

Countering Legitimacy: Prison Protest and the Colonial Welfare State

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THROUGH THE WORK OF MICHEL FOUCAULT AND OTHERS we have grown accustomed to thinking of the welfare state as a biopolitical formation of liberal democracies. No less a dimension of the biopolitical state is the prison system with its regimes of incarceration and reform. This article seeks to examine the history and practices of incarceration as a mechanism of the liberal state in relation to a contested and colonial domain, namely, Ireland. Commencing with the period of the formation of the modern British state and the relation between prison reform and political prisoners' protest, I look at the simultaneity of discourse on prison architectures and on (the welfare of) prisoners' bodies. The long-standing concern of the state with the structures of incarceration and punishment, on the one hand, and with the welfare of the "reformable" subject, on the other, provides a somewhat telescoped context for understanding the prison protests of the 1970s and 1980s in Northern Ireland, the bureaucratic opposition between the "ordinary decent criminal" and the recalcitrant political prisoner, and the nature of a protest that deploys both the reduced "bare life" of the body and the very architecture of the prison against the logic of "criminalization" of political prisoners.

To think Ireland in this context is to be struck forcibly once again by Ireland's more or less anomalous state—the state of being a colony that is in certain senses also a welfare state—and to think again how much the colonial state is bound up with notions of welfare and with the biopolitics of managing subject populations. One is obliged to consider how much anticolonial struggle has been fought out on a terrain shared with the welfare state—that of the body as an object of the state's concern. It has, of course, often been noted that the politicization of the Northern Irish Catholic middle classes, themselves to some extent beneficiaries of the welfare state's expansion of public education, was in part driven by "a growing awareness of Protestant monopolisation of recent expansion in the state sector of the economy and the public sector," just as it has generally been understood that working-class Catholic disaffection from the Protestant state was the consequence of systemic discrimination.¹ But it has not often been noted that

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the nonviolent Northern Ireland Civil Rights Association (NICRA) of the late 1960s, which preceded the onset of the IRA campaign, while taking the terrain of formal legal and political rights as its object, was ignited by an issue that had to do with welfare, that is, the issue of fair access to public housing for Catholics/nationalists.²

But I will commence, a hundred years earlier, with a constellation of texts that mark the first stirrings that would lead to the formation of the welfare state. Marx's chapter "Simple Reproduction" in *Capital* points out that reproduction has two aspects: the reproduction of mere labor power in the form of nourishment and rest and, increasingly, the reproduction of skills and dispositions, "the accumulation of skill, that is handed down from one generation to the other." Citing a letter to the *Times* from a "cotton lord," Mr. Edmund Potter, that raised alarm at schemes to aid emigration by skilled operatives made workless by the slump of the Lancashire cotton industry during the American Civil War, Marx produces a parable of the moment at which capitalism demands that the state assume the costs of reproduction: Potter insists that the state should subsidize the retention of the operatives in the country rather than risk losing their accumulated skills, so difficult—unlike machinery—to replace.³ The domain of welfare emerges as the state takes charge of both the costs and the institutions of reproduction for capital, becoming in the process the "biopolitical" state. This fact signals the extent to which, from the outset, the welfare state, the state that cares for its population, was bound up with the requirements of capital accumulation; as Claus Offe has suggested, "while capital cannot coexist *with*, neither can it exist *without*, the welfare state."⁴ To take care of reproduction is to take charge of both the bodies and the comportment of subjects.

Some five years after *Capital* was published, William Tallack engaged in an inquiry into the British and Irish prison administration for the penal reformist Howard Society. The core of his concern was that the "congregation of" and "communication among" prisoners prevented the reformatory aims of imprisonment from being achieved. Against the continuing practice of forced labor on the "gang," or "congregate," system, Tallack argued for a principle of separation that would allow for the *individualization* of prisoners. He accordingly recommended the "cellular system" that was already to some degree in operation in European prisons. That system "implies total separation, both by day and night, from *other prisoners only*, but frequent daily communication with instructors, prison officers, or philanthropic visitors."⁵ The cellular individuation and

The Politics of Culture in the Shadow of Capital (1997), with Lisa Lowe; and *The Nature and Context of Minority Discourse* (1991), with Abdul JanMohamed.

¹ See Paul Bew, Peter Gibbon, and Henry Patterson, *Northern Ireland, 1921/2001: Political Forces and Social Classes*, rev. ed. (London: Serif, 2002), 143. The paradox of nationalist mobilization being led by sectors of the population that have benefited marginally from the colonial state is stressed by virtually all commentators on nationalism from Frantz Fanon to Benedict Anderson. On economic and other forms of discrimination in Northern Ireland and for a summary account of the civil rights movement, see Joseph Ruane and Jennifer Todd, *The Dynamics of Conflict in Northern Ireland: Power, Conflict and Emancipation* (Cambridge: Cambridge University Press, 1996), 150–60, 124–28.

² On the necessity for a conservative Unionist leadership to secure the unity of the Protestant population by furnishing social welfare, see Bew, Gibbon, and Patterson, *Northern Ireland*, 86–89.

