



Unexpected spaces of confinement: Aversive technologies, intellectual disability, and “bare life”

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Abstract

Giorgio Agamben describes the “camp” as the “zone of indistinction between law and violence” where bodies located in exceptional spaces are stripped of citizenship rights and embody “bare life.” We deploy Agamben’s analysis to the context of the everyday violence of aversive technologies meted out against students living at the dangerous intersections of race, class, gender, and disability and located in unexpected spaces of confinement such as schools, developmental centers, and family homes. We argue here that the logic of the “state of exception” applies to disabled children and adults where acts of violence enacted via disciplinary practices are justified as being outside the realm of the legal and subject to sovereign power. The locus of our study is the Judge Rothenberg Center that over the past 40 years has utilized behavioral techniques that have been investigated as abusive and only very recently has been held accountable for these infractions. We examine the discourses used to justify these forms of inhumane punishment as well as the discourses that oppose them to foreground the real material implications of “how we understand the role of systems and institutions of punishment” in unexpected spaces of confinement of children/adults with intellectual disabilities.

Keywords

autism, aversive technologies, disability studies, Giorgio Agamben, *Homo Sacer*, intellectual disability, Judge Rothenberg Educational Center, mad studies

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It's so scary you don't even feel like, like, like it's real life anymore. You just feel like your [sic] floating. I would just try to make myself float because it's so scary. I would ask God to make my heart stop because I didn't want to live when that was happening to me, I just wanted to die and make it stop.—Jennifer Msumba (Werner, 2014)

Introduction

The above epigraph is a transcription from a 2014 interview on CBS Evening News with Jennifer Msumba, a biracial autistic survivor of the Justice Rotenberg Educational Center (henceforth referred to as the JRC) where she lived from 2002 to 2009. Her testimony was given at the U.S. Food and Drug Administration (henceforth referred to as the FDA) advisory panel hearing to support a proposed ban of electric shock devices used in behavior modification therapies for children and adults diagnosed with intellectual disabilities, mental illness, and/or autism. Then, on 24 April 2016, the FDA moved to ban electrical stimulation devices (ESDs) and other aversive technologies used to treat aggressive or self-injurious behaviors in response to testimony given by several residents of the JRC and disability rights activists. Recognizing that these devices present an unreasonable and substantial risk of illness or injury, the FDA is proposing to include in this ban both new devices and devices already in distribution and use. But this is not a done deal. The FDA has presently opened up the issue for public comment and there are several powerful constituencies (including some parents) who are vehemently opposed to this ban (Brown, 2015; Gonnerman, 2007; Kix, 2008). We, however, are troubled by the frequency with which disabled children and adults (especially those with intellectual disabilities) experience physical and mental abuse and even death at the hands of not only agents of the State (police/teachers/nursing home employees) but also individual citizens (parents/children/personal caregivers) and by the complacency with which the public regards these forms of punishment (and murder) as both normative and necessary (Gonnerman, 2007; Kix, 2008; Titchkosky, 2007). Even more troubling is the realization that these aversive technologies are not only located in prisons, but also in the most unexpected spaces of confinement—rehabilitation centers, nursing homes, and even schools.

An oft-repeated adage that presumably adheres to principles of fairness states that the punishment should always fit the crime. What if one's only crime is be-ing black, disabled, queer, and/or transgendered?¹ For example, over the last few years, we have witnessed the murder of African Americans by the police as well as other vigilantes in the US because of their be-ing black. This spectacle of black suffering has become so commonplace that critical race scholars describe this violence against black lives as mundane rather than exceptional (Hartman and Wilderson, 2003; Neal, 2016; Weheliye, 2008). We argue, however, that while we respond with horrified outrage to black suffering transformed into the mundane, we also recognize that in the mundane lies the exceptional. In this paper, we point out the exceptionality that among the many murdered, beaten up, incarcerated

bodies are also bodies diagnosed with mental illness, and/or intellectual impairments whose lives and deaths are barely registered except in the small and often marginalized communities in which they are cared for and cherished (Billyjam, 2012). Refusing their erasure obscured by the mundane, this paper begins as a dedication that remembers and reminds us all about the violent implications of the punitive structures and practices that have marked their lives and their deaths.

