11 'Doin' hard time on planet earth'

Migrant detainability, disciplinary power and the disposability of life

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Absolute power is the power to make oneself unpredictable and deny other people any reasonable anticipation, to place them in total uncertainty.... The all-powerful is he who does not wait but who makes others wait.... Waiting implies submission.... It follows that the art of 'taking one's time' ... of making people wait ... is an integral part of the exercise of power....

Pierre Bourdieu, Pascalian Meditations (1997/2000: p. 228)

For those who are routinely and systematically criminalised, life itself comes to resemble an unrelenting kind of entrapment, an open-air confinement that is inevitably interlaced with routine police abuse and punctuated repeatedly with longer or shorter episodes of imprisonment. While being condemned to a condition of criminalisation and inordinate susceptibility to imprisonment is indeed a fact of life, to greater or lesser degrees, for all poor people everywhere (Wacquant, 2009; Bonds, 2012), it is especially pronounced for racially subjugated and colonised groups. Referring to Israeli military occupation and the racist socio-political order in Palestine, for example, Noam Chomsky has depicted Gaza as 'the world's largest open-air prison, where some 1.5 million people ... are subject to random terror and arbitrary punishment, with no purpose other than to humiliate and degrade' (2012; cf. Peteet, 2005: pp. xiii, 171; 2017; Bornstein, 2008). Liz Fekete incisively makes a similar point about all of Europe, where the 'pan-European racism' against minoritised Roma communities converts the entire continent into something approximating 'a huge open prison' (2014: p. 68). Describing her research along the US-Mexico border, Patrisia Macías-Rojas affirms, 'Policing permeated every aspect of social life' (2016: p. 8), whereby 'criminalization ... amounts to the branding of a caste-like criminal stigma' (p. 164). Although her study plainly foregrounds the racialised subjugation of Mexicans in particular in the US-Mexico border region (cf. Levario, 2012; Muñoz Marínez, 2018), Macías-Rojas notably insists that the roots of this criminalised racial branding reside in the 'historical association between Blackness and criminality' (2016: p. 164). It is precisely this ever-present fact of racist criminalisation and police abuse and the ever-menacing possibility of imprisonment (or indeed, of torture or murder by police) that deeply informs and invigorates the contemporary Black Lives Matter struggles in the United States. In the words of the African American rapper 2 Black 2 Strong, from whom I have adapted the title of this essay, for those who are the object of systemic racial oppression, life itself becomes a matter of 'doin' hard time on planet earth.'

Without reducing the truly punitive and often brutal realities of imprisonment to a mere metaphor, these gestures remind us that for racially subordinate populations subjected to systematic criminalisation, prison becomes not some sort of distant and mysterious space apart but instead a known and familiar cruelty that is thoroughly interwoven into the fabric of everyday life (Price, 2015). Moreover, the capricious vulnerability to imprisonment punctuates a more permanent condition of radical uncertainty attending to the susceptibility to abuse arising from virtually any routine encounter with the law (and law enforcement). In this important respect, the criminalised condition of 'doin' hard time on planet earth' is also substantially entangled always with a life significantly spent waiting under the horizon of virtually inevitable police harassment, likely arrest, and the inordinate prospect of eventual imprisonment.

This chapter will explore how the predicament of systematic criminalisation evoked by the notion of 'doin' hard time on planet earth' may illuminate something about the particularly uncertain and indeterminate temporalities of illegalised migrants' susceptibility to detention, and how this sociopolitical condition of protracted waiting and *detainability* exposes the operations of a disciplinary form of power that enhances 'irregular' migrants' precaritisation and serves to enforce the disposability of migrant life.

