

The Long Reach of Borders:
Migration, Difference, and the Uses of Punitive Power

By
Mario Bruzzone

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This dissertation is approved by the following members of the Final Oral Committee:

Keith Woodward, Associate Professor, Geography
Robert Kaiser, Professor, Geography
Sarah A. Moore, Assistant Professor, Geography
Gay Seidman, Professor, Sociology
Stephen J. Young, Assistant Professor, Geography

Dedication

La tesis presente está dedicada a todos los muchach@s en tránsito que conocí:
Estar con ustedes y escuchar sus historias me afectó mucho—como una pequeña
bendición en un contexto de muchos dolores y dificultades. Gracias por
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Contents

Dedication	i
Acknowledgements.....	ii
Abstract.....	xii
Introduction: Minor violences	1
Human mobility, state power, and the production of value	2
Spatializing migration politics	7
Violent spaces, violent journeys, violent borders.....	11
The long reach of borders	15
The central problems of this dissertation	19
Methods, methodology and points of departure	23
Transecting trauma and method.....	27
The dilemmas of migrant provisioning.....	29
The researcher in the research	32
Overview of chapters	35
Chapter 1: On exterior and interior detention regimes: Governing, bordering, and economy in transit migration across Mexico	42
Introduction: The <i>huelera</i> and the bar	42
Prevention through deterrence	49
Border regime as method.....	54
Class and detention.....	59
Conclusion: Detention at the interface of state and economy.....	64
Chapter 2: A relational approach to unaccompanied minor migration, detention, and legal protection in Mexico and the US	68
Introduction	68
The Mexican system for protecting minor migrants.....	71
Legal framework	72
Mexican migrant-minor protection in practice: The story of Milton	77

Understanding minor migrants' claims to protection in Mexico.....	81
The US system for minor migrants	84
US legislative framework for migrant minor protection.....	85
Internal tensions in US protection of migrant minors.....	87
Discussion: Towards a relational account of minor migrant protection	91
Conclusion	96
Epilogue, Summer 2018.....	97
Chapter 3: "To not be a human being": Ungrievability, performative appropriations, and undocumented Central American migrants who assemble by dispersing.....	99
Introduction	99
Performative inconsequence and the representation of migration.....	102
Grievability, precarity, assembly	108
Grievability across plural and individual action.....	113
Representations, visibility, migration, signification	120
Conclusion: Migration and the stakes of representation	124
Chapter 4: "Each punishment should be a fable": The punitive-city diagram, punishment as technology, and punitive analytics in Foucault's works of the 1970s and 1980s	128
Introduction: The questions of punitive power	128
Notes toward a punitive archaeology	133
What is it to punish? The elements of punishment.....	140
The punitive city as technology and diagram.....	152
Conclusion: Punishment, discipline, and the diagram of deterrence.....	162
Chapter 5: Migrant punishment and migrant "deterrence": Foucault, the US-Mexico border regime, and the punitive governance of mobility outside the sovereign territory.....	166
Introduction: Punitive power and the dialectic of migration deterrence.....	166
The logic of border militarization.....	171
The elements of punitive power	176
The punitive-city diagram and spaces of migrant punishment	182
Punitive power and sovereign power in migration enforcement.....	186
The project of North American migration "deterrence"	190
Conclusion	195

Conclusion: A punitive politics of migration	197
Trajectories, backward and forward	198
The problem of the subject	198
The problem of political recognition and the migration vocabulary.....	200
Open questions and next steps	203
The punitive turn in im/migration geopolitics	203
The spatial tactics of migration enforcement.....	204
Latin American migration in an era of punitive power	205
Difference and space in migratory contexts.....	207
To arrive, arrive, arrive	208
Appendix A: Statement on co-authorship	214
Bibliographic information.....	215

Abstract

This dissertation consists of five papers that consider the politics of Central American irregular migration in and through Mexico. The first chapter shows how migrants' survival practices enroll them in economic circulations that may be at once intimate, non-capitalist, and deeply exploitative. Further, it considers the co-production of two forms of migrant detention: an "interior" detention regime that orders institutions, and an "exterior" detention regime comprised of the everyday forms of spatial unfreedom brought about in ways apart from state direct-administration yet in relation to state bureaucratic objectives. The second chapter examines the forms of state protection for unaccompanied migrant minors in Mexico and the US. Conceptualized as a geolegal space unified by migrants' mobilities, it uses a case-study to show how systems of legal protection may exacerbate migrant marginalization because legal rights are only functionally available with the help of advocates. In the third chapter, I draw on Judith Butler's concept of "ungrievable life" to reveal how migrants in urban Mexico are produced as ungrievable, how they live under the conditions of that status, and how they may strategically perform their ungrievability. It situates the representational politics of migrants' mobilities - largely in the purview of states who would arrest migrants' mobility - against the signification of those movements. The fourth chapter develops an account of punitive power through Foucault as both immanent analytic and technology of power. I argue for a spatialized conception of punishment, that punitive power can act on individuals both outside the sovereign territory and analytically prior to the behaviors that would identify individuals for disqualification as legal subjects. Finally, the fifth chapter theorizes the long reach of border militarization, which configures Central Americans' decisions in Mexican urban spaces that are

far from the borderlands, through the lens of punitive power. As many intend to continue to the US, Central Americans find their experiences, rather than their behaviors, targeted in such a way as to differentiate and subjectivate them without the presence of state agents.

Introduction: Minor violences

In Irapuato, the migrant shelter's courtyard is all concrete – its walls, floor, smell – with trash cans in one corner and a staff member's motorcycle opposite it. Laundry lines crisscross the seating area. Migrants smoke while sitting in plastic chairs, attend to plump white blisters on their feet, and they socialize, sometimes warily, sometimes gregariously. I am interviewing the second of three migrants who are traveling together, here in this small city in the state of Guanajuato. Irapuato lies in the middle of the overland route from Guatemala to the US border, and at the junction of several different routes north, depending on destination.

Maynor is 32 years old and on his way from Honduras to Denver, where he hopes to be reunited with his son, an American citizen. He had held Temporary Protected Status in the US ever since Hurricane Mitch in 1998, but a minor drug possession charge had seen his status revoked and him deported. Maynor tells me that he stayed in Honduras for two years, working as a security guard at a mall near San Pedro Sula before he needed to return to the United States. He tells me that he can't let his son grow up in Honduras, and that he can't let his son grow up without him.

Maynor hybridizes his English and his Spanish, not fully comfortable in either, and so the interview flips between languages. In a moment of flipping, in this shelter courtyard, I misspeak. As a placeholder, I mean to say the word *pero*, but roll the single r into a double r – *perro*.

Immediately Maynor and a friend nearby crack up. They begin with all sorts of inside jokes - “Remember the face on that train guard?” “You were so scared, man!” and on and on. Eventually I get the story out of them: Several days before, they were spotted when climbing the metal ladder onto a train. An armed train guard forced them to descend. Trying to think up some excuse, Maynor had made the same mistake. *Pero* means “but,” or “however”; *perro* - that means dog. And so the guard immediately struck Maynor in the head with his gun. The two men tell the story together, as a form of slapstick.

Maynor takes my hand and puts it on the spot on his head where the gun struck him. The lump is still sizable. “I told you man!” he says, laughing and triumphant.

I take my hand off his head.

Human mobility, state power, and the production of value

Long before they may attempt to cross into the US, Central Americans such as Maynor must cross Mexico. Their journeys, in the hundreds of thousands annually, are characterized by the threat and presence of violence, especially for those who attempt to travel as cheaply as possible - that is, without *guías* (guides), *coyotes* (middlemen), or *polleros* (smugglers). Migrants are valuable for the money they carry with them and for the money that can be extorted from their families; they are valuable as the bearers of labor-power, with little functional access to state or social protections; and they are valuable for organized criminal groups as clandestine crossers whose timing, crossing points, and quantity can be directed (Izcara Palacios 2012,

2016; Vogt 2013; Brigden 2016). Migrants expect extortion, but they fear kidnappings and torture. One of Maynor's companions told me that he feared disappearing more than he feared dying, because if he disappeared his family might come to believe that he didn't love them.