We explain this exceptionality in the violence of the mundane by applying Giorgio Agamben's (1998) notion of the "state of exception" to the discourses used to justify the violence meted out against disabled bodies located in these unexpected spaces of confinement. In his book, *Homo Sacer and Bare Life*, Agamben (1998) describes the "camp"—the "zone of indistinction between law and violence" where bodies located in these exceptional spaces (the state of exception) were stripped of citizenship rights and social privileges because they were believed to embody "bare life." Here we deploy Agamben's analysis in angry response to the everyday violence of aversive technologies utilized to discipline persons located in spaces of confinement such as schools, developmental centers, and family homes. We argue here that the logic of the "state of exception" applies to disabled children and adults diagnosed with mental disabilities, intellectual disabilities, and autism, where violence is enacted via disciplinary practices by security personnel, and even personal caregivers (teachers/teacher aides/parents). It is our intent to foreground the material and discursive implications of how we understand the role of systems and institutions of punishment in these unexpected spaces of confinement.

The "camp" that Agamben refers to has usually been applied to prison-like settings such as the concentration camp at Auschwitz or the detention camp at Guantanamo Bay. It is very rarely that noninstitutional spaces such as nursing homes, rehabilitation and educational centers, and schools that serve disabled children and adults are conceived of as the "camp." However, Chapman et al. (2014) emphasize the importance of thinking of spaces of confinement as broader than the prison and the asylum to also include spaces that confine disabled people against their will. In fact, these unexpected spaces of confinement are inspired by the same eugenic ideologies that sought to protect society from the social dangers of those who have historically been considered racially, physically, intellectually, and socially deviant (Ben-Moshe, 2013).

Our specific focus here is on these unexpected spaces of confinement that use behavioral therapies/punishment for the social control of those disabled bodies resistant to normative, rehabilitative, and educational interventions (Eldevik et al., 2009, 2010; Israel et al., 2008). Because the language used to describe these therapies/punishments are cloaked in discourses of care rather than crime, and because both the adults and children who receive these therapies/punishments are diagnosed with intellectual impairments/mental illnesses, the general public as well as scholars working for the abolition of the prison industrial complex have often failed to recognize that these spaces exist in a continuum, "ranging from prisons and jails to institutions for the intellectually

disabled, and psychiatric hospitals” (Ben-Moshe, 2013: 386). Thus, even though the locus of our discussion is a specific institutional setting (the JRC), our intent is to foreground the broader structural practices and their corresponding ideologies that proliferate both in these unexpected spaces of confinement as well as in the prison and in the institution.

We first contextualize our argument by describing aversive technologies deployed in the JRC (the “camp”) for care and treatment of children and adults diagnosed with mental illness, intellectual disabilities, and autism. Next, we briefly describe Agamben’s (1998) conceptualization of *Homo Sacer* in order to explore the ways in which “the state of exception” applies to this particular context. Finally, we conclude by foregrounding the discourses that justify how sovereign acts of violence and modern technologies of biopower intersect and inform one another such that they constitute disabled bodies as “bare life.”

The JRC as the “camp”

(Trigger warning regarding graphic descriptions of abuse, neglect, and death in this section)

Since its inception, the JRC has been in the news for its deployment of aversive technologies (e.g. shock, restraint, and seclusion) to discipline disabled children. On its website the JRC describes itself as

a special needs day, respite, and residential school located in Canton, Massachusetts licensed to serve ages five to adult. . .[providing] very effective education and treatment to both emotionally disturbed students with conduct, behavior, emotional, and/or psychiatric problems, as well as those with developmental delays or on the autism spectrum. (Judge Rotenberg Center, 2016: para. 1)

Founded in 1971 by Dr Matthew Israel, a Harvard graduate, the first Behavior Research Institute (henceforth referred to as the BRI) was opened in Providence, RI where he took in children “nobody else wanted— severely autistic and mentally retarded kids [sic] who did dangerous things to themselves and others” (Gonnerman, 2007: para. 22). Israel’s first two students were “a schizophrenic [sic] and an autistic teenager” (Kix, 2008: para. 13). Based on his “success” with these two students, he, then, opened a second center in Massachusetts (now the JRC) and yet another one in California.

Israel studied under B. F. Skinner (whose theory of operant conditioning came from experiments he conducted on animals) and utilized this behavioral approach to eliminate “behavior problems” in children and adults. According to Israel (n.d.),

a behavioral approach essentially views a treatment problem as one in which the individual has certain behaviors that need to be decreased and certain ones that

need to be increased. The fundamental technique for accomplishing these increases and decreases is the application of rewards and punishments.