³ See Karl Marx, *Capital: A Critique of Political Economy* (London: Lawrence and Wishart, 1954), 1:536–42.

⁴ Claus Offe cited in Hartley Dean, "Offe," in *Modern Thinkers on Welfare*, ed. Vic George and Robert Page (London: Harvester Wheatsheaf, 1995), 220.

⁵ William Tallack, *Defects in the Criminal Administration and Penal Legislation of Great Britain and Ireland, with Remedial Suggestions* (London: Kitto, 1872), 62; William Tallack, *The Cellular (But not Rigidly Solitary) System of Imprisonment, as Carried out at the Prisons of Louvain, Amsterdam, etc.* (London: Kitto, 1872), 6. This latter paper was

isolation of prisoners were thus to be paired with putting external agents of what Gramsci would term the “ethical state” in charge of their welfare.

If, as several theorists of the welfare state suggest, there was for a long time a “blurring” of “the distinctions between ‘welfare’ and ‘penal’ systems,” Dr. Wines, “the American Commissioner to [Great Britain] on prison discipline,” expressed its logic in response to Tallack’s presentation of the cellular system to the English Social Science Association in 1871:

he thought that when the supreme aim of imprisonment was to make men and women better, morally, mentally and physically, and in everything that constituted manhood or womanhood, they should come to look upon those who were confined in prisons not so much as subjects of punishment and suffering, as wards of the State, when the State stepped in and took the place of the parent of the child, or the youth, or the man. He was a ward of the State, and then it was a simple question of when he had become changed—when he had given reasonable promise of going out from his imprisonment and becoming an honest, industrious and useful citizen.⁶

Prison undertakes both the reform of the subject and the reproduction of labor, taking charge of the transition from the subject of punishment to the subject who, in Althusser’s terms, “works by himself.”⁷ As Offe puts it, “social policy is the state’s manner of effecting the lasting transformation of non-wage labourers into wage labourers.” As a condition of that transformation, “The owner of labour power first becomes a wage-labourer as a *citizen of the state*.”⁸ The technical requirements of reproduction become, through the reformatory impulse of the welfare state, a question of political formation.

We can see this most clearly when questions of citizenship and of political challenges to the state are articulated in the form of prison protest. Between 1867 and 1871, the Irish Fenian Jeremiah O’Donovan Rossa was arrested, tried, and jailed in English prisons for sedition. The Fenians were among the first “terrorists” and the first objects of modern forensic technologies—subjected to the first systematically gathered “mug shots” and to a *biometrics* directed at the human body.⁹ In their own self-definition, they were among the first *political* prisoners, not so much by the fact of their arrest for political activity as by the way in which the conditions of their imprisonment became the stage for a contestation of the legitimacy of the state itself. As I will suggest, the Fenians also transformed the prisons into a stage on which the literal “bare human,” the naked body itself, would become both means to and site of struggle with the institutions and architecture of the state.

That struggle took place within the intertwined nexus of the penal and the welfare state. The emergent welfare state was a continuum of institutions marked in the first instance by their confusion or indistinction. There was initially nothing self-evident about the institutional sectoring of policing in the Continental sense that Foucault has made familiar. Indeed, writing in the 1870s, Tallack noted the “miscellaneous and incongruous” assemblage of affairs that were the

delivered by Tallack to the English Social Science Association’s Annual Congress, Leeds, 1871, and printed for circulation at the International Penal and Prison Congress, London, July 1872.

⁶ Wines cited in Tallack, *Cellular System*, 27–28.

⁷ Louis Althusser, “Ideology and Ideological State Apparatuses (Notes towards an Investigation)” in *Lenin and Philosophy and Other Essays*, trans. Ben Brewster (New York: Monthly Review Press, 1971), 181.

⁸ Offe cited in Dean, “Offe,” 226.

⁹ Breandán Mac Suibhne and Amy Martin, “Fenians in the Frame: Photographing Irish Political Prisoners, 1865–68,” *Field Day Review*, no. 1 (2005): 101–20.

responsibility of the British home secretary. Apart from a wide range of matters that we would recognize as related to justice, he was responsible for “ridiculous compounds of promiscuous business,” including “Health of Towns, Mines, Sewage, Gas, Cab Regulations, Water Supply, Lunatic Asylums, Trades Unions, Liquor Licenses, Cattle Plague, ‘Contagious Diseases,’ and the Public Morals.”¹⁰ One principal purpose of the reformer was accordingly to isolate and rationalize the functions of the state, to demarcate and distinguish its functions as aimed at separate aspects of the welfare of the individual and the population. Reform undertook first of all a rational division and distribution of state functions.