For undocumented Central Americans, the journey across Mexico traverses Mexico's verdant south, the semiarid plateau home to most of Mexico's largest urban areas, and, for many, the deserts of the US-Mexico borderlands. In 2011, when I first began research on migration in Mexico, Mexican government officials claimed that this journey – 1500 kilometers at its shortest, 4500 kilometers at its longest – took migrants between one and three weeks (Rodríguez Chávez, Berumen Sandoval, and Ramos Martínez 2011, 5). Those claims were deeply erroneous, if not outright lies, but they served an orientation of state neglect that characterized the administration of then-President Felipe Calderón. Calderón's administrative apparatus intervened little in Central American migration, whether to deport migrants or to protect them. Mexican and Central American activists have documented how migrants regularly encounter extortions and kidnapping as well as abuses, injuries, preventable accidents and dismemberments (REDODEM (Red de Documentación de las Organizaciones Defensoras de Migrantes) 2015, 2016; Kovic and Kelly 2017). Alejandro Solalinde, the Catholic priest who is often positioned as the face of the Mexican migrants-rights movement, has called Mexico a “cemetery for the nameless” (quoted in Goodman 2014) and similar depictions abound (Nazario 2006; Martínez 2013; Puga 2016).

This dissertation revolves around the ways in which barriers to mobility for Central American migrants, mostly but not entirely in Mexico, produce and reflect their vulnerability to

economic exploitation and social devaluation. Migrants' experiences in transit overland are unpleasant by and large, with even the best experiences tending to incorporate severe episodes of anxiety and distress. However, representations of migrants' suffering can, as Wendy Vogt has written, "risk becoming dangerously ordinary and one-dimensional" (2018, 4). As she identifies, images and the implicit narratives of migrants flatten migrants' agency, depersonalize individuals, and commoditize their experiences into abstracted media spectacles. In addition, the visual and narrative trope of migrant victimization is double-sided. On the one hand, Mexican migrants-rights activists have wielded it to prompt government action to protect migrants, both in shame-based campaigns and to make social claims on behalf of migrants (Kron 2016; Bruzzone 2017a; Basok and Rojas Wiesner 2018). On the other hand, state agents in Mexico and the US commonly wield the trope to reassert links between migration, violence, and social risk so as to legitimate state-bordering practices. Indeed, the representational strategy has long been understood as a state strength across the globe (e.g. Mountz and Loyd 2014; Mountz 2015; Tazzioli 2016; van Reekum and Schinkel 2017). Wary of such a bind, this dissertation seeks to focalize power relations over migration through migrants' transits. Power relations may create difficult and dangerous conditions of passage, but power relations also play out through migrants' mobilities, individual and collective.

Maynor's account is shot through with spatial politics. Freight trains have long been a preferred mode of transit through Mexico for undocumented Central Americans and some poor Mexicans, despite sporadic crackdowns and raids, and train-hopping in Mexico is deeply associated with migration. The trains – sometimes metamorphosed into the figure of *la bestia*,

“the beast” – present both a segregation by mode of transit and a differentiation through transit. Maynor and his friends engaged in trespassing in order to change trains, and the combination of this trespassing and Maynor’s misspeaking was penalized or remedied with the guard’s violence. Rights to property, legal and *de facto*, have been delegated to the guard, who may enforce them through violence. The guard’s violence is disproportionate to the offense and almost certainly predicated on the migrants’ status as migrants, if not initially – the guard may or may not consider migrants as socially lesser, even if his actions performatively enact a lesser valuation – then at minimum as stabilized from the exterior condition in which migrants’ access to the law in Mexico is severely restricted.

At one level, Maynor’s vignette exemplifies a familiar relation of coercive state control over individuals’ mobilities. It describes a minor violence leveled on a migrant subject by an authority that does not value him or, alternatively, values him predicated on his subordination and submission. Physical violence arises as consequence for violations of the order of power and the order of mobility. Yet if Maynor and his friends had fought back, or resisted, or escaped the guard’s notice, the power relation of the event he describes would have been otherwise. The story works by describing the power relation of migrants’ movements against those who would repress those movements. At another level, the vignette would portray how migrants’ mobilities commonly exceed state control. The guard’s violence was ineffective at repressing mobility, instead temporarily impeding it; Maynor and his friends were ejected from the rail yard but returned to catch a train the following day. Treating the vignette metaphorically, the counter-reading becomes clearer. Private security guards commonly claim to coordinate

with the Mexican government to capture and deport migrants (Campos-Delgado 2017, 8), and the railway companies that employ private security commonly rationalize their security practices with nationalist tropes. As a case in point, Mariana Morante Aguirre quotes one company's government-relations officer as asserting that migrants on trains pose "a serious problem for Mexico" (2015, 24). The devolution of practices of migration enforcement to private individuals and private corporations' use of presumed Mexican state priorities to legitimize extralegal violence strongly imply functional limitations to state control over human mobility. These actors claim state power but pursue private initiatives; if state agencies use them as relays of its power, it does so by allowing a diversion of statist power.

This dissertation frequently returns to a set of geographic problems about human mobility, state power, the production of value, and the operation of borders to interrogate bordering practices and migration enforcement. It shows border militarization's long reach into Mexico, and how migrants' practices enroll them in a political economy of survival. It demonstrates how Central Americans' plural status as migrants enables predation by state and non-state actors, as well as migrants' labor exploitation. But the dissertation also argues that migrants' plural status may allow their movements to signify against state borders without coordinated collective action. It examines how systems of legal protection for unaccompanied migrant minors often exacerbate their marginalization, in part because legal rights are functionally available only through the help of legal advocates and other agents. Finally, it theorizes border militarization at the US-Mexico border as a logic whose practices implicate the production of space. Border militarization as developed in and through so-called "deterrence"

practices have failed to deter, as is well-documented. Instead, they target “migrants” and their experiences – rather than their behaviors – in such a way as to differentiate and subjectivate them. This process, I hold, is best understood as punitive politics of migration, in North America and beyond.

Spatializing migration politics

Immigration policies as well as the more recent explosion in border walls and border militarization have generated an enormous scholarly literature. Much of it reflects and reproduces state-led discourses of migration and spatial imaginaries. Even after prominent sociologists such as Douglas Massey broadened migration studies away from neoclassical models in the 1990s and 2000s (Massey et al. 1993; Massey 1999) to integrate social-capital theory, cumulative causation, network effects, and household strategies, the armature of migration determinants remains pervasive (Orrenius and Zavodny 2005; de Haas 2010; Mayda 2010; Takenaka and Pren 2010; Hear, Bakewell, and Long 2018), reflecting the long privileging of economism in migration-policy debates. For example, Ernst Ravenstein’s individualist “laws of migration” (1885, 1889) arose in a 19th-century social context in which passports and other technologies newly manifested a “state monopolization of the means of legitimate movement” (Torpey 2000, 166) predicated on individuals’ identity-based access to space. The treatments of migration determinants in the mid-20th century, such as Michael Todaro’s germinal work in economics (Todaro 1969; see also Zelinsky 1971; Schwartz 1973; Todaro and Maruszko 1987), viewed migration as governed by wage differentials and opportunity differentials across state

territories and rural-urban divides in a context of modernization debates made under the sign of progress (Lawson 2000). World-systems theory inverted the neoclassical approach, arguing that 20th century transitions to market economies in peripheral countries displaced people from their subsistence livelihoods and forced them to leave their communities in order to survive (e.g. Portes and Walton 1981).

The theoretical complement to migration determinants has been a renewed attention to migrants' strategies and agency. Feminist migration studies in the 1980s leveled important critiques of how gendered discourses erased women migrants' agency by treating them as male migrants' dependents (Morokvasic 1984) and led to difference-led approaches that problematized the concept of "the migrant" as unitary and/or coherent (see Bailey 2005, 95-98). Elsewhere, scholars have theorized migrant agency in opposition to state structures, in studies of pioneer migrants who move through and settle in new locations (Bakewell, Haas, and Kubal 2012) or in considering emigration as a collective act through the political science model of "exit or voice" (Hirschman 1978) and the Marxist-influenced standpoint of a plural mobility against global economic injustice (Rodríguez 1996; Spener 2009). Migrant transnationalism has offered a further strategy to theorize migrants against the state. If "transnational social fields" link receiving and sending communities, then migrants might use them resources to overcome both the material and subjective dimensions of poverty, expand the notions of community and group membership, put pressure on gender norms, and create forms of meaning outside of state frameworks (Basch, Glick Schiller, and Szanton Blanc 1994; Castles 2002; Córdova Plaza 2007; Faist 2008; Ralph and Staeheli 2011; Collyer and King 2015).