Although Israel claims that his center focuses on positive reinforcement and that punishment is a last resort, there has been a documented history of abuse, torture, and neglect of disabled children and adults confined there. In his early years at the BRIs, Israel utilized Skinners' research on animals to develop a large repertoire of punishments—"spraying kids in the face with water, shoving ammonia under their noses, pinching the soles of their feet, smacking them with a spatula, forcing them to wear a "white-noise helmet" that assaulted them with static" (Gonnerman, 2007: para. 22). Finding that these techniques were not as effective as he expected, he then turned to a shock device on the market known as self-injurious behavior inhibiting system (SIBIS) that provided a shock that lasted 0.2 minutes. Soon, he requested that the manufacturers of SIBIS provide him with a device that would gradually increase the power of the shock and when they refused, he and his team designed one "that would start with a low current but that could increase the voltage if needed" creating the graduated electronic decelerator (GED).

The use of these devices of punishment got Israel and the BRI in trouble when the deaths of several of his clients drew attention to his practices. In 1981, 14-year-old Danny Aswad from California was restrained face down on his bed and died in that position. Although the autopsy report stated that Aswad died of natural causes, the school was placed on a two-year probation. In 1982 the Department of Social Services filed a legal complaint and a settlement was reached with the state of California that the center would not use any aversive techniques stronger than water spray and barred Israel from the property (Kix, 2008).

Although two agencies in New York State had reported on abusive practices at the BRI in Rhode Island in 1979, it was not until 1985 with the death of Vincent Milletich, a 22-year-old man with autism from Queens, New York, that the public became aware of the abusive techniques used to treat "problematic behaviors" exhibited by residents. Milletich "was restrained in a chair, his hands and feet tied by plastic cuffs, his face masked and his head helmeted, the earphones inside it admitting white noise. He suffocated in there, asphyxiation" (Kix, 2008: para. 17). The BRI was cited for negligence and a year later the Massachusetts Office for Children issued an order to close the BRI. However, the BRI appealed and the facility remained open with the recommendation that the use of aversives stop, pending hearings (Kix, 2008).

The Bristol County Probate and Family Court Judge Ernest Rotenberg heard appeals from Dr Israel and some parents to keep the facility open. Some parents argued that the treatment their children received at the center was the most effective, and feared that their only other option was sending their children to state mental hospitals where they would be heavily sedated and in restraints (Butterfield, 1985). Then, on 4 June 1986, Judge Rotenberg, after observing a student revert to "life threatening behavior" without aversive therapies and then greet

him with a hug when the behavior was reinstated, refused to bar the school from using physical aversives as treatment (Butterfield, 1986). In gratitude, the BRI was renamed the Judge Rotenberg Educational Center in 1994.

In December 1990, 19-year-old Linda Cornelison became the third death linked to the BRI. Cornelison had an intellectual disability and could not communicate verbally. She had been trying to communicate to the staff at the BRI that she was sick (it was later revealed that she had ulcers and a perforated stomach); however, the staff interpreted her attempts to communicate as target behaviors (drooling, spitting, nagging, stopping work, refusing, silly laughing) and used aversives that escalated in severity. On December 18, Cornelison received 61 aversives consisting of spankings, finger pinches, and muscle squeezes, and was even forced to inhale ammonia and given taste aversives. She died 5 hours later at the hospital when the BRI medical staff decided it was necessary to call an ambulance (Broadreach Counseling and Mediation, 1995).

The Disabled Person's Protection Commission and the Massachusetts Department of Mental Retardation (DMR) found after an extensive investigation of Cornelison's death

... that JRC/BRI direct care staff, nursing staff, and administration, as well as several specific staff members, took actions that were 'egregious' and 'inhumane beyond all reason' and constituted not only violations of legal standards but violations of 'universal standards of human decency'. (Broadreach Counseling and Mediation, 1995: para. 2)

Although the DMR found abuse and medical neglect, a lawyer for the BRI stated that, "Linda's death was tragic, but it was not the result of negligence. We didn't do anything wrong. We loved her" (Broadreach Counseling and Mediation, 1995: para. 16).

In a 2005 investigation by the New York State Education Department, the agency found students treated with level III aversive interventions for behaviors that were not destructive, aggressive, or dangerous to their health. The New York State Education Department (2006) also found aversive treatments using food control caused an undue risk for nutritional and health impacts on normal growth and development, and that students were not being provided with sufficient academic and special education instruction or related services. Based on these findings the New York State Board of Regents drafted regulations to prohibit the use of aversive behavioral interventions and establish specific standards for use with students. In 2006 the Board of Regents called for the total ban of aversive treatment after the year 2009. However, children currently receiving treatment would continue to receive level III aversives after 2009.