Within the nineteenth-century penal system, a similar confusion of spaces reigned. The rational divisions of spaces and times, the “panoptical” framework we are familiar with from Foucault, remained mostly imagined rather than implemented, at least in Britain and Ireland. Indeed, largely absent from the reformers’ designs was the goal of panoptical surveillance, concerned as they were with moral transformation rather than the regulation of external conduct, with interior rather than surface. Few of the cellular prisons constructed in the nineteenth and twentieth centuries with the aim of separation actually embodied Jeremy Bentham’s vision of total and constant surveillance. What they emphasized was the desire for separation even to the extent of frustrating the goals of surveillance, impeded as those would be by the linear corridor and the closed door that sealed the prisoner from contact with other prisoners. Individuation and isolation, as preconditions for the reform of the self, were the principal aims, and the closed cell became the analogue of the discrete and autonomous individual, arrayed in contiguity and equivalence alongside his fellows. In place of the direct exposure to visibility implied by the panoptical model, the surveillance of the prisoner was mediated through an architecture that submitted him to an intense form of serialization in which he became no more than “one digit in an aggregable series.” The spatial form of the prison thus anticipated the prisoner’s reinsertion after his individualizing reformation into an outer world reordered no less on a principle of seriality, the governable world of the modern nation-state within which “the particular always stood as a provisional representative of a series.”¹¹

That aim of serial individuation, however, signals the fundamental paradoxes of the welfare state. Welfare, like the instruments of reform, is directed at the individual, but at the same time welfare produces statistical aggregates of individuals. Its effect is that of a *massification* of aggregated individuals. Yet at the same time, although most recent critiques of the welfare state have been elaborated in the name of the individual and individual rights (in a peculiar twist, the welfare state is said to impede the ultimate welfare of the individual), the individual that is the object of the welfare state is by no means a given at the historical threshold at which that state begins to emerge. Rather, the modern individual is in large part the product of the welfare state, produced and reproduced through its institutions—and not least through penal institutions. This individual is produced as a *type* or *norm* of what it is to be human in and for the state, as the state reaches into the biological, bodily life of the individual. That bodily life, which appears “organically” to individuate and bound the human, becomes the object of a normalizing discourse. It is this process of “normalization” that produces the paradox, invoked throughout the language of prison reformers and penal institutions alike, of the “normal” or “ordinary” criminal, a desig-

¹⁰ Tallack, *Defects in the Criminal Administration*, 11–13.

¹¹ I follow here Benedict Anderson’s highly suggestive analysis of the forms of colonial state governmentality in *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, rev. ed. (London: Verso, 2006), 169, 184.

nation that gives rise to the “ordinary decent criminal” of the Northern Ireland prison regime as distinguished from the political and nonconforming Republican inmates.

One might say, then, that the criminal works within the purview of the state and obeys the rationalities of the laws and technologies that are produced to deal with him or her or, in a somewhat broader sense, that the criminal is the unexceptional substrate of the normalized individual. The criminal finds his or her definition within the purview of the state and in a certain respect justifies the laws (of property, of the monopoly on violence) against which he or she rebels. It is the *political* prisoner who, in questioning both the legitimacy of the state and the forms of his or her “punishment” by the state, succeeds in questioning and defying the logic of penal normalization. The political prisoner works, moreover, precisely by refusing to accept the state’s right to take care of his or her “welfare,” to take charge of the body of the prisoner. The body becomes, rather, a fundamental weapon in the struggle against the state, not merely, though crucially, because it is all that is left to the prisoner, but also, and critically, because the body is precisely that through which the state’s claims to represent prisoners’ welfare, their normalization, and their return to citizenship must be challenged.

We may suggest, then, that the emergence and normalization of the welfare state lead to a shifted terrain for struggle with the state, one that makes the signification as well as the subjectification of the body crucial insofar as the body has become the matter of the state. To take the instance of the NICRA, the recognition that the state is not merely the representative of formal, “negative” rights but reaches into the biological life of the citizen means that the struggle with the state summons the individual’s biological being as the point of contention. What was at stake in the Northern Irish civil rights struggle was only partly such matters as voting rights and more importantly—and initially, inaugurally—questions that concerned the biological life of the minority community, such as housing and other forms of welfare. The struggle for rights came to focus on those points through and at which the individual as body articulates with a community as a whole.

Prisons are, of course, intense and intensified sites of focus on the comportment or regulation of bodies. During the 1860s, the attempts of reformers to produce and institute the cellular system with its program of isolation and individuation confronted the existent system of gang (congregate) labor, a system that enabled the interaction and collective association of prisoners as a dissonant counterpoint to the prison regime. As Tallack noted, to the despair of the reformer “prisoners *do* communicate”: “Prisoners congregated at work together in silence, represent a great day school in which cunning—how to outwit the watchers—is the only lesson learnt *by heart*. Besides the frequency of punishment, and duplicity fostered in evading it, a third objection is, *the expense of superintendence*. More warders are required than under any system, fruitless as their surveillance is after all; and this is the fifth objection, that *the end is not accomplished*. Prisoners do communicate, to their mutual and serious disadvantage.”¹²