Contemporary geographic scholarship on migration largely distances itself both from the language of causal determinism and the structure-agency debates. Andrew Baldwin identifies this distancing to both a methodological concern – so many factors influence human mobility such that “no evidence exists that could substantiate a determinist claim” (2014, 518) – and to a political alignment that recognizes the historical role of determinism in social-scientific racism. At a methodological level, Jørgen Carling (Carling 2014; Carling and Collins 2018; Carling and Schewel 2018) notes that the primary distinction between involuntary migration (e.g. refugees) and voluntary migration (e.g., so-called economic migrants) presumes a sedentarist norm. The overemphasis on migrants’ “choosing” to go or stay is complicated by processes of involuntary mobility (e.g. deportees, but also children migrating with parents), involuntary immobility (e.g. the incarcerated, but also children unable to join parents), and mobility’s intrinsic value for subjects apart from either origin or destination. For feminist geographers such as Vicki Lawson (1998, 1999), quantifiable processes like wage rates, violent incidences in sending communities, and wage differentials always elide the relationships between place and people as well as the power relationships that configure who migrates, under what conditions, and with what consequences. For scholars influenced by the “autonomy of migration” thesis, state migration-enforcement practices respond to the fundamental socio-spatial process of mobility, which must always precede control analytically (Casas-Cortes, Cobarrubias, and Pickles 2015; see also Mezzadra and Neilson 2013; Papadopoulos and Tsianos 2013; Nyers 2015; De Genova 2017).

The feminist intervention in migration geography (e.g. Lawson 1999; Silvey 2004; Hyndman 2012; Loyd and Mountz 2014) opens a specific critique for the study of migration’s

in-between spaces. Taken on their own terms, migration determinants can explain why migratory acts are catalyzed and give sufficient explanation for why immigrants chose or end up in specific cities and regions. At the level of population, they account for why flows are sustained. But they have less utility in explaining migrants' experiences in transit, for at least three reasons. First, migration determinants generally elide the social process of migration journeys, because their analytic objects come into view at origins and destinations. Even the stop-start "stepwise migration" approach (e.g. Conway 1980; King and Skeldon 2010) reconciles a migration trajectory to structural approaches by the serial addition of origins and destinations. Second, to the extent that migrant journeys appear per se, journeys are folded into determinants (e.g. Artuc and Ozden 2018). Journeys become either the outcome of power relations that inform the general migration context - e.g. evidencing still more reasons to emigrate - or the application of power relations - e.g., as part of barriers to mobility generated by states to inhibit or repress flows. Third, the meanings of migration are elided in determinant-focused accounts of extended transits (Carling 2014). Thinkers in feminist geopolitics have shown how migration occupies the overlapping contestations of states while simultaneously enrolling and producing meanings (Hyndman 2004, 2012; Massaro and Williams 2013; Mountz 2015; see also Pain 2009). If migrations per se are places where struggles play out, then they are not determined fully by struggles elsewhere. Consequently, focalizing struggles through migrations and transits offers an important perspective on how power relations are generated, sustained, diverted, and dissolved apart from the perspectives available at origin and destination.

Violent spaces, violent journeys, violent borders

In Mexico, the authors of violence against migrants are legion. In the media accounts that commonly circulate in both English and Spanish (Jones 2014; Vogt 2018; see also Chapter 3), they include individual opportunists, local gangs, organized transnational criminal organization (“cartels”), as well as local police, Mexican federal police (“federales”), migration-enforcement agents, and other state officials. If the former half of this list marks a familiar cast of “bad actors,” the latter half marks an equally familiar trope of corrupt state officials in the Global South. But there are reasons to be wary of accepting the framework. First, the “criminality and corruption” discourse smuggles in a normative idea of how Mexico should be for Central Americans – one that lies at odds with how Mexico has been for all migrants since at least the 1970s (Fitzgerald 2006; García 2006; Casillas 2007, 2011; Hernández 2010; Chávez 2012). “Corruption” in particular has been the stable ground, not the social aberration (see also Bruzzone 2017b). Second, as a recent generation of scholars has shown (Vogt 2013, 2018; Sladkova 2014; Brigden 2015, 2018; Gutiérrez Rivera Forthcoming; Van Ramshorst Forthcoming), transit migration through Mexico cannot be understood outside the structural and historical contexts that configure it. Wendy Vogt writes that “in reality, the ‘bad guys’ blamed for violence are actors maneuvering within the constraints of the structures of global capitalism and state enforcement where there is profit to be made from the mobility of unauthorized people” (2018, 4). Her political-economic optic does not absolve “bad guys” of moral responsibility; rather, it opens up a discussion of how a structural production of migrant vulnerability came into being and how it is socially maintained.

Complementing Vogt's approach, my optic is spatial. As a significant body of research has shown, the militarization of the US-Mexico border has been a major facilitator of harms against migrants (Eschbach et al. 1999; Cornelius 2001; Nevins 2007; Fan 2008; Martín Alvarez and Zubieta Fernández 2009; Pickering and Cochrane 2013; De León 2015; Soto and Martínez 2018). A key document is the *Border Control Strategic Plan 1994 and Beyond* (United States Border Patrol 1994), which defined the practical strategy of "Prevention through Deterrence." The 1994 plan advocated that agents act to shift migrant crossings away from the relative safety of urban areas to higher-risk areas like deserts and mountainous regions. The underlying theory or justification was, at the outset, one of substitution effects: with urban crossings became less viable, migrants would be forced to choose between more dangerous crossings in remote areas and not crossing at all. "Raising the costs" would lead to fewer crossings, and eventually to no crossings. The 1994 Plan defines the "costs" (1994, 6) to be increased as the financial expenses, the time spent in transit, the exposure to injury and interpersonal violence, and the risk of apprehension.

Risk of apprehension aside, the tactical goals to raise migration's "costs" largely succeeded, and the strategy continues today. Yet even in its basic economism, the 1994 Plan is a contradictory jumble. Compare the following two paragraphs, which are reproduced faithfully:

The forces that cause legal and illegal migration are powerful. Without positive, long term changes in the root causes that prompt illegal migration such as improvements in the Mexican economy, NAFTA, effective employer sanctions restrictions, or closing the

loopholes that allow illegal aliens to gain equities in the United States, the “push” and “pull” factors will remain strong.

Those attempting to illegally enter the United States in large numbers do so in part because of the weak controls we have exercised over the southwest land border in the recent past. Strengthening border control is a critical component of improved border management and will provide the U.S. Government the opportunity to deal with powerful global immigration pressures in a reasoned, systematic manner. (1994, 4)

The former paragraph recognizes migration flows as structurally configured, primarily by poverty in Mexico and wage differentials between Mexico and the United States. Although it is unclear whether the authors of the document use “equities” in its meaning of social egalitarianism or in its financial sense of accruing wealth, on either meaning the paragraph’s solution to “illegal migration” lies in “long term changes” that reduce or ameliorate economic inequality within Mexico and between Mexico and the US. By contrast, the latter paragraph seems to assert “weak controls” over unauthorized crossings to cause migration. Its assertion that “strengthening border control” will lead to a “reasoned, systematic” border contradicts the prior paragraph’s discussion of migration’s structural causes unless the “reasoned” border largely allows the poor to cross. Yet although the document advocates for significant legislative changes outside the purview of a border agency, it never advocates for a more open border.