In April 2012, a malpractice suit filed in 2002 against the JRC by Andre McCollins and his mother Cheryl finally went to trial where the judge permitted video evidence of McCollins "receiving treatment" at the JRC. The video showed McCollins, a Black autistic teenager, being shocked "31 times in seven hours while in four-point restraints for refusing to take off his jacket (and saying "no") when

asked. All but two of the shocks were for ‘tensing up’ or ‘screaming’” (Brown, 2015). Although the suit ended in a settlement, the video went viral stoking public outrage (Neumeier, 2015). Gregory Miller, a former JRC teaching assistant created a petition to stop the use of shock devices that received over 270,000 signatures and provided the impetus needed to pressure lawmakers for change. Autistic activists such as Lydia Brown, Shain Neumeier, Ari Ne’eman, several JRC survivors, and agencies such as the Autistic Self Advocacy Network also provided testimony to ban the use of aversives. In a letter to the FDA, Miller (2013: para 1) wrote:

I am guilty of carrying out some of the most terrible torturous crimes against helpless and nonverbal students. The nonverbal students cannot speak of the horrors to which they are subjected at JRC by well-meaning staff like me, or tell of their nightmares from watching their classmates get shocked.

On April 2016, the FDA announced a proposed ban of the electric shock devices at the JRC and invited public comment until July 2016. Currently, there has not been an update from the FDA and the public debates still rages.

Notes on “the state of exception” and “bare life”

Our description of the JRC as the “camp” highlights the casual normalization of some of the most egregious forms of punishment meted out to children and young adults outside of traditional spaces of incarceration like prisons and asylums. We underscore the fact that the JRC was conceived of as an educational center “of last resort” for children and young adults whose behaviors place them outside the boundaries of protection from inhumane treatment. Recognizing this terrifying reality we ask: On what grounds are children and young adults diagnosed with intellectual disabilities, mental illness, and autism located outside the pale of protection from the law? And, what ontological assumptions regarding be-ing disabled make these forms of punishment justifiable? To answer these questions, we turn to Agamben’s (1998) book, *Homo Sacer*.

Agamben (1998) begins *Homo Sacer* by distinguishing between two terms that the Greeks used to describe “life”—*zoe*, the simple fact of living or the natural life and *bios*, the political life. The distinction is significant because in the classical world, the simple natural life, *zoe*, is excluded from the *polis* and confined to the *oikos*, or home as reproductive life. Agamben (1998: 3) then extends Foucault’s depiction of biopolitics as the process by which *zoe* gets included in “the mechanisms and calculations of State power” to bring society into the “threshold of biological modernity.” Punishment, one of the tools of biopolitics, was used to correct “subjects according to their unique potential” (Lewis, 2006: 163) rather than confine individuals who committed infractions against the normative order.

Extending Foucault’s analysis, Agamben (1998) defines the state of exception as “the preliminary condition for any definition of the relation that binds and, at the same time abandons the living being to law” (p. 1) to create a zone of distinction

that is “not a dictatorship. . . but a space devoid of law, a zone of anomie in which all legal determinations — and above all the very distinction between public and private — are deactivated” (p. 50). This zone of indistinction is a no-man’s-land where the sovereign deploys the power of the state to decide which lives are worthy of living and therefore protected by the State and which lives exist outside the purview of State protection—beyond the law—and “who may be killed but yet not sacrificed” (p. 8). This “state of exception” does not refer to an exclusion, but rather an *abandonment* that implies survival in a “legal limbo” where “life is held in suspension, neither inside or outside the polis, neither fully alive nor dead” (Lewis, 2006: 61). More troubling is the recognition that the very concept of democracy rests on defining the “good life” of the polis against what is not there—“bare life.” As such democracy and its other (the state of exception) mutually coexist constituted by and constituting the “relationship between the violence that constitutes power and the violence that preserves it” (Agamben, 1998: 40).