Despite all efforts to institute noncommunication in the daily penal labor of convicts, the very instruments of discipline became the means to evade its ends, to assert the collectivity of the prisoners against the institutional goal of separation. O’Donovan Rossa observed this phenomenon when he was obliged to work with other prisoners on the treadmill: “There were thirty of us in that gang, and fifteen to each side of the crank, facing those opposite. We laid hold of the iron bars, and the officer cried, ‘On!’ We pushed; our bodies bent; our heads came together at every revolution of the wheel; and remarks of some kind were passed. Those professionals could whisper without moving a lip or a facial muscle, and I took much interest in their flow of sto-

¹² Mr. Merry, chairman of Berkshire Magistrates, cited in Tallack, *Defects in the Criminal Administration*, 62.

ries.”¹³ The convicts, reduced to “appendages of the machine,” found means to “communicate” and thereby to create provisional but effective forms of oral “community” whose very existence, fleeting as these forms may have been, undermined the disciplinary ends of the penal system.

At the same time, however, community, and participation in it, were signs of an inveterate criminality, understood as a refusal to be subjected to the reformatory goals of the prison. Hence, O’Donovan Rossa, however sympathetic to the convicts and their tactics, needed to *separate* himself from this community as a statement of his noncriminality as political prisoner. For to criminalize is to normalize within the purview of the state, to disavow the challenge that the political prisoner’s existence poses to the legitimacy of the state, while for O’Donovan Rossa, to belong to the community of prisoners was to accept the legitimacy of his incarceration and the criminality of his acts as a Fenian. Accordingly, if the emerging welfare state was the means by which the capitalist and, in this instance, colonial state was legitimated, within the specific regime of the prison the political prisoner was called to refuse both its discipline and its “welfare.”

O’Donovan Rossa was therefore obliged to use the disciplinary mechanisms of the prison and their contradictory principles against his own criminalization. Just as the convicts used the treadmill, the instrument and signifier of the congregate, or gang, regime, as a means to reconstitute their community outside the reach of the prison regime, so O’Donovan Rossa discovered that he in turn could use the other regime of the prison, with its emphasis on separation and individuation, equally against its own ends. The very uneven and mixed introduction of the “cellular system” meant that he was able to manipulate the contradiction between the mass incarceration of prisoners and the system’s desire to individuate them. Recognizing that his “masters” were using his association with the “criminal” inmates as a mode of both punishment and denomination, he realized that he had to choose separation from their “society,” not willingly but “in opposition to the authority that would degrade an Irish rebel.”¹⁴ He accordingly infringed regulations in order deliberately to bring down the force of “disciplinary separation” (or isolation) on himself: “So that this was actually compelling them to do what I had asked them to do in the first place—separate me from the other convicts. My whole fight had been to require them to recognize the difference between us ‘politicals’ and the ordinary convicts, and in the end they were obliged to do it.”¹⁵ The “political” thus turned the discipline and the structure of the prison against itself, with O’Donovan Rossa even discovering that cellular separation offered him more opportunities to write. Indeed, his whole narrative is replete with instances of his use of the very architecture of the prison to communicate with other prisoners by tapping on walls or floors or incising roof slates that could be thrown over the walls of exercise yards; or to conceal items of contraband, such as by slipping his pen between floorboards or brickwork or hanging his inkwell outside from the bars of the cell; or

¹³ Jeremiah O’Donovan Rossa, *Irish Rebels in English Prisons*, ed. Thomas J. Cox (Dingle: Brandon Books, 1991), 159. Randall McGowen corroborates O’Donovan Rossa’s observations on the prisoners’ capacity to subvert the prison regime in his “The Well-Ordered Prison: England, 1780–1865,” in *The Oxford History of the Prison: The Practice of Punishment in Western Society*, ed. Norval Morris and David J. Rothman (Oxford: Oxford University Press, 1995), 106: “Prisoners were inventive in discovering ways to subvert penal discipline. . . . They developed a form of ventriloquism, the art of talking without moving one’s lips. The prison at night was filled with the sounds of tapping as pipes became a medium for telegraphic communication. Some prisoners created chat holes through which they could speak to one another.”

¹⁴ O’Donovan Rossa, *Irish Rebels*, 91–92.

¹⁵ *Ibid.*, 161.

to exchange confidences with other Fenians across the barriers that separated them at mass but also concealed their whisperings from the guards.¹⁶

O'Donovan Rossa recognized immediately that at every level—its architecture, its routines, its intrusive practices—the technology of the prison was directed at *breaking* the prisoner: the reduction of the prisoner to what can be called, after Giorgio Agamben, “bare life” is the preliminary to his reform. Crucial in this process was the practice of strip searching. The stripping of prisoners was in the first place an instance of biometric rationality. On several occasions, usually but not always as he was being transferred from one prison to another, O'Donovan Rossa underwent being “measured, weighed, stripped, searched, bathed, re-dressed, shaven, shorn, and entered on the books.”¹⁷ The putative concern with the welfare of the prisoner's body merged here with the function of identification and control. But stripping simultaneously furnished a means of discipline; the function of the involuntary nakedness of the prisoner became the ritual of humiliation. O'Donovan Rossa instantly recognized the parallel between strip searching and the military's “breaking” of recruits through stripping:

For three months, day after day, those officers put me through the same routine. I felt it more than anything connected with my prison life; and when the surveillance came so forcefully on one that, when taking a bath, I had to suffer a jailer standing over me, no words could describe the depths of my resentment. I am not overly sensitive or thin-skinned, but I own to strong feelings against my fellow man looking at me in a “state of nature.” When I was at school, and heard boys tell tales of how men were stripped naked when they enlisted, I imagined it to be the most arbitrary outrage they could suffer, and there was little fear of my ever becoming a soldier.¹⁸

This is the fundamental paradox of the naked body under the surveillance of the state: that which is most intimate and “private,” most the property of the individual, the site of identification as of identity, is equally the site of the person's reduction to the unindividuated “state of nature.” Strip searching, like military discipline, combines in one complex the vulnerability and exposure of the individual with his reduction to a mass of undifferentiated flesh: its function is identical to that of the cell, at once isolating the prisoner in his vulnerability and reducing him to an interchangeable unit in a mass.

O'Donovan Rossa, however, managed to transform even this complex practice of surveillance, discipline, and nakedness into the means to redifferentiate the political prisoner. At one point he responds eloquently to a prison governor who says:

“England has no political prisoners now-a-days. You are no more than any other prisoner here, and are treated like every other prisoner.”

¹⁶ *Ibid.*, 83–84, 161. Writing of a slightly later Fenian prisoner—Thomas J. Clarke, who endured fifteen years of solitary confinement from 1883 to 1898, mostly under a regime of total silence—Sean O'Brien remarks that “because the prison sustains itself as an entirely self-contained unit, the primary means with which to survive it are found within the structure itself” (“Irish Prison Writing and the Victorian Penitentiary” [PhD diss., University of Notre Dame, 2008], 102). He goes on to argue: “Once the cell and the prison have been imaginatively dismantled and reconfigured, all of the elements of his imprisonment become potential sources of resistance and consequently of survival” (109). This suggests that O'Donovan Rossa's experience and tactics were by no means unique to him but part of a set of Fenian responses to imprisonment dictated by the very form of the prison in their historical moment.

¹⁷ O'Donovan Rossa, *Irish Rebels*, 191.

¹⁸ *Ibid.*, 152.

O'D: "Ah, but Governor, I think you are mistaken. You don't keep the gas burning in the cell of every other prisoner all night; nor do you strip every other prisoner naked once a day. You don't take every other prisoner through wards and corridors from his day-cell to sleep in another at night; nor do you punish every other prisoner for not doing two work tasks at the same time."¹⁹

The spectacle of "unaccommodated man" became the sign of his refusal to "accommodate" to the prison regime and therefore of his refusal to accept the state's monopoly on rights and on the right to punish and reform the dissenter into a "cooperative" subject. The body that is deprived of all "welfare" is the very image of the insistence on a threshold of difference from the incorporative function of the state that operates through its curative "care." Here the political prisoner's naked body stands as a staging of bare life, that *zoe* that Agamben distinguishes from the *bios* of political existence as its very sill or unincorporated point of differentiation.²⁰ The assumption of that status by rhetorically embracing the political prisoner's state of exception vis-à-vis other prisoners is at once the refusal to be subjected to disciplinary incorporation by the state and the assertion of standing at the threshold of another political community that will accommodate this bare life.

O'Donovan Rossa's remarkable capacity to transform the very techniques and architectures of the penal system into means of resistance found its counterpart over a century later in the dramatic protests of the Republican political prisoners in Northern Ireland from 1976 to 1981—a recapitulation all the more singular in that, by their own account, virtually none of the young activists then jailed knew much if anything of the history of Republican prison protest. Their own prolonged protest, raised from an individual to a mass scale, took place within the context of a fully developed, if discriminatory, British welfare state. The background to that prison struggle lay in the unfolding of Britain's counterinsurgency campaign and its attempts at "normalization" of the conflict. In the wake of the violent police reactions to the civil rights movement of the late 1960s, conflict in Northern Ireland rapidly escalated from street protests into organized armed struggle. The British army initially responded to the conflict in a framework based on colonial counterinsurgency campaigns it had fought elsewhere in the postwar period, including Malaysia, Kenya, and Cyprus, campaigns in turn partly shaped by previous insurgencies in Ireland. Among the strategies adapted from those "low-intensity" campaigns was internment, introduced into Northern Ireland in August 1971; numerous suspected Republican activists were incarcerated, including some who were neither paramilitaries nor, in many cases, politically involved at all but who were subjected to "in-depth" interrogation and extended incarceration without trial. Numbers of internees eventually reached more than 2,300. Because of the counterproductive politicizing effect of such mass intrusions into largely Catholic and nationalist communities, British policy increasingly sought to use the courts as a means of convicting and confining those suspected of terrorist offences. Where internment indirectly recognized the colonial nature of the conflict, use of the court system began the gradual effort to recast the conflict as a law-and-order problem. In 1976, the British government radically changed its counterinsurgency policy in Northern Ireland and decided to regard all terrorist acts as ordinary crimes rather than as politically motivated offences. The policy of "criminalization," which was part of a larger strategy of seeking to "normalize" life in Northern Ireland and to cast the violence as an apolitical question of law and order, was clearly designed to delegiti-

¹⁹ Ibid., 158.