A decade after the consolidation of “deterrence,” Wayne Cornelius wrote that “while there is evidence to suggest that migration strategies have been affected by enhanced border

security – crossing points have changed and the use of people-smugglers has increased – these policies have by and large been ineffective in discouraging clandestine entry attempts” (Cornelius 2007, 12). Today, two decades’ worth of research shows no widespread deterrent effect (Espenshade 1994; Cornelius 2001; Cornelius and Salehyan 2007; Ryo 2013; Martínez 2016b; Massey, Durand, and Pren 2016). At times, even border-enforcement officials have acknowledged the failure to deter. Doris Meissner, the Commissioner of the Immigration and Naturalization Service¹ in the 1990s, told Congress in 2004 that her “numbers of investigators were not nearly enough to have any real impact or deterrence capability” (Meissner 2004) and in 2011 pointed out to Congress that deterrence effects remained unsubstantiated in CBP reports (Meissner 2011). Perhaps most bluntly, an internal CBP report in 2014 stated that “results led the US Border Patrol to acknowledge that no amount of resources could guarantee an immediate or sustained interdiction capability” nor deterrence per se (Schroeder 2014, 8). Following Mexican scholars, who have persuasively linked US-Mexico border violence to Central Americans’ exposure throughout Mexico (e.g. Casillas 2011; Calleros Alarcón 2013; Córdova Plaza and Rodríguez 2015), this dissertation examines the extensive effects of border militarization. Border-crossing conditions and their perceptions configure migrants’ decisions far from lines of demarcation, opportunities for “profit to be made from the mobility of unauthorized people” (Vogt 2018, 4) arise from both their movements and inhibitions to that

¹ The INS was the parent agency of the US Border Patrol in the 1990s. Both were reorganized in the early 2000s: the INS was dissolved into the new Department of Homeland Security, under which bureaucrats placed the newly named Customs and Border Protection. The US Border Patrol now refers to the operational law-enforcement sub-agency of the CBP.

movement, and migrants may be penalized long before they actually attempt to cross into US territory.

The long reach of borders

In the 1990s and 2000s, US border policy was aimed squarely at unauthorized Mexican border crossers. “Raising the costs” of migration, as a shared referent, led to policies and practices that would spatially displace transits to “more hostile terrain less suited for crossing and more suited for enforcement” (United States Border Patrol 1994, 7). By exposing migrants to environmental hazards, deserts and mountains provide a “tactical infrastructure” (Jusionyte 2018, 99) and renovate an anti-smuggling tactic dating to at least the 1880s (De León 2015, 32). Although the spatial displacement of migrant transits to unforgiving terrain has not dissuaded migrants from crossing (Orrenius 2004; Cornelius 2007; Massey, Durand, and Pren 2016), it has produced more migrant deaths (Cornelius 2001; Rubio-Goldsmith et al. 2006; Soto and Martinez 2018). When exposure is the proximate cause of migrant deaths, it “provide[s] a moral alibi for any responsibility on the part of the US government” (Doty 2011, 600), both because the “metabolic” (De León 2015; see also Boyce 2016) processes of the desert often erase physical evidence and because no US agents appear as the perpetrators. Belying the apparent naturalness, however, is a continual process of management to maintain the desert as inhospitable to migrants and guides who would make movements safer, more rapid, less strenuous, and less expensive (Cook 2011; Johnson 2015; La Coalición de Derechos Humanos and No More Deaths 2016; Warren 2017; Jusionyte 2018).

In the late 2000s Central Americans became a greater proportion of the US-bound migration flow (Comisión Nacional de los Derechos Humanos 2011; Baker and Rytina 2013). With the change in flow, a different spatial problematic emerged: the territorial disjuncture of migration enforcement. Today, US migration-enforcement agents attempt to influence a variety of sites beyond the US-Mexico borderlands: sending and receiving communities, emigration points from sending states, and the routes along which migrants tend to travel. As with spatial displacement of transits along the border, these attempts iterate older tactics to manage migrants' activities outside the territory. The 1994 Strategic Plan advocated both a redirection of unauthorized movements and a linked tactic to deprive potential migrants of resources in Mexican urban areas (termed "staging"). Likewise, US and Mexican authorities have a long history of collaborations to complicate and restrict the movements of northbound migrants, often migrants' legal movements and often through extra-legal practices (Fitzgerald 2006; Hernández 2010; Chávez 2012). Two spatial implications follow. The distinction - legal, management political, and spatial - between "border" and "interior" would entail the state "exterior" as third site for the operation of power (see Chapter 1). In addition, migration-enforcement practices would appear to produce a spatial politics of rights (Gammeltoft-Hansen 2011; Gurman 2017) through access to the law that is granted or withheld (see Chapter 2).

The territorial disjuncture of migration enforcement is emblematic of a contemporary global trend. The sites where borders are enforced have expanded, and "border work continues to be offshored, outsourced, and externalized beyond its traditional violent borders" (Davies, Isakjee, and Dhesi 2017, 1281). Expanded activities of migrant interdiction and detention are

commonly narrated as a “rearticulation and expansion of sovereign authority” (Jones and Johnson 2016, 192; see also Vaughan-Williams 2010; Loyd and Mountz 2014). Examples include the offshoring of US detention facilities, the Australian territorial excision of several offshore islands, and EU “border-security” activities in North and West Africa (Bialasiewicz 2012; Mountz et al. 2013; Andersson 2014; Loyd and Mountz 2014; Vaughan-Williams 2015; Celata and Coletti 2017). Yet bordering may also make use of spatial registers in intimate relations and in other ways distinct from state-territorial spatial orderings. Lauren Martin provides a provisional list of locations where effects seem to analytically depend on borders yet are spatially detached from lines of demarcation, including “bodies, intimacies, homes, legal cases, ...[and] everyday mobilities” (2015, 244). Individuals’ digital identities or “data doubles” (Bigo 2010; see also Amoore 2006; Amilhat-Szary and Giraut 2015) as well as families (Hiemstra 2012; Martin 2012; Sanchez 2015) might present additional spatial regimes. Consequently, for a great many border scholars, the “form and functions of borders no longer coincide” (Amilhat-Szary and Giraut 2015, 4) – the “form” here referring to the spatial limit, and the “function” referring to the social condition of division.

For studies of migrants and migration, state strategies to curtail the mobility can have effects far from lines of territorial demarcation. Bordering processes and “borderwork” (Pallister-Wilkins 2017) provide powerful optics for understanding the relations between otherwise distinct phenomena, including processes of circulation both across and within state territories (Heyman 2012; Mezzadra and Neilson 2013; Amilhat-Szary and Giraut 2015), the production of immigrant laborers as reliable, affordable, and above all disposable (Shultz 2008;

Smith and Winders 2008; Massey and Pren 2012), experiences of border control and policing that can govern migrants affectively, typically through fear, even when no state agents are present (Harrison and Lloyd 2012; Herrera 2016; García 2017), the capillary power of state normativities for and over migrants (Andrijasevic 2009), and spatial reconfigurations for non-migrants that functionally “move” physical borders (Shapira 2013; Sundberg 2015). However, skeptical of a perceived totalizing impulse, a number of geographers (e.g. Johnson et al. 2011; Burridge et al. 2017) have put pressure on the thesis that “the border is everywhere” (Rumford 2006; Paasi 2009; De Genova 2013). For Andrew Burridge and colleagues, “borders are highly selective and are only ‘everywhere’ for certain excluded sections of the population. Borders are powerful tools of segmentation and differentiation” (2017, 244) but their “ubiquity” (De Genova 2013, 1183) is a metaphor rather than spatial relation.

Throughout this dissertation, I center migrants’ movements both as sites where power relations play out and as the “stakes” of struggle. By studying “border regimes” (Tsianos and Karakayali 2010; Mezzadra and Neilson 2013; Nail 2016) through migrations, I am able to add to accounts of processual borders, borderwork, and bordering, among others. My continual reference point, albeit often tacit, is the experiences that Central American migrants have in transit. Importantly, while migrants’ experiences of movement and stasis may be abstracted into (e.g.) borderwork, they are rarely lived as borderwork. I emphasize that understanding migrants’ experiences and migration phenomena from the perspective of borders is not misguided – the category of “migrant” implies, if not depends on, state borders – but rather that it presents limitations. A border optic can both collapse the phenomena of the journey, and of people’s

mobility, into the phenomenon of being a migrant. It may also render the politics of migrants' suffering as the settled outcomes of power relations, which are then put to work dynamically within other struggles. By contrast, I take categories and borders as necessary to but not sufficient for conceptualizing the power relations that inhere in the struggles over North American migrations. I begin from migrants' experiences, and their widely acknowledged suffering. The suffering that Central Americans in Mexico experience might not filter or exclude, and only contingently differentiate them, when power over migration is expressive – which is to say, when bordering operates as punishment.

