhat metaphorically to describe the vast architectures of immigration law, presidential executive orders, state and for-profit facilities designed to house 'illegals' or 'detainees', as well as the bureaucracies and networks of services that preside over the lives of those who are detained there, including the provision of healthcare services for them. Power is no longer exercised in the public square, and it is much more than a prison architecture designed only for the 'benefit' of prisoners. It finds its application behind locked gates, but also in closed meetings and in boardrooms, in courtrooms, and out onto the streets and into homes, into private lives that are under constant surveillance, utilizing big data (Funk, 2019) and cellphone location data (Tau & Hackman, 2020), and coming in the night to round up 'illegals' who are effectively disappeared, or worse, whose children are taken and adopted out by ICE agents to new American families (Burke & Mendoza, 2018). This exemplifies a police state operating in an 'ambiguous zone' of frightfully normalized exception to the rule of law. There can be no mistake that these represent vast, coordinated, and strategic—indeed willful—efforts on a scale hitherto possible only in the most repressive totalitarian states. The system operates according to principles of maximal efficiency, on vast economies of scale, interested in a given individual only insofar as they belong to a class of those deemed to be either threat, disposable, or property. This

scaffolding is much more difficult to see, but it still has a hallucinatory quality, it still sees, exerts its will—not quite the will of a Foucauldian sovereign, but a biopolitical will, a diffuse power, a widespread cultural imperative, to securitize, to protect life.

The modern 'scaffold' is an apparatus, which Agamben (drawing on Foucault) defines prosaically as follows: 'discourses, institutions, buildings, laws, police measures, philosophical propositions, and so on. The apparatus itself is the network that is established between these elements. The apparatus always has a concrete strategic function and is always located in a power relation. As such, it appears at the intersection of power relations and relations of knowledge' (Agamben, 2009, p. 3). Of course, it is not that we have no particular knowledge of the apparatus. It is an open secret, sometimes whispered, sometimes appearing in news media, sometimes called 'fake news', and sometimes little more than rumor or hearsay. Because these sites of power are by and large closed to the public, it is difficult to know what goes on inside. Further, it is well-nigh impossible for those who are detained within their walls to speak. In these 'zones of indistinction', detainees are deprived of speech and political representation, reduced to bare life. In the case above, the subject's representation is forcibly co-opted and constrained by federal law enforcement agents, right down to matters of consent, organ harvesting, and the disposal of the mortal remains. In these places, there is no speech as any speech that dare contravene the 'authoritative' account of things will be suspect, just as there is bound to be a hostile response or perhaps even threats in light of what we write in these pages. Of course, a certain amount of bad press is openly sanctioned and encouraged by the state. The Department of Homeland Security (DHS) is well aware of the abhorrent conditions at detention centers but is happy to leverage this bad news as a 'deterrent' to migration (Entralgo, 2019). Mass media is mobilized as part of the vast apparatus. The message is carefully controlled and curated; officially, reporters have not been allowed to photograph or interview children housed (and in some cases, caged like animals) in detention centers (Long, 2019), though most of us have heard the audio-recordings of desperate children crying for the parents from whom they have been separated (Fausset, 2018). Agamben (2008) writes:

> While the media apparatus controls and manipulates public speech, a corresponding technological apparatus identifies and registers bare life. Between these two extremes of speech without a body and a body without speech, the space of what we once called politics is increasingly reduced, increasingly exiguous. Thus, by applying these procedures to the citizen—or rather, to the human being as such—the State is applying a technological apparatus that was invented for a dangerous class of persons. The State, which ought to constitute the very space of public life, instead has made the citizen into the suspect par excellence—to the point that humanity itself has become a dangerous class.
>
> (Agamben 2008, p. 202)

The media control and manipulation of public speech works together with the vast apparatus that produces bare life, rendering detained bodies speechless, lifeless. Meanwhile, the media apparatus effects a similar death, transforming language into bodiless speech, virtualized, pure spectacle, and utilized as powerful propaganda—or when convenient, dismissed as 'fake news'.