Prison/detention

There are profound affinities between the susceptibility of criminalised populations to imprisonment and what I have characterised as migrant detainability (De Genova, 2007, 2017), just as there are important substantive continuities between ordinary incarceration and migrant detention inasmuch as both entail a punitive combination of spatial dislocation (confinement) and temporal rupture. Hence, detention must be situated within the nexus of diverse forms of captivity and confinement (Foucault, 1972–1973/2015; 1975/1979; cf. Walters, 2004: p. 248). Notably, within the purview of 'human rights' discourse, detention appears as a rather generic figure of imprisonment. Article 9 of the Universal Declaration of Human Rights states: 'No one shall be subjected to arbitrary arrest, detention or exile.' In this regard, detention and imprisonment appear to be effectively synonymous. However, within this normative perspective of 'human rights,' detention is implicitly distinguished from ordinary incarceration precisely to the extent that it is coupled with arbitrariness. That is to say, in its hegemonic and institutionalised forms, human rights discourse implicitly normalises the prison and upholds incarceration as the presumptively justified and ostensibly non-abusive form of punishment; imprisonment in and of itself becomes legible as a concern of human rights only to the extent that it is apprehensible as arbitrary. 'Detention,' then, comes to be deployed to signal precisely this excision of imprisonment from the presumptively 'normal' and 'legitimate' operations of the Rule of Law, in a murky netherworld of arbitrary and abusive power. For those whose plight is that of 'doin' hard time on planet earth,' however, this seemingly durable distinction is immediately revealed to be a dubious one, indeed. In these respects, we may begin to appreciate the profound limits of human rights discourse and the degree to which prison abolitionism (see, e.g. Loyd, 2012; Loyd et al., 2012; Price, 2012; García Hernández, 2017) already substantially prefigures a critical conception of justice that far exceeds and transcends the normativity of human rights law.

Of course, one rather obvious difference between incarceration and migrant detention is that the latter is a form of spatial confinement that is deployed against people whose only transgression or offense is commonly their very existence (i.e. their mere status as 'irregular' migrants, 'bogus' refugees, or rejected 'asylum seekers'). Here, indeed, we are accustomed to the understandable objection that migrant and refugee detainees have committed no crime, that they are not 'criminals.' Hence, their detention plainly looks like the kind of arbitrary imprisonment that is readily cognisable as an abuse of their putative human rights. But again, the normativity of imprisonment as a presumptively just and appropriate punishment for 'true' criminals is thereby subtly but pronouncedly reinforced. Indeed, if the outrage over the detention of migrants is that they are treated in a manner that is reminiscent of the treatment of the incarcerated, this might be an instructive occasion to confront the outrage of prison itself (Loyd et al., 2012; cf. Aas & Bosworth, 2013; Aliverti, 2013; Bosworth, 2014; Kaufman, 2015; Longazel et al., 2016; Macías-Rojas, 2016; García Hernández, 2017). Moreover, the predictable response to the objection that migrants are 'not criminals' from advocates for more restrictive immigration control is precisely the belligerent reaffirmation of a simplistic affiliation of migrant 'illegality' with outright 'lawlessness' and criminality.

For my purposes here, I am nevertheless interested in underscoring some of the heuristic differences between imprisonment and detention – and specifically, migrant detention – in order to interrogate the specificity of detention as a distinctive form of power. Therefore, while located within the continuum of various types of coercive confinement, detention must be also distinguished from other forms of incarceration. What chiefly characterises detention as such is the extent to which it has been reserved as a category for naming precisely those varieties of confinement that are intended to be emphatically distinguished from the more customarily juridical coordinates of penal imprisonment for criminal offenses. In short, detainees are so designated precisely because they are understood to not be 'prisoners'; detention is so named exactly to the extent that it is conceived to be

something that is *not* incarceration. Here, indeed, we may recall Arendt's memorable insight into the cruel and revealing irony that common criminals in fact had more legal rights and recognition than those 'interned' in the Nazi concentration camps, or indeed, than those relegated to the status of stateless refugees (1951/1968: p. 286). To be a 'criminal' is to be subjected to the recriminations of the law, and thus to be inscribed within the law and its punishments; in contrast, to be a detainee is to be subjected to an 'administrative' apparatus, and as a consequence, to be potentially (not always, but not uncommonly) figured as effectively outside of the purview of the law altogether.

With detention – very much like deportation (De Genova, 2014) – we are in the midst of what Hannah Arendt famously designated as 'the banality of evil' (1963/2006). The particular banality of Adolf Eichmann's evil, for Arendt, derived from what she deemed to be not only 'the essence of totalitarian government' but also 'perhaps the nature of every bureaucracy': the dehumanising reduction of individuals into 'functionaries and mere cogs in the administrative machinery' (2006: p. 289). It is in this respect that the idea of the 'banality of evil' is instructive when we confront and seek to challenge such otherwise routine 'administrative' punishments as detention and deportation.