The central problems of this dissertation

This dissertation emerges from an attempt to understand the political use of enforced suffering in mobility regimes. Even for Central Americans who never encounter violence, the journey may be psychologically harrowing. Migrants in transit must make decisions within a milieu of indeterminacy and uncertainty, as local conditions are constantly in flux, with violent consequences when one should “choose” wrong. The associated stress can be near-constant. However, my respondents tended to perceive their transits through Mexico as less a part of their life-narrative than a dissociated trial determined by one's luck, choices, and God's will (cf. Brigden 2015). Indeed, for my respondents, luck and God's will were understood to far outweigh any decisions an individual might make. On the one hand, the milieu of indeterminacy does not necessarily produce the psychic burdens of migration for individuals, but it certainly amplifies them. On the other hand, any political use of the psychic “costs” of

migration requires that those who suffer accept or compose the relation between what they undergo and the causal story of why they undergo it. Deterrence logics, for example, would require that a subject believe that forms of suffering – or a risk of suffering, when based in a “risk calculus” – are linked to behaviors. Migrants’ experiences of vulnerability, stress, suffering, and deprivation, and their understandings of those experiences, offer privileged access into the connections between suffering and political power (see also Chapter 3).

If the impelling problem of this dissertation is the power to make suffer, the key problematic is the spatial governance of migration. The five texts collected here treat this problematic from at times divergent angles. The first chapter links the production of conditions in a state exterior space with the crystallization of migration economies, via the delays that force migrants into working in Mexico. In the second chapter, and together with my coauthor Enrique González Araiza, I argue that the North American protections for unaccompanied migrant minors should be understood as a contingently unified cross-national system in which the relevant linkages operate through migrants’ mobilities as well as multiple and disunified subnational bureaucracies. The third chapter draws on Judith Butler’s concept of “ungrievable life” (2009, 2015) to conceptualize how migrants in urban Mexico are produced as “subjects...not quite recognizable as subjects” – how they live under the conditions of that status, and how they may strategically perform their ungrievability in certain situations. And the fourth and fifth chapters argue that the failure of ostensible deterrence policies to deter means they are better understood nominally, as practices whose “strategic use” (Foucault 2000c, 385) is a form of subjugation I theorize as punitive power.

The power to make suffer and the spatial governance of migration converge on an analytics of power. Chapters 1 and 5 concern the bureaucratic logic and set of practices called “deterrence” as well as cross-national projects of border militarization in Mexico and the US. Deterrence has been repeatedly challenged for its ineffectiveness, its infeasibility, and its incoherence as a management paradigm to repress migration flows. Border militarization, the omnipresent logic and interpretive framework for both Mexican and US elites, has equally questionable mechanics. No matter what evidence has been or can be provided, the institutional commitments to both “deterrence” practices and border-militarization logic has persisted. No fundamental revisions arise. However, a failure to restrain migrants’ movements does not imply that “deterrence” practices have no effects, nor that border-militarization logics – in which military force and its threat are states’ first-best response to unauthorized migration (see Chapter 5) – are retroactive justifications for ongoing policies that would contradict their foundational presuppositions. As I argue throughout, the practices labelled “deterrence” do not deter; they make migrants suffer.

Rodolfo Casillas asserts that “the power of those who commit crimes against [Central American] immigrants is embedded in local social processes; it is not a ‘possession’ or ‘invasion’ of them” (2011, 306). In the borderlands, migrants’ exposure to hazardous environments is enrolled in forms of statist power. But the 1994 Border Patrol Strategic Plan not only foresaw that migrants would suffer from environmental harms that the coordinated action US Border Patrol would produce; it also foresaw a rise in violence against migrants that the Border Patrol could exploit to further “raise the costs of migration” (see Chapter 1). Following this through,

we might recognize a state attempt to condition its territorial exterior without claim to either political sovereignty and thereby a legitimated use of violence. In a parallel with border-studies theorists' distinction between the "form" and "function" of borders, if "exterior" modes of management through violence are separated from territorial exteriority, an "exterior" management may be employed within the territory and extend through the territory. Maynor's vignette at the outset of this introduction may serve as a case in point, when the train guard strikes him extralegally, in a location far from the border and socially within what Casillas calls "a submission-dominance order...[operating in] an act of subjugation by some individuals, mostly Mexicans, against others, mostly Central Americans" (2011, 306).

The US-Mexico border regime produces more than violence and representations of itself. My focus on punishment contributes to scholarly discussion around the spatial tactics of migration governance (Mountz et al. 2013). The major state strategies for migration governance as articulated in bureaucratic policy documents and political speech – exclusion, expulsion, differential inclusion, social-network disruption, and punishment – rely on distinct uses of space, ways of interpreting space, and performative productions of space. They present divergences in implicit conceptions of – and ways of targeting – collectivities, individuals, social relationships, and territories to be managed. Where migrant experiences and migrant suffering are epiphenomenal to exclusion and expulsion, and where they are contingent to strategies of differential inclusion, they are necessary to social-network disruption and punishment. The papers collected here might trace this line of thought: Chapter 1 treats exterior migration management; Chapter 3 treats differential inclusion through Butler's notion of "ungrievable

life”; Chapter 4 and 5 concern a punitive power that unites the power to make suffer and the spatial governance of migration. Migrant punishment is analytic lens, an inherently spatial field of struggle, and a technology of power for which migrant suffering is its own end.

Methods, methodology and points of departure

Fieldwork for this project was largely sited in two Mexican migrant shelters: FM4 Paso Libre (FM4) in Guadalajara, Jalisco; and the Casa ABBA shelter in Celaya, Guanajuato. For migrants, shelters offer food, water, rest, a place to bathe and do laundry, and often a place to sleep. Both FM4 and Casa ABBA facilitate access to medical and psychosocial services, known as *acompañamiento* (meaning both “accompaniment” and “company”); in addition, as illustrated in Chapter 2, FM4 offers legal services in some cases. Beyond material and institutional support, Mexican migration shelters provide migrants with spaces of emotional and subjective relief. Vogt calls shelters “spaces of solidarity and hope” (2018, 10), and the migrant-advocacy and direct-action group Las Patronas – with whom I did earlier research (Bruzzone 2017a, 2017b) – has adopted the tagline of “la esperanza del migrante” (“the migrant’s hope”). Likewise, a recent report from the Mexico’s National Committee on Human Rights is titled *The Challenges of Migration and Shelters as Oases*:

Shelters...are essential to maintain strength and unity for people in a context of mobility.

The act of encountering a place where you can stay, feel safe, live among other people, and satisfy basic needs is of vital importance. They are also places where in the midst of worries there are moments of leisure, games, songs, prayers, music, sports, crafts; for that reason the

shelters represent a place of rest in the long journey, where they [migrants] can also find the company of other migrants and accompaniment from those [shelter workers] who assist and give them support. (CNDH/UNAM 2017, 57-58)

Producing the conditions for rest and relief is a continual project and continual challenge for shelters. That challenge illustrates the social context of irregular transit migration through Mexico in at least two ways.

First, migrants' transits through Mexico are often made under exceptionally trying emotional circumstances. My respondents commonly bore the weight of both their hopes for the future and of familial need and personal tragedies: family medical emergencies, extortions, violent neighborhoods, lack of employment possibilities, and violence directed at the migrants and their families. Migrants are commonly victimized in transit, and half of my interviewees had been the victim of a crime while in Mexico. Moreover, the potential for kidnapping - where one's "price" for ransom depends on one's contacts in the US - isolates migrants during their journeys (Vogt 2013), even while migrants are often in the company of others. My respondents commonly came to suspend belief that they are - to draw on Judith Butler's terminology (2004, 2009, 2015) - "grievable":

The migration controls and raids don't get to me. Not anymore. The risks, walking through La Arrocera² [trails off] ... I suffered the evils that creep up on you [*que acechan en el camino*]. I just couldn't care about extortion, not kidnappings, not the even-worse things that pop up everywhere there. You have to arrive.