6 | THE POSSIBILITY FOR RESISTANCE

In the case of the patient presented above, it is all too obvious that the individual represents a vivid example of Agamben's *homo sacer*. The nurses' attempts to learn their identity and to treat them with dignity are thwarted by a state power that has already stripped this individual of political identity. The warden acts as sovereign in this case, making all life-and-death decisions, unto death and beyond, and yet this sovereign authority is anxious and frenetic, aware that it is but an artifact of the sovereign exception that is already in play here, in this 'zone of indifference', because it has already been established that the patient falls into a gray area of legal jurisdiction, that this individual is not a citizen, is without certain rights, and does not quite count as a person. Agamben contends that the border between bare biological being and political life is unclear, and there are many instances in which we are conflicted over the unassailability of human identity and dignity. In the case above, that struggle is evidenced by the efforts of nursing and medical staff, and evidenced here once again in this essay: Any effort is only belated, too little and too late to save a person in many respects already dead, even while alive. The distinction between *zoē* and *bios* is fragile and precarious; their complexities and intersections become tangible only at the point where the distinction fails to operate (Colebrook & Maxwell, 2016, p. 87). Severed from loved ones and denied the ethical protocols that surround informed consent, a nameless patient identified only by a number, guarded by armed officers who determine the care she/he will and will not receive, nurses may begin to see this patient's 'life split from within' (Colebrook & Maxwell, 2016, p. 87). On the one hand, this life is so sacred that we must preserve the body through any means necessary, while on the other, paradoxically, her/his existence has already been reduced to 'bare and manageable matter', someone or something that is beyond redemption.

If the apparatus or 'scaffold' exerts an influence greater than the mere sum of its parts, one way to resist its power is to refuse to see a patient as no more than the sum of her/his parts. The nursing staff sought opportunities to see this patient as more than the number assigned to her/him and more than the aggregate of her/his organs. They discussed with one another *who* this patient might *be*. How did they get here? What might they mean to their loved ones? And what identity might they have beyond the state ascription of 'illegal'? In the nurses' attempts to reach the patient's family members and to allow them to share in the experience of the death of a loved one, as well as to give voice to the unconscious person they had known and cared for, the nurses honored this person's life and defended her/his potential agency, refusing and unable to see them as bare

life. Indeed, if they saw this person as bare life, any care would have seemed nonsensical, immaterial, misplaced. Colebrook and Maxwell discuss this as loving through appreciation of potentiality:

> We often think that ethics and even love depend on granting the other person their human dignity or personhood, but Agamben suggests the opposite.... A more challenging ethics would follow from being able to love that potentiality or fragility which is not-yet formed into the identified person, but which is only given and known in the coming-into-form of life.... Agamben suggests that there are modes of relating to another human being beyond the elevation to something like human dignity or personhood... This mode of ethics or love is one of the inapparent, the inoperative, and un-working: it suggests that what we might learn to value is an openness to the fragility and contingency of temporality as well as a generosity toward life without proper end.
>
> (2016, pp. 15-16)

In this discussion, it is critical to address the ways in which nurses might so easily be conscripted as 'sovereign' arms of law enforcement, agents of the state. It is unclear whether health care stripped of its ethical and interhuman components is still care or even quite human, but these nurses might simply have mechanically maintained this patient's physiological functions; they might have treated the mass of tissue and organs before them; they might have remained indifferent, leaving the patient shackled, withholding medications, making no attempt to understand who this person was and what their potentiality might be. This would recognize neither the individual's fragility or contingency—nor, indeed, their own.

In the case study presented, it is clear that the provision of health care was constrained to fall within the compass of law enforcement's judgement and decision-making. The normal and ethical delivery of care appeared to be of little concern to ICE agents, who seemed more interested in hastening a person's death rather than preserving a person's life (though they would surely not put it this way: by their logic the person has already been depersonalized, a *homo sacer* who can be killed with legal impunity). Just as the state uses nurses to facilitate 'more humane' methods of executing criminals to quell public outcry (Holmes & Federman, 2003), one might wonder here whether the state is using nurses to present little more than a façade of responsible care to detainees. We can see this strategy in the almost surreal websites of governmental agencies, such as ICE, which feature images with smiling compassionate faces and emphasize the comprehensive and ethical care provided by nurses and physicians to detainees (Fry, 2019). In fact, it is not uncommon after the death of a detainee for ICE press releases to discuss in detail the care provided to detainees (free of charge!) by healthcare professionals. Here are three sentences from one ICE media release following the death of a detainee: 'Comprehensive medical care is provided to all individuals in ICE custody. Staffing for detainees includes registered nurses and licensed practical nurses, licensed mental health providers, mid-level providers like physician assistants and nurse practitioners, and a physician. Detainees also have access to dental care and 24-hr emergency care' (ICE, 2019). This statement can in no way be squared with the first-hand account of the medical intervention that opens this essay. But that is not the point; this press release is part of a media apparatus, a public relations exercise and a spectacle, or what Guy Debord might call a 'totalitarian bureaucracy' (1994, p. 9). 'The spectacle is not a collection of images', Debord writes, 'rather, it is a social relationship between people that is mediated by images' (1994, p. 12). The social relationship that is falsely proffered by this particular press release includes mention of nurses (three times), America's most trusted profession, here instrumentalized to reassure the public that detainees are ethically cared for.