Imprisonment is customarily understood to be the highest form of 'modern' punishment, short of execution. Likewise, incarceration is generally understood to be a deprivation of liberty, frequently including the suspension of other ostensible civil rights, which is purportedly 'corrective' and presumptively 'rehabilitative.' Thus, imprisonment is temporally delimited and assumed to have a definite end, after which those ostensible rights associated with citizenship ought to be restored. Of course, there are also statutory measures that inflict permanent and irreversible harms upon formerly convicted persons, such as lifelong disenfranchisement, as is the case in many of the states of the United States. In this respect, incarceration is also inseparable from the profound and egregious inequalities of citizenship that I have elsewhere theorised in terms of denizenship (De Genova, 2015, 2019) as well as the cynical deployment of forms of illegalisation conventionally associated with migration for the purposes of debasing (minoritised) citizens and stripping them of their juridical personhood as citizens (De Genova, 2018b; De Genova & Roy, 2020). Conversely, there has likewise been an increasingly expansive tendency to reclassify various immigrationrelated offenses as explicitly criminal acts that come to be subject to ordinary imprisonment, only thereafter to be further supplemented with the redoubled punishment of detention and deportation (Hasselberg, 2016; Turnbull & Hasselberg, 2017) – a deliberate and vindictive conflation of antiimmigrant law making with criminal law that has been called 'crimmigration' (Kanstroom, 2004; Stumpf, 2006, 2010), prompting new avenues of critical inquiry into the concept of governing migration through crime (Chacón, 2009; Dowling & Inda, 2013; cf. Bosworth & Guild, 2008). Nonetheless, in general, imprisonment may be understood to be fundamentally articulated to the putative freedoms and obligations of citizenship as such.

Yet, for non-citizens, detention – entailing confinement and frequently most if not the full panoply of other deprivations of basic liberties associated with imprisonment – is a banal, commonplace form of punishment that is ordinarily purported to be not a punishment at all, operationalised as a more or less automatic repercussion pertaining to the mere juridical status of non-citizens, especially those deemed to be 'irregular' or 'illegal.' That is to say, migrant detention is commonly activated as a more or less mandatory reflex of the routine functioning of an immigration regime. Notably, there are of course various terms and conditions of migrant detention that are applied differentially across distinct nation-state regimes, and likewise distributed unevenly among non-citizens of various immigration statuses. Nonetheless, the bureaucratic rationality that coldly executes such severely punitive measures as 'standard operating procedure,' and the consequently heartless disregard for their veritable cruelty for those whose lives are thereby derailed, convert a systemic evil into the simple and banal functionality of a presumptively efficient governmental apparatus.³

The uses of time

Another chief difference between imprisonment and detention as forms of confinement and punishment revolves around their distinct modes for governing *time*. Perhaps the premier and most excruciating difference from prison commonly at stake in migrant detention is the deeply ambiguous and profoundly punitive dimension of temporal *indeterminacy*. As Pierre Bourdieu suggests, 'Absolute power is the power ... to place [other people] in total uncertainty' (1997/2000: p. 228). The temporality – and, indeed, the specific predicament of *waiting* – that frequently accompanies migrant detention have, above all, to do with such uncertainty (Golash-Boza, 2012; Hall, 2012; Fili, 2013; Griffiths, 2013, 2014; Campesi, 2015; Fischer, 2015; Hasselberg, 2016; Freedom of Movements Research Collective, 2018; Esposito et al., 2019).