²⁰ On the distinction between *zoe*, or mere biological life, and *bios*, or life as political or cultural, see Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, trans. Daniel Heller-Roazen (Stanford: Stanford University Press, 1998), 1–3.

mate the IRA and other paramilitary groups and to deny the colonial roots of the conflict. Beginning in 1976, men convicted in the special, or Diplock, courts were to be incarcerated as ordinary criminals in the purpose-built Maze Prison at Long Kesh, a complex of cellular blocks that became known as the H-Blocks because of the way in which the wings were arranged around a central administrative “bar.”

Republican prisoners immediately determined not to recognize their criminalization. The prisoners refused to wear the prison uniform and were locked in their cells naked apart from the towels or blankets that they wrapped around themselves. To break the prisoners’ resistance, the prison authorities attempted many strategies of humiliation, including obliging prisoners to go to the canteen naked or to stand naked outside the governor’s office. The casual and systematic violence of the mostly Loyalist warders meant that movement in the wings, to use the bathrooms or go on visits or medical checks, became the occasion for harassment, beatings, and intrusive bodily searches, including the infamous and brutal mirror searches of the prisoners’ rectal passages and other orifices. Eventually prisoners refused to leave their cells and went on the “no-wash” protest (often known as the “dirty protest”). When warders began to empty their chamber pots onto their bedding, prisoners resorted to emptying them out their windows. When these were blocked up, they would empty them under their doors at night. Eventually, they were forced to dispose of their excrement by smearing it on the walls of their cells rather than allowing it to accumulate in corners. In the course of the “blanket” and no-wash protests, the prisoners managed to gain considerable control of their cell blocks, being held in de facto segregation from both Loyalist prisoners and the nonpolitical offenders, the so-called ordinary decent criminals. They negotiated with prison officials only through their block and wing Officers in Command and, despite the appalling conditions in which they lived, organized political and language classes and other forms of recreation within their wings, while continuing to communicate and strategize with the IRA command.

These conditions continued until late 1980, when H-Block prisoners decided that their protests were failing to gain sufficient public awareness and escalated their protests by adopting the tactics of the hunger strike. The first collective hunger strike, in December 1980, appeared to achieve the majority of the prisoners’ demands and was called off when one striker was in danger of dying just as negotiations appeared about to succeed. However, British authorities reneged on the understandings that were reached, believing that they had broken the prisoners’ resolve, and in March 1981 the prisoners began a second hunger strike, planned in a different and unprecedented way. Rather than striking en masse, volunteers went on strike serially, at regular intervals, thus ensuring that there would be a continuous “conveyor belt” of dying prisoners if authorities refused to yield. In a radical break with the Republican tradition of refusing to recognize the British parliament, the National H-Block-Armagh Committee put forward Bobby Sands, the leader of the strike, as a candidate in the April by-election in Tyrone, listing him on the ticket as a “political prisoner.” Unexpectedly, he not only won the election but did so moreover with an overwhelming majority of nationalist votes. His death in May 1981 was met with worldwide protest and was followed by the deaths of nine more strikers before family members began to demand treatment for the strikers when they lapsed into coma, thus effectively breaking the strike’s momentum. Although the negotiations during the hunger strike ended in compromise, gaining the prisoners some of their demands short of official political status, Sands’s election victory and the international recognition that it brought to the prisoners were understood to have gained them

the political legitimacy that they sought, not only in Ireland but—perhaps more importantly—with the Irish community in the United States.

My own reading of the later protests, which helps to explain the apparently spontaneous repetition of many of O'Donovan Rossa's tactics, understands them as determined by an architecture that is itself a kind of "memory chamber" of those former struggles and designed to break a resistant collectivity once again. The architecture of the modern political prison was developed to confront the possibility of exactly the kind of resistance that prisoners like O'Donovan Rossa posed, and its very form necessarily retains the traces of that protest. The unrelieved repetitiveness of the cellular H-Blocks was intended to separate and individuate activists whose political violence had overnight been criminalized, and that serial individuation was designed to lead to the reintegration and conformity of the prisoner.²¹ Accordingly, although the refusal to wear prison uniform was an immediate and unstrategic response to the new policy of "criminalization," it entailed a series of further actions and reactions, determined in their form by the very architecture of the cell blocks and directed toward the refusal of separation and individuation. The blocks themselves, as a defined and isolated terrain, became the reclaimed space of a collectivity.