They don't matter, [his voice cracks] the things that really happen to you on the road. You're not a human being. [Pauses.] You have to not be a human being. If you want to be a person who is someone in life ... [Trails off; restores voice.] You want to have any kind of life, well, it's what's necessary. You have to." (Eber, 27 years old, Escuintla, Guatemala, interviewed February 2016)

The strategy "to not be a human being," repeated in my interviews although variable in phrasing, clearly injures him deeply. In the moment Eber seems to recognize himself as both a person without a social or meaningful life while in transit and a biological life for whom social forms of personhood are denied. As a shelter worker, one can watch and feel as migrants

² La Arrocera ("the rice paddy") lies outside of the town of Huixtla, Chiapas. Crimes against migrants have been common in La Arrocera since at least the early 2000s, and it is mentioned in both Sonia Nazario's *Enrique Journey* (2006, from *Los Angeles Times* reporting first published in 2002) and Oscar Martinez's *The Beast* (2013, from articles published in 2008 and 2009). Vogt (2018) describes treating migrants who had passed La Arrocera as well.

unwind their tensions, often as if their bodies are going to collapse with exhaustion. Yet they often do so quietly, or with words that divert unwanted attention and risky questions.

Second, shelters present “stops on the journey where one can feel safe, cared for, and can restore oneself to continue the journey or to make Mexico one’s destination” (CNDH/UNAM 2017, 18). However, shelters are not set apart from the violence that characterizes many migratory journeys, and typically operate with security protocols. Migrants are vulnerable to local predation like robberies and theft, extortion by state and non-state agents, *enganchadores* or “recruiters” for smugglers and organized criminal actors, and from unscrupulous *polleros* or guides. Shelter workers and especially shelter directors are common targets for extortion threats and death threats. One occurred when I was visiting Casa ABBA in Celaya in late 2015. Inside shelters, tensions can arise through combinations of enforced proximity, everyday interpersonal conflicts, lack of social ties between migrants, and the long echo of the stress of the journey. Forestalling and diffusing these tensions comprise a constant part of shelter work, along with supporting other shelter workers in the ongoing work while allowing migrants to make (temporary) friendships to allow them to “be a human being” again.

I worked at both FM4 and Casa ABBA over the course of research. Additional interviewing occurred at other shelters in the Guadalajara metropolitan area; as well as in the Bajío region north of Mexico City where both Celaya and Irapuato are located. I worked 28 hours per week at FM4 for eight months in 2015-16, with regular visits to the Bajío shelters; and then a month living and working at Casa ABBA in early 2016. I conducted a follow-up visit to the shelters in Guadalajara and Celaya in the summer of 2017. Not much had changed, despite

the ongoing repercussions of the US election in November 2016. In total I interviewed 112 migrants; most of the interviews were recorded. Beyond formal research and my shelter duties, I often chatted in informal situations with those who came to shelters for assistance. The isolation of the migrant journey and, perhaps counter-intuitively, my being a foreigner facilitated a conversational openness when circumstances permitted. In the following section I discuss some of my everyday shelter duties and activities, as well as the research tensions I encountered.

Transecting trauma and method

Maynor's vignette, like the excerpt of Eber's interview, depicts a political relation between subjects and gives evidence for a process through which representational tropes about the journey circulate. In addition, both implicate a set of methodological concerns. On the one hand, their affective charge and use as empirics runs in some way counter to academic scholarship that remains modelled on a facially neutral, positivist ideal. My argument that migrant experiences are inextricable from border regimes, corroborated through Maynor's story, aligns me in a very general way with scholars holding that research is always-already politicized even when it asserts its neutrality, objectivity, or scientific/scientistic distance. On the other hand, the use of stories such as Maynor's can be troubling, particularly when they have a clear potential for individual benefit to western academics and unclear individual or collective benefit for those who have undergone the traumas described. On that count, the use of Maynor's story would seem to insert a nebulous but potent aura of extractivism into the dissertation. This "double front" is particularly salient for the papers in this dissertation, in

which I argue in part that acts of “revealing” the violence of migration have no necessary relation to, nor can be relied upon to produce, changes in migration politics or migration conditions (see Chapter 3).

I affirm these problems but, similar to Audrey Kobayashi (2003), do not believe that they can be overcome in any satisfying way. Instead, I am interested in giving an account of the unmanageable “dilemmas” (Goerisch 2017) in the sites of my research – migrant shelters and in the public margins where migrants congregate – as well as in the metabolism of that fieldwork into academically recognized outputs (e.g. the papers of this dissertation, but also conference papers and talks, grants, and teaching). Like practicing a handstand, this and other research dilemmas can be described through faculties of reason but the balance cannot be produced through disputation. Further, I recognize that methodological discussion through the trope of dilemmas itself responds to a “dilemma”: the approach emphasizes the power relations of research as immanently generated, but at the potential cost of underestimating the importance of forms of social privilege whose benefits may not be consciously perceived. Yet rather than narrowing methodology to a discussion of epistemic constraints (see Peake 2015, 262–63), dilemmas emphasize research praxis, across researcher positionality, the research context, and the longer process of research from fieldwork to academic production. The dilemmas that I describe structured my research and my thinking, even while little in these chapters appears as standard ethnography.

The dilemmas of migrant provisioning

I spent most of my time at FM4 working in the shelter, although I was officially integrated into the organization as part of the “Research Cluster” rather than the “Operations Cluster.” I performed a variety of jobs at FM4, including entry intakes, receiving and sorting donations, manning the *guardarropa* (“checkroom”) where migrants would secure their belongings, accompanying migrants to Guadalajara’s local hospitals, and migrant interviews. Most commonly I worked at the door – really a heavy swinging gate – in an entry area closed off to the street but also separated from the rest of the shelter by sliding doors. The tasks of working the door include an initial screen of arriving migrants with basic questions about their country, routing in Mexico, and time in transit; explanation of FM4’s rules and services offered; pat-downs and reviews of migrants’ belongings, to keep weapons, drugs, and other items out of the shelter; a decision about which migrants would not be permitted entry; and escorting out migrants from within the shelter who had been asked to leave. To reiterate the discussion in the prior section, the safety challenges in a shelter context are serious, material, and require sustained attention from individuals and organizations. FM4’s intake is meant to appear relatively seamless but has multiple checks that migrants must pass to be allowed inside; *el rol de puerta* is the first of these, and where most of the filtering occurs.

FM4’s safety protocols – to protect shelter workers and for migrants alike – manifest a general tension. On one hand lies an organizational value of care and security for the marginalized. On the other lie values of access and inclusion. The dilemma is that inclusion is not possible without some minimal degree of safety, but that safety requires exclusion. Further,

both inclusion and safety are predicated on power inequalities, between the potentially vulnerable and the potentially predatory as well as between the protectors and the protected. A parallel tension arises in interviewing migrants in shelters, whether for the shelters or for scholarly knowledge-production: on one hand, both require that trust in migrants' stories and in migrants be balanced against the fact that migrants sometimes lie. If the possibility of unreliable respondents is typically treated methodologically as an epistemological issue to be addressed through triangulation and corroboration (but see Chapter 3 for an alternative use), putting it in parallel with the former tension suggests an alternative formulation: that research is structured through the conditions that make respondents want to lie or want to tell the truth.

The reasons to lie at the door of the shelter are largely straightforward: to gain access to food and bathing facilities, to gain some small quantity of clothing and other material goods to be used or sold, and because the shelter offers a concentration of migrants in a small space. The organization had several good reasons for stationing me at the door, which often implicated my positionality. At the level of screening, my expertise in the broad dynamics and routes that migrants take across Mexico, as well as the conditions along those routes, allowed for quick evaluation of arrival stories. As an individual, I grew up in an urban setting that prepared me to balance the trust and skepticism needed in the role. Moreover, I can psychologically "live in" the roll's ambiguity, which pulls between a desire to help and the likelihood that in an effort to protect those inside, I have turned migrants away who were entitled to our services. My foreignness was seen as an asset, especially by the Operations Cluster director, because stereotypes of American brusqueness for Spanish-speakers presented a strategic opportunity in

which the shelter could deny access when necessary without exacerbating conflicts. Finally, embodiment makes a difference here: although I'm not notably large in a US context, I am an American cisman who is physically bigger than most Latin American men, so physical altercations and especially subtle intimidations – a recurring problem for smaller-framed volunteers and especially women – were perceived to be less likely by Operations Cluster staff.