The temporality of imprisonment marks a striking contrast. In *The Punitive Society*, Michel Foucault remarkably examines the profound correspondence of 'the prison-form of penalty' and the 'the wage-form of labour' (1972–1973/2015: p. 261) as 'historically twin forms' (p. 71), predicated upon 'the introduction of the quantity of time as measure, and not only as economic measure ... but also as moral measure' (p. 83). Hence, Foucault contends, 'the introduction of *time* into the capitalist system of power and into the system of penalty' signals that 'the time of life' is 'exchanged against power' (p. 72; emphasis in original). Here, we may appreciate the profound affinity between Foucault's formulation and Marx's analysis of labour – specifically, what Marx designates to be *living labour* – in terms of the systematic conversion of an ontological and trans-historical human creative

capacity and productive power to transform our material circumstances, as an existential vocation of human life, into estranged and alienated 'labour' in its specifically commodified form (wage labour) within capitalist social relations (De Genova, 2010a, 2012). In short, like the homogenisation of living labour into something abstract and quantifiable and, more specifically, measurable by time (as 'labour-time') in Marx's analysis of wage labour within capitalist relations of production, the prison-form of penalty presupposes a strict quantification of (life-)time – as measure – that is, in effect, exchanged according to an ostensibly rational calculus. Hence, the colloquial phrase 'doing time' – less a matter of truly 'doing' so much as being compelled to do, and hence, its synonymous expression 'serving time' – comes to name the conversion of the time of life into a kind of indentured servitude to the state, time coercively spent in the service of a punishment in prison. Indeed, these affiliations have a direct genealogy in the connections among the colonial-era transportation of convicts, convict labour and indentured servitude, wherein the deprivation of freedom associated with imprisonment has long been equated with a regime of unfree labour (Ekirch, 1987; Linebaugh, 1991; De Vito & Lichtenstein, 2013; cf. Smith, 1947).

Whereas the notion of 'doing time' in prison ordinarily has the character of a finite countdown, however, migrant detention deploys indeterminate waiting and temporal uncertainty as an end in itself, as punishment (if not outright torture). Time spent in detention is not an anticipatory waiting oriented towards a projected future; rather, it is commonly experienced as a compulsory waiting with no definite horizon, and therefore it is time that can only be quantified retrospectively – often, resentfully or melancholically – once it is already past, commonly perceived to be irredeemably wasted and lost, or indeed, as Shahram Khosravi (2018) argues with regard to deportation, 'stolen.' Whereas both prison and detention, to the extent that they involve enclosed confinement, are spatially bordered, imprisonment may also be understood to be generally bordered in temporal terms as well, with its delimited and relatively explicit stipulations of sentencing for penal convictions. In some contexts, migrant detention is also legally subject to strict time limits, encouraging non-citizen detainees to 'wait it out' as they hope that their prospective deportations may be deferred. Nonetheless, migrant detention usually entails the uncertain prospect of eventual deportation, while always coupled with the uncertain prospect of non-deportation and either indefinite detention or eventual release, which itself is always shadowed by the prospect of subsequent apprehension and further detention. In this important respect, furthermore, migrant detention subjects non-citizens to a regime of surveillance that does not reach its conclusion following release from confinement but rather is projected indefinitely into the future, beyond actual detention. Consequently, for all of these reasons, detention frequently can be found to deliver detainable non-citizens into a quintessentially Kafkaesque nightmare (cf. Welch, 2002; Bhartia, 2010; van Houtum, 2010; Cohen, 2016). It is poignantly revealing that the 2016 protest slogan of detainees living in Denmark's deportation centres was *Stop Killing Us Slowly!* (Freedom of Movements Research Collective, 2018).