Agamben (1998) also introduces the notion of the “camp” to delineate the biopolitical borders that sketch out the zones of indistinction that constitute “bare life.” The camp has its historical roots in spaces of exclusion demarcated for prisoners of war and insurrectionists, the segregated ghettos and concentration camps like Auschwitz that housed Jews in Nazi Germany and more recently, Guantanamo Bay that has housed Afghan prisoners and is administered by the U.S. military. In each of these spaces, claiming exceptional circumstances, legal protections for the inhabitants of these camps are suspended—the state of exception. Thus, the camp continues to exist “not as a historical fact and an anomaly belonging in the past (even if still verifiable) but in some way as the hidden matrix and *nomos* of the political space in which we are still living” (Agamben, 1998: 166). Here, in the camp, the normal order is suspended such that “it is impossible to distinguish between fact and law, rule and application, exception and rules, which nevertheless incessantly decides between them” (p. 173). The camp, then, is no longer a determinate space, but rather a *dislocating localization* that in recent years has become a permanent space of exception—“a stable spatial arrangement inhabited by the bare life [sic] that more and more can no longer be inscribed in [the juridico-political order]” (p. 175).

In another departure from Foucault, Agamben argues that in these states of exception, new subjectivities are not constituted, but rather citizens are stripped of all subjectivity. Thus, Agamben citing Primo Levi describes the most extreme figure of the camp inhabitant as the *Muselmann* (the Muslim), “. . . a being from whom humiliation, horror, and fear had so taken away all consciousness [such that he exists]. . . at the extreme limit of pain [where] nothing remains but the conditions of time and space” (p. 185). The figure of the *Muselmann* as described by Agamben, however, rejects the possibility of theorizing a resisting agent, notwithstanding one’s location within “the state of exception.” Thus, in the next section of the paper, we will discuss the parallels between Agamben’s depiction of the camp and the JRC and explore the ontological implications for their respective inhabitants.

Abandoned in the camp: Punishment and bare life

(Trigger warning—graphic descriptions of abuse, neglect, and death are present)

The “camp” as described by Agamben is not a relic of the past, but instead, describes a contemporary “spatial theory of power” (Ek, 2006: 264). One such contemporary example of the “camp” is the JRC. We argue here that within the JRC, disabled subjects (especially those with behavioral and intellectual impairments) are conceived of as *zoe* (natural life) rather than *bios* (political life) because the “expressions of life” of disabled people have been “negated as states of exception” on account of their association with a negative humanism (Overboe, 2007: 219). Agamben, citing Karl Binding, a penal law scholar, derived the concept of “life unworthy of being lived” and/or “a life devoid of value” that reaches a threshold “beyond which life ceases to have any juridical value” (p. 138). While originally this argument was utilized to justify the sovereignty of a living man to take his own life, it was also extended to include “incurable idiots, either those born as such or those. . . who suffer from progressive paralysis – who have become such in the last phase of their life” (p. 138). When ableist discourses constitute disabled people as having neither the “will to live” nor the “will to die,” then, as per modern biopolitics, they are constituted as “bare life” and left under the decision-making power of the physician who serves as the substitute for the sovereign. As such biopolitics marks the integration of medicine and politics, where the discussion of pain or even harm to the body is rendered irrelevant to the discussion at hand. Here, as Agamben points out in chilling accuracy, “in the biopolitical horizon that characterizes modernity, the physician and the scientist move in the no-man’s land. . . [where] subjection to experimentation can. . . either return the human body to life. . . or definitively consign it to the death to which it already belongs” (p. 159).

An example of biopolitics that consigns a body “to the death to which it already belongs” is apparent in how behaviorists and physicians have justified these aversive technologies. According to Israel, the founder of JRC, “behavioral procedures that will effectively eliminate problematic behaviors and help the student improve his/her condition and live a more normal life, often have to be highly *abnormal* at first until the behavior changes sufficiently” (Israel, n.d.: para. 13). When in 2007, Dr J. Eason, a professor of biomedical engineering, was asked about the ESDs used by JRC, he pointed out the abnormality existent in the fact that the lowest level of shock the JRC used was “roughly twice what pain researchers have said is tolerable for most humans” (Kaufman, 2007: para. 19) and that the highest level was three times the lowest amount. In response, JRC’s lawyer used the justification that the current had to hurt to work and claimed that the highest shock was no more than a hard pinch (Kaufman, 2007: para. 20).

That the pain is assumed to be both inconsequential and necessary is justified purely on the basis of the ontological—be-ing disabled with intellectual disabilities, autism, and/or mental illness. Here the subject is not conceived of as a productive docile body but rather as “the traumatized paradoxical body” (Lewis, 2006: 165) able to tolerate necessary aversive interventions because it exists within “the state of exception.” In an interview with *People’s* magazine, Israel defended his

exceptional treatments by describing the JRC as a kinder gentler alternative to the state institution. Plummer (1986: para. 6), his interviewer observed that:

For him [Israel], the institute is the end of the therapeutic road, beyond which, says Israel, lies the jungle of the state medical hospital. Israel says that if his critics really want to see cruel and unusual punishment, they should visit a state institution unannounced and take a look at the overmedicated zombies there. Drugs, he says, are not used at BRI, and no one is turned away. “No matter how big, how old, how disgusting the student, we won’t say no.”