Agamben remarks on the intimate relation of the state of rights to the biopolitical state:

The contiguity between mass democracy and totalitarian states . . . does not have the form of a sudden transformation. . . . It is almost as if, starting from a certain point, every decisive political event were double-sided: the spaces, the liberties, the rights won by individuals in their conflicts with central powers always simultaneously prepared a tacit but increasing inscription of individuals' lives within the state order, thus offering a new and more dreadful foundation for the very sovereign power from which they wanted to liberate themselves.²²

As against this inscription, we can understand the work of the political prisoner, who refuses the normative force of welfare, to be the staging of his naked body as the sign of its subtraction from, rather than its subjection to, the state. If we follow the historical dynamic of the Northern Irish struggle, we can see how at every stage it was articulated around the biopolitical or welfare state. In the first place, the civil rights movement mobilized entitlement claims as a mark of the state's failure and was met with a police violence that signaled the extent to which their claims fundamentally challenged the constitution of a state self-consciously framed as discriminatory, as a "Protestant state for a Protestant people."²³ The claim to civil rights, despite the nonviolent nature of the mobilization, was necessarily itself understood from the state's perspective as manifesting a violence that had to be met with violence. This paradox of nonviolent acts being understood as violent was theorized in relation to the general strike by Walter Benjamin, for whom it reveals "an objective contradiction in the legal situation" that is nonetheless fundamental to the problematic constitution of the state itself: "even conduct involving the exercise of a right can, nevertheless, under certain circumstances, be described as violent. More specifically, such conduct, when active, may be called violent if it exercises a right in order to overthrow the

²¹ On the "constant, relentless repetition" of the H-Blocks, as well as for an invaluable photographic record of their architecture, see O'Donovan Wylie, *The Maze* (London: Granta Books, 2004), 6.

²² Agamben, *Homo Sacer*, 121.

²³ This phrase is attributed to both Basil Brooke, later Lord Brookeborough, and Sir James Craig, both leading Unionist politicians; the sentiment is also expressed as "a Protestant parliament" or "a Protestant government." See Bew, Gibbon, and Patterson, *Northern Ireland*, 6–7.

legal system that has conferred it.”²⁴ In their own turn, the prison protests removed the body that was the object of welfare from the care of the state, thus denying its right to take charge of the subject’s transformation or re-formation into a citizen—or ordinary decent criminal. Both the NICRA and the prisoners thus challenged the legitimacy of the state at the level of biopolitics. One might think that the demand of the prisoners was for better treatment of their bodies, for better conditions and an end to abuse, but it was, rather, the demand for the recognition of a difference so absolute that the state could not recognize it without itself dissolving itself—the demand, encapsulated in the challenge to the state’s right to criminalize, for the right to form another state. The dissolution of the prisoner’s body can thus be seen as the mirror of the state’s own dissolution.

Both the NICRA and the prisoners elicited the violence of the state because in effect they challenged the state’s monopoly on violence. Hence, the British government quite consistently insisted on the *self-infliction* of the prisoners’ conditions, which it represented as the savage or primitive indifference of the prisoner to his own welfare and to the hygienic comforts of civility. The rationale of the state in general is that it comes to *cure* an always prior and almost primordial violence: its objects, which it seeks to subject, are those who atavistically preexist the institutions of state and civil society—inhabiting what Hegel saw as the realm of blood kinship and clan. This therapeutic claim of the state of *force* is continuous with its claim to being the state of *welfare*: the state cures violence and thus creates the conditions for its “policing” of its citizens in the broad and ambiguous sense of that term. This therapeutic self-image of the state is its principal means of disavowing the history of its founding violence, what Benjamin calls mythic violence: “law-making” as opposed to “law-preserving” violence.²⁵ In the *après-coup* of the state’s self-legitimation, the initial violence of its own coming-into-being is forgotten, and the state appears to have emerged to counter an always prior and always threatening violence of the other, the “raw,” or “savage,” as-yet-unincorporated life that it wills to subject.

We could say that the *welfare* state, as the legitimating agency of the capitalist state that masks its function of protecting accumulation, becomes the mark of a necessarily repeated disavowal of the violence that maintains (or preserves) the state, an anxious reassertion of its therapeutic role.²⁶ Throughout its history, however, Northern Ireland, for all that it partook of aspects of the larger British welfare state, suffered perpetually from the inability to forget its founding violence. It was a state subject throughout its history to the invocation of a virtually permanent Emergency Powers Act, a state whose coercive origins were thus always in play. The nonviolence of the NICRA was inevitably seen, therefore, as challenging the constitution of the state by demanding inclusion for a population whose claims to equal participation and recognition threatened the very existence of the state as constituted. The full emancipation of the Catholic population would have transformed the state into another polity, with the effect that nonviolence itself could be perceived only as a claim to “mythic” violence. In a manner fully predicted by Benjamin, the coercive force of nonviolence was met with *rage*.

²⁴ Walter Benjamin, “Critique of Violence,” in *Reflections: Essays, Aphorisms, Autobiographical Writings*, trans. Edmund Jephcott (New York: Harcourt Brace Jovanovich, 1978), 282.