For practical purposes, few research interviews could occur on days when I was working the door. Typically, I was at the shelter on Tuesdays, Thursdays, and Fridays, with most interviews taking place on Fridays when my duties were fewer. I found it fairly easy to build rapport with migrants in shelters. Working the door facilitated conversational trust: it meant, for example, that migrants had already interacted with me before I asked them to sit down for an interview. Migrants had also already seen that I was invested in their safety and well-being, as FM4's security protocols are more rigorous than other shelters. But there is another important aspect to rapport-building: that I am not Mexican. Some migrant respondents evaluated me as more trustworthy because they felt that I, as white and American, was extremely unlikely to be connected to *enganchadores* or to organized criminal actors. That trust was not reducible to racial stereotypes (e.g. that white people are more trustworthy) but neither was it entirely separate from the Latin American pigmentocracy. The consequence for research praxis, in the context of a journey that enforces silence on migrants, was that migrants commonly used the interviews to unburden themselves of everything that they had not been able to talk about. Migrants would talk about their children, who they loved and missed. They would talk about being shot and show the enormous bullet-wound on their legs, now a starburst

of a scar. They would ramble. They would tell aimless but funny stories about their cousins who were bus drivers and their sisters who worked in cardboard-box factories. The dilemma I experienced was less about the extraction of stories than the directing of interviews: what many migrants wanted was to be heard, that I share some of their burden, but not all of their digressions would fit into research, nor was I always willing to take on that burden even as they called on me to do so. The dilemma is between one's duty and care for one's project and self against the duty and care for someone amid constant stress and often between periods of acute distress.

The researcher in the research

Let me return to Maynor's vignette to introduce myself to it. In the moment that Maynor took my hand and put it on his head, I felt no strong reaction. I neither liked nor disliked Maynor or his friends. I believed his story and while it surprised me that he had grabbed my hand I was not offended by it. I felt the bump (it was larger on one side than the other) and wished it had not been there but did not feel particularly upset. For better or for worse, I felt almost nothing in this moment. His comic timing made the story funny, if there is such a thing as objectively funny, but I had no emotional response, even when that my hand was put on the bump on his head. I remember the story for a different reason: because my interest was piqued in the non-reaction, both the emotional closure that it seemed to represent and the lack of traction that I had to understand the full suite of experience that the story would seem to invoke. The metacognition that nothing was happening made the experience stand out.

Maynor had treated the interview with a joking air of benign paternalism. Even before the story about the train guard, he wanted to “teach” me what the journey was like. Since the didacticism also functions as an emotional evasion, the story’s larger context presents two figures of affective closure, Maynor’s and my own. The architecture of power of research might be understood to present affective closures and openings for researchers and respondents as an inverse mimesis. For researchers, non-affectivity is a conditioned response that implicates limits to understanding; for respondents, non-affectivity implicates limits to communication of experience. Conversely, affectivity receptivity presents a pair of dilemmas. On the one hand, the co-production of qualitative research is particularly acute in contexts of vulnerability and violence, since the researcher’s arbitration must always decide truth against forms of untruth (e.g. lies, exaggerations, equivocations, and otherwise deceptive speech) but also what has been said against the unsaid, which can have no truth-value. Although Maynor clearly missed his son, it remains unclear to me whether and to what degree Maynor had suffered. On the other hand, Maynor’s story evokes limits to affective receptivity in the actual conditions of the moment. Maynor’s didacticism is inextricable from how he read me and our larger context. His reading covers dyadic relations of getting along, my individual identity characteristics such as gender and age (approximately the same as his), the atmospheric conditions in the shelter that day, and a wider context of power relations where migrants know that shelter workers are never fully set apart from their journey’s violence. The non-individual components of these are relations of power but are not necessarily discernable or even knowable.

Whether I was prioritizing my shelter work or my research project – though they could not be fully disentangled – part of my job was to elicit migrants’ stories. A crucial divergence arises: migrants live a single story, with intense burdens; I listen to hundreds of stories as part of my research and as part of FM4, each of which is evocative in its own way. Listening to those stories, day after day, cannot but have an enormous effect on the researcher. So too being part of migrants’ stories. In late 2015 and early 2016, one of my tasks of *acompañamiento* was the ongoing treatment of a shelter client for a foot that had been run over by a train wheel. Iván was about 50, and he relished talking about how he had lived a life of violence and machismo; I was charged with him because Operations staff perceived him to be less combative when surrounded by people larger than he was. Doctors inserted metal pins into Iván’s toes, and he disappeared from the shelter. But one cold morning I arrived at the shelter, headed to the morning coordination meeting, but was immediately pulled aside because Iván had returned – he was sleeping in a nearby informal settlement called Pueblo Quieto – and needed to go to the hospital immediately. He had stopped caring for his toes; now they had turned black. In the ride to the hospital, Iván spoke with as much bluster as ever, telling me about fights he had had in Tijuana, his stick-and-poke tattoo of the ace of spades, and the specs of his old motorcycle. But in the triage room of the hospital, the nurse told him that his toes had become necrotic and his whole foot would have to be amputated. Iván collapsed into himself like nothing so much as a sheet of aluminum foil squeezed into a ball and thrown in the trash. He spent that night in the hospital, then the next month. When he tried to show me his prosthesis – I had come back with a migrant who had HIV, and stopped in to visit Iván – he was only able to feign the old machismo for a moment before his words failed him.

This dissertation responds to the experience of working in migrant shelters, and makes use of materials gathered during fieldwork, but it is not an ethnography in any traditional sense. If migrants' experiences offer an approach to understanding the connections between suffering and political power, I use this dissertation to flesh out those connections. The approach should not imply anything about "desire" to be or not to be an ethnographer. Instead, the approach reflects the problems that confronted me as a researcher, and the problems of being a researcher in a safer corner of a violent migratory milieu. Affective receptivity is inextricable from research that tries to metabolize it into other things – texts such as this one, but also anything that hints of researcher psychological transference within texts. But there is also a dialectic between the affective capacity necessary to do social science research within violent milieus and the moral sensibility that makes it possible to confront suffering through individuals' experiences. If this project also follows on the broad social currents of its moment – how could it not? – then from the vantage point of 2018 it responds to a historical moment when "cruelty is the point" of much mass politics (Serwer 2018). Its critical balance crosses description, argumentation, and the normative orientation presupposed by both.

Overview of chapters

The papers that comprise this dissertation are presented in roughly chronological order. The first chapter, "On exterior and interior detention regimes," began as a paper talk given at the 2014 AAG, was written in 2015 and published in the edited collection *Intimate Economies of Immigrant Detention* in 2016. The second chapter, "A relational approach to

unaccompanied minor migration, detention, and protection in the US and Mexico,” was solicited and begun in early 2016 for its edited collection *Unaccompanied Young Migrants: Identity, Care and Justice* but, owing to the vagaries of academic book publishing, fully drafted only in late 2017 and completed in summer 2018. The third, fourth, and fifth chapters all arose from single, initial text and were progressively separated. The third chapter, “‘To not be human’: Ungrievability, performative appropriations, and undocumented Central American migrants who assemble by dispersing” was drafted between July 2016 and February 2017 and substantially revised for this document. The fourth chapter, “‘Every punishment should be a fable’: Illegalisms, the punitive city diagram, and a Foucauldian analytics of punishment” is in press at *Foucault Studies*; it was sent out for review in August 2017, returned in June 2018 in part due to editorial turnover, and accepted in October 2018. The final chapter, “Migrant punishment and migrant ‘deterrence’: Foucault, the US-Mexico border regime, and the punitive governance of mobility outside the sovereign territory,” was completed in June 2018 and is currently on a revise-and-resubmit from *Environment and Planning D*.