Here, the JRC as opposed to the “camp” is described as “a safe haven from the ‘terrors’ of the outside world. . .[such that] the state of exception [the JRC]. . .which encloses to protect folds back on itself to become a space wherein safety and terror can become indistinguishable” (Lewis, 2006: 165). Israel also describes his vulnerable clients as “disgusting,” a term that has the political and legal power to constitute disabled bodies as “bare life.” This political and legal power of the institution also offers parents a ready-made discourse of “therapy” to justify their decision to abandon their children in the “camp.” In fact, even before entering the JRC, disabled children were already constituted as “bare life.” For example, Robert Flanagan defended placing his 29 years old severely autistic son Chris at the BRI for eight years: “We knew the only alternative to BRI was the state institutions, where Chris would be sodomized, beaten and—if he were lucky—held in a strait-jacket. They’re torture palaces” (Plummer, 1986: para 9). Flanagan accepts that BRI’s tactics genuinely horrifies some outsiders, but “as the father of an autistic victim,[sic]” (Plummer, 1986; para 9), he views Dr Israel’s program as a blessing. Similarly, in a *New York Times* article, Kaufman (2007) interviewed a mother who also fought for the use of aversives for her 20-year-old daughter, who had been at the school for four years.

I understand people who don’t know about it think it is cruel, . . . but she is not permanently scarred and she has really learned that certain behaviors, like running up and hitting people in the face, are not acceptable. . .Her behaviors were not acceptable for society, now I think I can bring her home. (Kaufman, 2007: para. 13)

In both examples, we observed that parents were aware that their disabled children are already assigned a negative humanism that locates them within the “state of exception,” and thus feel compelled to enable the physician (Dr Israel) acting as quasi-sovereign to deploy biopolitical power “to consign the subject to life. . .or to the death to which it already belongs” (Agamben, 1998: 59).

Survivors who experienced these aversive treatments offered different testimony. Jennifer Msumba (2014: para. 5) in her testimony remembered this:

It’s not safe. It doesn’t feel safe. I ended up having nightmares weekly, if not nightly — at least once a week — about JRC and the GEDs, about being on the GEDs. In these

nightmares I'm getting shocked. During the day, if I hear certain noises, like the Velcro they use to keep them closed, I freeze. I feel like it's about to happen to me. Or if I'm having a hard time, I start to think I'm there again and that I'm going to get shocked for it. I've been to dozens of horrible places, hospitals, residential schools — and I have never once had a nightmare about any of them.

After years of litigation, investigations, and position statements from several disability rights organizations, the FDA met on 24 April, 2014 to review information that would assist them in the decision to ban ESDs for aversive conditioning. Their specific focus was on a previously FDA approved GED used by the JRC in order to increase the amount of current produced to three times of the approved level in order to create aversive stimuli for residents who appeared to tolerate lower level electric shocks. The following is an excerpt from the testimony of two participants—Dr Dorsey, a member of the FDA panel reviewing the use of ESDs and Dr Blenkush, a representative for the JRC:

DR. DORSEY: I have questions pertaining to your contentions around risks, efficacy, and questions about its application. In your materials and your discussions, you discuss that administering these shocks is “harmless” and that the risks are “theoretical.” How can a device that's designed to cause harm, designed to cause pain, be harmless and have theoretical risks?

DR. BLENKUSH: Well, it's not designed to cause harm. Remember, it's designed to reduce the behaviors by applying an electrical stimulus that is sufficient enough to reduce the problem behavior. So I don't think it's designed to injure the person, and it's not designed to cause harm to the person. It's designed to treat the person's behavior disorder.

DR. DORSEY: Does the stimulus cause pain? Yes or no.

DR. BLENKUSH: Yes.

DR. DORSEY: Is pain a form of harm?

DR. BLENKUSH: Well, then that's —I mean, if we wanted —

DR. DORSEY: Is pain a form of harm?