²⁵ *Ibid.*, 283–89, 294–95. For an elaboration of this point, see David Lloyd, “Ruin: Partition and the Expectation of Violence,” in *Irish Times: Temporalities of Modernity* (Dublin: Field Day, 2008), 135–42.

²⁶ On Joseph O’Connor’s contention that “the modern capitalist state tries to fulfill two, often contradictory, functions: to aid capital *accumulation* and to buttress the *legitimation* of its social relations,” see Ian Gough, “O’Connor,” in George and Page, *Modern Thinkers on Welfare*, 203.

In the civic violence that followed the suppression of the NICRA, the state itself was thus thrown into question along with its monopoly on violence. Those who subtracted themselves from its rule and its order ceased to be its differentiated, individuated objects as subjects and became (in the temporality of the state, became *again*) a “mass”: hence the vividness of the symbol of the so-called dirty protest, which connotes the pre-hygienic, pre-civil “natural” state of the human. The protesting prisoner, and the larger population he was supposed to represent, became the uncured locus of atavistic violence. This accusation of atavism corresponds to the state logic that the prisoners lacked the rationality of good subjects of and for the state and required “normalization,” individuation within a cellular system that would break up their fearful collectivity. Thus, the penal object of *reform* devolves into the more instrumental project of producing *conformity*. “Conforming” political prisoners, as they are broken by the violence of the system, rejoin the ordinary decent criminals, thus indicating that conformity implies no more than the acknowledgment of the legitimacy of law. Hence, unlike the political prisoner, the criminal belongs in the state, is recognized by the state, is even required by the state as the object of the exercise of legitimate law. As I have suggested above, the criminal must be understood as the counterpart to the possessive individual who appropriates a part of the commons to himself by an exercise of force (property, as the saying goes, is itself theft). The criminal is the imago, in the double sense of larval stage and mirror image, of the individualized subject of the state: in both the state and the individual, a founding and violent moment of appropriation is disavowed, and the law appears as if it merely legislates, in its positivity, the preservation of what has made it. As against that disavowal, violence *and* the bare life made manifest in the political prisoner’s naked body occupy the peculiar threshold that is at once inside and outside the state, at that *limen* where Agamben locates the “state of emergency” itself that is the repetition or recursion to the founding violence of the state.

It is perhaps no accident, then, that our moment of a renewed crisis of the welfare state is equally one in which Benjamin’s dictum, that the state of emergency has become permanent, has become alarmingly self-evident. The crisis of the welfare state coincides with a new moment of primitive accumulation (or what David Harvey has called “accumulation by dispossession”), a moment in which life and the means to life are once again the object of a fundamental appropriation.²⁷ Where once the raw materials of the colonized—gold, silver, minerals, sugar, coffee—and the flayed bodies of the dispossessed transformed into raw labor power were the objects of the violence of accumulation, now those objects are oil and water and the tortured bodies of those who refuse the legitimacy of the state that oversees their expropriation. But the eerie historical proximity of the welfare state and the state of force should not lead us to conclude too easily that the abandonment of the welfare state would be an unmixed good. For the goods promised by the welfare state—and not least because they backhandedly acknowledge the failures of capitalism—are a kind of “second commons,” to play on Lukács’s sense of the constructed but naturalized world of human conventions as being a “second nature.”²⁸ The idea embodied in the goods promised by welfare and the claim to them as an “entitlement” have become fundamental to what it means to us to be human. The crisis of the welfare state is then no less a crisis in the meaning of what it is to be human. But if it is the case that we find ourselves in a moment of crisis, it is as much, in the famous phrase, a moment of opportunity as a moment of danger. Our challenge must be, in this moment of extreme danger, to think the human beyond the framework

²⁷ See David Harvey, *The New Imperialism* (Oxford: Oxford University Press, 2003), chap. 4.

²⁸ Georg Lukacs, *The Theory of the Novel*, trans. Anna Bostock (Boston: MIT Press, 1971), 63–64.

of the welfare state envisaged (and for now to be preserved) as a “second commons” or as compensation for the violence of primitive accumulation. It is ours to ask what kind of distribution of goods, and of rights as the means to more than merely political life, would enable a thinking of the human after, to paraphrase Herbert Marcuse, contingent necessity has been removed: “If human relations are nothing but human, if they are freed from all foreign standards, they will be permeated with the sadness of their singular content. They are transitory and irreplaceable, and their transitory character will be accentuated when concern for the human being is no longer mingled with fear for his material existence and overshadowed by the threat of poverty, hunger and ostracism.”²⁹ To think thus is to imagine human relations beyond the *necessity* of the welfare state, beyond, indeed, the necessity of the state itself, as the instrument of capital and of colonialism. The fundamental challenge posed to us by the prisoner as bare life lies not in the demand for another political state but in the longing for the human life-in-common that would abolish both welfare and the political state along with the artificial scarcity that requires them. [A]

²⁹ Herbert Marcuse, “Some Social Implications of Modern Technology,” in *The Essential Frankfurt School Reader*, ed. Andrew Arato and Eike Gebhardt (New York: Urizen Books, 1978), 161–62.