Waiting as disciplinary power

Once we take into account the uncertainties of outright detention, moreover, we must likewise factor in the vagaries and vicissitudes of migrant detainability – as the unpredictable susceptibility to detection, arrest and detention that is lived as a protracted socio-political condition in everyday life (De Genova, 2017; cf. 2007). Detainability thus amplifies migrant deportability (De Genova, 2002, 2010a), and enhances how irregularised migrants and refugees' predicaments come to be reconfigured as an enduring socio-political condition akin to 'doing hard time on planet earth.' The emergent ethnographic literature depicting situations in which migrants and refugees find themselves stranded en route, temporarily but indefinitely stuck someplace along the way on their migratory itineraries, and often vulnerable to arrest and detention, provides ample evidence of merely one example of this predicament (Mountz et al., 2002; Coutin, 2005; Collyer, 2007, 2010; Dowd, 2008; Mountz, 2011; Bredeloup, 2012; Lecadet, 2013, 2017; Tazzioli, 2013; Andersson, 2014; Garelli & Tazzioli, 2017; Osseiran, 2017; Picozza, 2017; Stierl, 2017, 2019; pp. 61–92). Similarly, an emergent literature exposes how rejected asylum seekers and other illegalised migrants and refugees increasingly find themselves 'legally stranded' even in their chosen countries of destination because they remain 'undeportable' (Ellermann, 2008; Paoletti, 2010; Sigona, 2012; Fischer, 2013, 2015; Le Leerkes & Broeders, 2013; Campesi, 2015; Courant & Kobelinski, 2016; Hasselberg, 2016; Freedom of Movements Research Collective, 2018; Fabini, 2019). The legal limbo of undeportability points to a punitive regime of detention that generates what Carolina Sanchez Boe has called 'a "floating population" of foreign nationals [who] are subjected to a forced circular migration through prisons, detention centres, and public space' (2017: p. 189). Something akin to 'the carceral circle' famously described by Foucault (1975/1979) thus comes more clearly into view: a repetitive cycle of rejection and detention, expulsion and capture, whereby immigration and border enforcement regimes literally convert detainable persons into a new type of virtual 'refugee' whose genesis is strictly internal to the space of their rejection (cf. Picozza, 2017).

In other instances, detention camps provide a kind of intermittent solution for housing destitute migrants who alternate between temporary confinement and homelessness (Leerkes & Broeders, 2013; cf. Andersson, 2014: pp. 177–207). Life itself, under such conditions, more and more is made to resemble a kind of enduring entrapment and a protracted state of greater or lesser degrees of outright deprivation of liberty, even if one's potential or actual confinement within an institutional space of capture and punishment (a detention camp) is only anticipated and approximated in an amorphous

way by a kind of containment in and through unresolved mobility. Such examples mark an adaptation in the regimes governing migration and refugee movements through the coercive prolongation of their mobilisation itself – as a mobility without remedy or relief (Garelli & Tazzioli, 2016; Spathopoulou, 2016, 2019; Picozza, 2017; Tazzioli, 2018, 2019a, b). Referring to the European Union's purportedly 'emergency' implementation of 'reception' centres, known as 'hotspots,' for the expedited processing and registration of newly arriving refugees and migrants at the height of the 'crisis' of European border control during 2015–2016, which were soon converted into detention camps (including closed prisons for unruly migrants), Aila Spathopoulou (2019) proposes the provocative concept of a 'hotspotisation of the road.' In this scenario, refugees and migrants in Greece found themselves subjected to and governed by the European asylum regime even in transit beyond the spatial confines of the official hotspots, trapped in the extended and expansive space of the border as they continued to move onward. In such examples, we note that the autonomy of migration – a freedom exercised in and through movement – nonetheless operates only within and against what Foucault (1976[2007]) memorably depicted as the 'meshes of power'; it is not an abstract, essentialised or absolute autonomy but one that is necessarily limited, constricted, compromised, contradictory and tactical (De Genova et al., 2018: p. 243). It is in this respect that detainability and deportability operate as disciplinary forms of power in which the temporal indeterminacy of waiting for a punishment that may or may not ever come to pass serves to condition the scope of illegalised migrants' subjectivity and imposes a grim horizon upon their relative freedom of action.

The coercive spatial dislocations of detention and the concomitant temporal ruptures – waiting in detention, waiting for the authorities to deliver a decision on one's asylum petition, waiting for deportation, waiting in fear of detection and arrest, waiting for anything certain in the protracted alienation of existential indeterminacy – frequently are indisputably punitive in character and commonly inflict profound torment on those who are subjected to detainability (e.g. Fischer, 2015). Yet, they cannot be understood to be purely and simply repressive mechanisms. Contrary to the exorbitantly sovereign image of 'absolute power' depicted by Bourdieu in the epigraph to this chapter, therefore, migrant detainability and indeterminate waiting (particularly in detention) serve to reconfigure disciplinary power (both in and through, as well as beyond detention) through the production of an amorphous social condition of temporal precarity. Of course, the manipulation of time and the production of protracted precarity, more generally, are not confined exclusively to the experience of 'irregular' migrants subject to detention and deportation (see, e.g. Schling, 2019). Such tactics of precaritisation are an elementary feature of the creation and maintenance of migration as a reliable, eminently mobile, flexible and ultimately disposable source of labour-power (Golash-Boza, 2015; De Genova, 2018a).