DR. BLENKUSH: I mean, I think it's something that people would work to avoid and something that we would rather do without, yes. So I mean, if you want to say, is it physical harm? No. But is it uncomfortable? Yeah. It's part of the process, and it's one of the things that we take into account in terms of risks and benefits. (United States of America Department of Health and Human Service Food and Drug Administration (FDA) Center for Devices and Radiological Health Medical Devices Advisory Committee Neurological Devices Panel, 2014: 123–124)

In the above interchange, Dr Blenkush treats the evidence of pain as a theoretical risk because science cannot “accurately” measure pain. This position is supported by many behaviorists like Dr Ivar Lovaas (1965: 99), the founder of the Lovaas method—another normalizing and invasive behavioral therapy, applied behavioral analysis (ABA):

The extensive presence of pain in everyday life may suggest that it is necessary for the establishment and maintenance of normal human interactions. Despite the pervasiveness of pain in daily functioning and its possible necessity for maintaining some behaviors, psychology and related professions have shied away from and often condemned the use of pain for therapeutic purposes. We agree with Solomon. . . that such objections to the use of pain have a moral rather than scientific basis.

Lovaas, however, later moved away from the use of severe pain as an aversive after learning that the children would eventually revert to past behavior when they were no longer subjected to the pain. ABA, however, is also considered abusive and traumatizing to people as well.

Along with the discourses of science, the rhetoric of war also invades the “camp” as a further justification of the violence unleashed on its disabled residents. For example, one of the leading autism advocacy groups in the US, Autism Speaks, organized by parents who have “lost” their children to autism, use a campaign of fear, where autism takes a life of its own and possesses and steals children away from their families. McGuire (2016: 176) describes how this rhetoric blends with the “rhetoric of the war on terror” to create “a frame that conditions into possibility the very particular appearance of pathologically terrifying and terrorizing enemy-figures and, in so doing, delimits the range of possible reactions and responses to those bodies marked as/conflated with such figuration” (p. 176). In the face of so much terror, “what is required are immediate militarized acts of intervention and rehabilitation, invasion and occupation” (p. 177). And most of this weaponry is directed toward the disabled subject as “bare life.”

The material experience of being located within “the state of exception” occurs not via an act of exclusion but via the enactment of the ban that contains the subject within the boundaries of the “camp” through the law of abandonment. This is because according to Agamben (1998: 28),

He who has been banned is not, in fact, simply set outside the law and made indifferent to it but rather *abandoned* by it, that is, exposed and threatened on the threshold in which life and law, outside and inside, become indistinguishable. (emphasis in the original)

To many of the survivors of the JRC as well as disability rights activists, this practice of abandonment aptly describes the context of punitive “care” accorded to the residents of the JRC. Thus, for example, an anonymous survivor of the JRC

describes in graphic detail the affective experience when one is “abandoned” by the law:

The most sickening, horrifying experience of my life was being shocked on the restraint board. What is the board? It is a large, door-sized contraption made out of hard plastic, with locking restraint cuffs on each corner where your wrists and ankles get locked in. Your body becomes stretched spread eagle style, pinned tight, rendering you completely helpless, combined with an overwhelming feeling of vulnerability. It is a torture that you would expect to see in a horror movie. The kind that makes you cringe and scream while you watch. The kind you can’t get out of your head even after it’s over. Only this was happening for real, to me. (Judge Rotenberg Center Survivor’s Letter, 2013)

These critiques have also been echoed by autistic activists, Lydia Brown and Shain Neumeier who provided testimony to the Massachusetts Joint Committee on Children, Families, and Persons with Disabilities at a hearing in 2015 on four bills related to the use of aversive (punitive) behavior modification on people with disabilities. Neumeier (2015: para. 2) testified that:

Aversives attempt to modify target behaviors through the use of punishments that cause physical pain or discomfort. This by itself raises significant ethics and human rights concerns, especially in light of the fact that these interventions are used primarily on populations whose members have no legal right to refuse treatment and are rarely if ever given the opportunity to do so.

The above testimonials while foregrounding the real violence also give rise to both complementary and yet contesting observations. Both testimonials foreground how disabled subjects with labels related to intellectual impairments, mental illness, and autism, by being subject to the violence of the “camp” can find common ground with Agamben’s “enigmatic figure of *der Muselmann* . . . a subject minus the supplement of social recognizability and as such exemplifies bare life itself” (Lewis, 2006: 164). And yet, while the pathos of the *Muselmann* may epitomize the violence experienced by disabled residents at the JRC, Agamben’s account of the *Muselmann* rejects any possibility of resistance/agency. But that we know is not true. While there were residents who did not use oral speech, there were others whose testimony (as in the testimonials included here) acted as subjects/agents, notwithstanding their consignment to “the state of exception” as “bare life.” And yet, as James Overboe has pointed out, “the expressions of life” of disabled people by being construed of through the lens of a restrictive humanism implies that this testimony though loudly articulated is rarely recognized as valid by sovereign power. Thus, brutal as the material violence of aversives has been for disabled residents at the JRC, even more brutal is the ontological violence that undermines the very structure of (disabled) subjectivity now located within the “state of exception,” thus casting the disabled subject outside the realm of political

life. Thus, even though disability activists offer testimonies located within a rights-based discourse, the effectiveness of these testimonies in courts of laws are mediated via the negative ontologies that construct disabled subjects as “bare life” abandoned within the legal limbo of the “the camp.”