7 | CONCLUDING REMARKS

In this paper, we opened with a clinical case study that is not easy to read, and even more difficult to comprehend in the context of acceptable or ethical standards of nursing care. Indeed, this case—and so many like it—represents the egregious failure of ethics and the forcible abrogation of care, not because nursing staff were themselves incapable or unethical but because the patient found themselves within the complex scaffolding of the immigration and detention apparatus. This is a 'situational' failure and one, we believe, that weighs heavily on nursing staff who work in settings such as these. Reading this case through the philosophical concepts of sovereignty, biopolitics, the state of exception, and bare life, we have tried to shed light on the power dynamics that inform the health care of detainees and others who find themselves caught in the scaffolding of a vast immigration apparatus. Our analysis extends beyond the conflicts that characterize the care versus custody dyad; it theorizes 'scaffolding' as a metaphor for the concrete and interrelated structures that enact state violence, and indeed, demand that violence as a 'moral' and 'logical' obligation in the delivery of health care and beyond. What sort of morality and logic is this? It is not quite the execution of sovereign will, but rather operates as a diffuse and anonymous biopolitics that 'makes live and lets die'.

We have been concerned, moreover, with the specter of 'letting die' as an increasingly ordinary consequence of securitizing the population and 'making live'. When a patient is reduced to bare life, and when our governmental and institutional scaffolding is organized in response to unending 'threats' and according to a perpetual 'state of exception', the provision of ethical and acceptable standards of care becomes impossible without a tremendous effort on the part of nursing staff. For a detainee to be called 'property' is scarcely conceivable without invoking the unending legacy of slavery, racial violence, and mass incarceration in the United States—something that we could only gesture to in this paper, but which would require

sustained reflection on a racist apparatus that 'profits' from human bondage. We hope that our paper will help clinicians to gain added perspective on the ways that power operates in these settings, and we hope too that this knowledge will not only inform but will give rise to tactics for delivering the best care despite the overwhelming constraints on clinicians' freedom to act.

We "ust tell these difficult stories. In practical terms, if a patient cannot speak or be heard, clinicians themselves must be able to speak in their stead without fear of disciplinary reprisals. To recall Agamben, speech is necessary in order to preserve life (*bios*) so that it is not reduced to a mere thing, to 'property', to bare biological life (*zoē*). Out of respect for life, and as an ethical duty, we as nurses are called upon to speak and thereby expose the harrowing scenes in which ethical care is in conflict with the apparatuses of state power—within an institution itself, state boards of nursing, the American Nurses Association, etc. Most importantly, such speech ought to be free from constraint and publicly accessible, ideally published in Open Access journals and the press: It should raise public awareness and generate robust public debate around the state-sanctioned abuses committed in the name of citizen protections. For nursing, topics such as this must be taught across university and college curricula, not only as a matter of ethics but because students may one day find themselves as practitioners in these extreme clinical settings (prisons, penitentiaries, forensic psychiatric facilities, etc.). Practitioners must have developed, through nursing education, political awareness of how power operates in these settings. Prior knowledge of these ethical and political conflicts, together with free and open discussion and debate, may help future practitioners to create their own moments of ethical resistance. It is, however, counterproductive to devise a priori any 'checklists', ethical guidelines, frameworks, or tactics for resistance as these could swiftly and too easily be co-opted and strategically thwarted by the institutional apparatus. Respect for life and ethical care, through small gestures of resistance, may be as singular and context-dependent as the singular person in the nurse's care. Finally, then, while this essay is intended to incite public debate, we write as well with the hope of better days to come, and foremost because we believe that our readers are neither powerless nor apolitical in the important, and sometimes disheartening, work that they do.

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