Such precaritisations of time tend to be productive, if for no other reason than that the human persons subjected to them stubbornly persist in seeking ways to prevail in spite of them. In short, regimes of waiting and temporal indeterminacy capitalise on the autonomous subjectivities of the people whom they make their object. In other words, such regimes capitalise upon the elementary resistances of human subjects in their refusal to accept to be reduced to pure objects. As Frantz Fanon memorably remarks early in his essay 'The Fact of Blackness' – 'I came into the world imbued with the will to find a meaning in things ... and then I found that I was an object in the midst of other objects' (1952[1967]: p. 109) – only by the end of that same essay to proclaim that he refuses to be mutilated and will not accept the socio-political amputation of his racial condition. Foucault analogously underscores the intrinsic and inextricable relation between objectification and subjectivity, between subjection and subjectivation, between domination and freedom:

Power relations are possible only insofar as the subjects are free.... Thus, in order for power relations to come into play, there must be at least a certain degree of freedom on both sides. ... This means that in power relations there is necessarily the possibility of resistance because if there were no possibility of resistance (of violent resistance, flight, deception, strategies capable of reversing the situation), there would be no power relations at all.

(1994: p. 292)

Elsewhere, Foucault remarks:

At the very heart of the power relationship, and constantly provoking it, are the recalcitrance of the will and the intransigence of freedom. Rather than speaking of an essential freedom, it would be better to speak of ... a permanent provocation

(1982: p. 790)

Thus, detainability is a disciplinary form of power precisely because its contribution to the subordination of migrant life as precarious labour is addressed to the constitutive role of that labour's productive power and creative capacity, and hence its subjectivity, within and against capital – a subjectivity that is always incorrigible (De Genova, 2010b).

By rendering all of life unstable and unpredictable for migrants subjected to detention or the threat of detention, detainability refines and exacerbates the sheer disposability of migrant life and intensifies migrants' precarity. But to be rendered disposable is not the end of life but indeed a way of life – a life that comes to resemble 'doin' hard time on planet earth.'

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Notes

- 1 Whereas deportability the susceptibility to deportation is indeed conventionally confined to non-citizens, detainability – the susceptibility to detention – is a condition that widely (and perhaps increasingly) also pertains to citizens. In the context of an escalation over recent years in exceptional police measures under the rubric of 'security' as well as securitarian law-making, the increasing use in many countries of detention (rather than incarceration), particularly as a purportedly 'preventative' measure, confirms that detainability operates as a significantly more general mode of governance than deportability (De Genova, 2002, 2010a). Thus, much of what I will argue with specific regard to migrant detention and detainability has considerably wider ramifications, and often pertains, albeit unevenly, not only to non-citizens but also to various categories of citizens. The unequal distribution of detention and detainability is a graduated and differential one that not only sorts and ranks according to the inequalities of citizenship status, therefore, but also class inequalities and racialised hierarchies associated with the ascriptive identities of minoritised communities, most notably, Muslim 'minorities,' citizen and non-citizen alike, in the context of the so-called War on Terror (cf. De Genova, 2007: De Genova & Roy, 2020: Eckert, 2014).
- 2 As is well known, Arendt invoked this notion with regard to the unsettling (and terrifying) 'normal'-ness of the high-profile Nazi technocrat Adolf Eichmann, during his trial for war crimes, crimes against the Jewish people and crimes against humanity (1963/2006: p. 276). While Eichmann was widely considered to be directly implicated in the perpetration of a truly extraordinary evil, in other words, Arendt nevertheless discerned something profoundly important about how mundane that evil was when embodied in the non-descript personality of Eichmann.
- 3 For a parallel exploration of the notion of 'standard operating procedure' in the normalisation of torture in the Abu Ghraib prison in the US-occupied Iraq, see Gourevitch and Morris (2008).

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Edited by
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