Conclusion: Seeing the exceptional in the mundane

In this paper, we have drawn on Agamben’s notion of the “camp” to locate the JRC in a “carceral archipelago” (Foucault, 1977) that includes the continuum of institutional settings ranging from the punitive to the medical to the educational. Our focus has been on the material and discursive structures that conceive of punishments meted out to residents labeled with intellectual impairments, mental illness, and autism as normative and humane treatment. We have also shown how the material and discursive effects of punishment under the power of the physician as quasi-sovereign constitute disabled residents as “bare life.” These discursive and material effects of aversive technologies interpellate the disabled subject outside the expectation of a “political life” (bios) and relegated to the “state of exception” as “bare life” (zoe) “requiring medical or rehabilitation intervention to initially sustain its life, and then to ‘overcome’ the effects of its disability, if possible” (Overboe, 2007: 226). In other words, the inability to overcome one’s disability enables the sovereign to consign the disabled subject to “bare life.”

Moreover, by conceiving of acts of torture/punishment as central to the “war against autism” and other intellectual impairments, this embattled metaphor justifies the spatial power of the “camp” to contain disabled subjects who threaten the “norm.” In these contexts, violent punishments such as electric shock therapies are considered mundane, and the escalation of the severity of these shocks normalized via the rhetoric of education and rehabilitation of children/adults that no other institution would want to include. Thus, even when electric shock therapy is viewed as torture, an exception is made for children and young adults diagnosed with intellectual disabilities, mental illness, and/or autism, who are now confined to the “camp” where they are simultaneously abandoned and bound by the law.

It is also important to remember that the “state of exception” is a relational concept where the political life derives its existence from the negation of all that is contained in bare life. Moreover, the spatial locations of separation experienced by residents at the JRC are not unrelated to the emergence of the new spaces of exception presented by refugee camps, detention centers, disaster areas, and terrorist holding cells. In fact, these permanent spaces of exclusion are ideological anchor points by which the exception gradually becomes accepted as the rule (Jordan, 2014: 35).

Finally, since this paper began by engaging the ways in which punishment is justified on the basis of ontology, it seems fitting that this paper concludes by addressing that same question. That race and disability are inextricably linked is apparent in the observation that several of the survivors of the JRC were also people of color. Additionally, too many black citizens murdered by police have also had impairments,

many of them with intellectual disabilities, mental illness, and/or autism (Adams and Erevelles, 2014). In a sociopolitical context when black lives clearly do not matter, the ontological significance of be-ing black AND be-ing disabled has unfortunately served as even more justification for the violence meted against black disabled bodies who seem even more threatening to the normative social order.

In any case one of the responses to the epidemic of state violence against black citizens in the US has been a concerted attempt to assert their humanity. But those assertions of humanness have not held any water in a white supremacist context that predisposes black life to being conceived as “bare life.” Echoing this argument, Alex Weheliye (2008: 323) reminds us that “black subjects, along with natives, the insane, the poor, the disabled, etc., serve as limit cases by which man could define himself as the universal human.” In this context, calls for rights-based reforms in the face of the material violence enacted by systems and institutions of punishment are ineffectual. Rather, we argue that what is at issue is not so much a matter of rights, but a matter of ontology or more precisely a matter of how to recognize the “expressions of life” of (disabled) subjects as *bios* (political life) rather than bare life. To do so we would have to heed Weheliye’s (2008: 321) exhortation to look for radical alternatives where “we do not take the liberal humanist figure of ‘man’ as the master-subject, but focus on how humanity has been imagined and lived by those subjects excluded from this domain.” It would mean that we both recognize and refuse the discursive and material violence directed against subjects consigned to a “state of exception” in these unexpected spaces of confinement where brutal punishment is meted out to those conceived of as *zoe* (bare life).

Note

1. Be-ing is used throughout this article to indicate its ontological significance.

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