The first chapter uses the conceptual device of “spatial unfreedom” to explore the prolongation and elongation of migration transits through Mexico. The 1994 Border Patrol Strategic Plan that consolidated “Prevention through Deterrence” attempted to prevent unauthorized border-crossers from using resources in Mexican territory and anticipated a rise in violence in Mexico that would be useful to its objectives. In this way, the foundational document of the US’s contemporary migrant-detention regime recognized and promoted that it should be effected through a series of exchanges with the state’s constitutive outside. I propose,

first, a continuum of spatial unfreedom that charts the hindrances to mobility – if not one’s presence in a location – that may arise apart from formal detention and incarceration, and thereby reveals the many spatial mechanisms that govern the timings and spaces of transit migration. In a broad parallel with border-studies scholars’ disaggregation of borders’ physical form and social function, I disaggregate spatial forms of spatial unfreedom from the forms of power that they present. Responding to accounts of the externalization of borders, in which Global North states coerce or compel third-party states into migration policing meant to diminish onward movements, the chapter argues that externalization is external to the territory but “interior” to state sovereign power. Where that power is unavailable, states may turn to “exterior” detention regimes that enroll complicit actors to enact the violence of borders. In Mexico this occurs both in the violence that surrounds migration as well as in the production of individuals as “migrants” and as the bearers of labor-power.

The second chapter, coauthored with Enrique González Araiza of FM4’s parent organization Dignidad y Justicia en el Camino A.C., describes and analyzes the systems of state protection for unaccompanied minors in Mexico and the US. We offer a descriptive-interpretive account of major revisions in the legal protocols governing migration following the Mexican Constitutional reforms of 2011/12. Although the reforms found the legal basis of unaccompanied minor migrant protection, and although they further create or assign duties to Mexican state institutions charged with serving and protecting migrant minors, few of the changes we describe have been analyzed in Anglophone scholarship. Both the Mexican and US systems for migrant-minor protection have crystallized around an apparent contradiction: minor

migrants are legal subjects without legal agency, yet the agency that they ostensibly lack – volitional action in their best interests – is necessary for their claims to state protection. Employing a comparative sociolegal analytic strategy, we argue that the stakes of this contradiction, and how the institutions involved come to occupy and defend figures of child migrants, manifest a tension between care for children and a policing of undocumented migration. Yet we trouble any congruence between legal access and practical access to the law, through the use of a case from FM4. Finally, we claim is that the disunity and polyvocality of the state means that the bureaucracy of migrant protection between the US should be understood as a North American migrant-protection system in which the subnational agencies rather than state legal regimes are the key actors, and in which agentic minor migrants make decisions in part based on the grounded realities of protection rather than legal rights.

The third chapter uses Judith Butler’s concepts of “grievable life” and “assembly” to explore how mobilities against the state enact political meanings and to examine how representations of North American migrations have a political geography. It focuses on Central American migrants’ experiences within an ungrievable norm that devalues their lives, and how migrants’ mobilities might enact a form of plural action against both the ungrievable norm and against state borders. “Grievability,” on Butler’s account, becomes embodied in social norms that apply to demographic groups and individuals. I highlight the ways in which individual migrants recognize their partial and lesser status as subjects, and how they must learn to survive in that status even while they might contest it discursively. However, because there is no necessary relation between the social statuses by which migrants are exposed differentially to

violence and that violence, they might be seen as plural subject-positions, matched by movements that might be read as a form of plural action. Taking up Butler's account of assembly, I argue that her formulation is symmetrical: If, as Butler says, when bodies assemble, they act in concert such that they enact a plural claim that signifies in excess of discourse, then when the plural action of a group contests their status as ungrievable – such as migrants moving against state barriers to their mobility – they may be said to assemble. If migrants assemble, then they signify, suggesting that state-produced representations of migrant scenes operate in a different register than the signification through which migrants might resist such representations.

The fourth and fifth chapters are dedicated to building an account of punitive power through a reading of Foucault (Chapter Four) and demonstrating the analytic utility of punitive power in the context of North American migrations (Chapter Five). North American border militarization over the past two decades has led to profound changes in migration experiences alongside a continuity in both militarization and militarization's amplification. Yet while deterrence logics account for how border militarization came to be – as a set of practices but also as a policy logic – they do not account for why “deterrence” continues as the sign of border militarization when border militarization does not show a deterrent effect. I hold that the failure of “Prevention through Deterrence” to deter migrants and repress migration indicates a failure of sovereign power; consequently, a sovereign-power optic is less useful for understanding contemporary state management of migration. Engaging Foucault on the question of punishment, these two chapters attempt to develop a notion of punitive power as a technology and places punishment among the limited alphabet of tactics that states use to manage the

movement of people, and returns to the questions of the exterior border regime proposed in Chapter 1.

Thus Chapter Four reads across Foucault's materials of the 1970s and 1980s to understand an immanent Foucauldian analytics of punishment with a theorization of punitive power. Foucault's account of the "punitive city" from *Discipline and Punish* offers theoretical model in which punishment becomes the ordering force of the social, and therein a diagram of punitive power exerted in extensive form across the social field. I argue that Foucauldian punitive power seizes the body in the name of an authority or a reified power, to subordinate individuals to that authority, and with an objective to correct the individual's relation to a multiplicity. Punishment functions as a polyvalent technology of power, operating "above," at the level of, and in "fragments" of embodied individuals. By offering the punitive city as diagram, I show how scholars might gain a new tool for tracing the filiations of a punitive power that - in examples such as neoliberal penalty, migration deterrence and police use-of-force - operates pervasively in social space without resort to juridical power.

Chapter 5 applies a migration-geographic lens to questions of borders and state attempts to govern migration. Examining the joint governance of irregular migration by US and Mexican institutions, and in particular border militarization, my paper shows how enforced suffering is central to contemporary forms of extra-territorial governance. In dialogue with scholarship on border militarization, border externalization and Agambenian abandonment, I first explore practices of North American migration "deterrence" - which consistently fail to deter - through a sovereignty optic. I argue that both externalization and 'bare life' run aground on the shores of

the dispersal and devolution of sovereign power, particularly to non-state actors. To reorient the frame of reference, I develop a reading of Foucault's accounts of punishment that positions punitive power as the mechanism, field of struggle, and relevant analytic for a "deterrence" that does not deter. This argument both solves spatial problems of extra-territorial sovereignty and enables a politicization of punishment as both immanent and always-already political. For border scholars, the chapter proposes to reconceptualize "deterrence" practices in migration governance as practices to punish migrants outside the state territory. Punishment, I argue, extends beyond the state territory because it links both embodied penalties and circulating representations and affects. For social and spatial theory, the paper offers a sustained account of a Foucauldian analytics of punishment. Punishment operates as a "terminal" or complete modality of power, expressing power over migrants who are both differentiated by punitive power's employment and who have no functional recourse to challenging the power wielded over them.

Chapter 1: On exterior and interior detention regimes: Governing, bordering, and economy in transit migration across Mexico

Introduction: The *hielera* and the bar

In 2013, three migrants to the United States sued US Customs and Border Protection (CBP), alleging mistreatment in immigration detention. They contended that they were fed only once per day, denied communication with their family members, denied access to showers and toothbrushes, and said that their cells were so overcrowded that detainees had to take turns lying down. One plaintiff testified that, after apprehension, “for six days she wore the same pants, shirt and undergarments she had on when apprehended. During three of the six days...she was menstruating. Because she had no way to clean herself, she smelled bad and was very ashamed that she was unable to properly clean herself.” None of the migrants had yet been determined to be legally removable, and nominally the immigration detention system is one of civil confinement (*Americans for Immigrant Justice v. Customs and Border Protection*, 2013).

The migrants described the site of their detention as a “*hielera*.” *Hielo* is the Spanish word for ice, and a *hielera* is anything that holds ice or is equivalently cold: a freezer, an icebox, a cooler, or here, a jail cell. The word was used by guards and prisoners alike. One deposition alleged that:

The temperature in the *hieleras* was so cold that [the detainee] observed that the lips and fingers of other detainees had turned blue. [She] experienced pain in her ears from the

extreme cold. The cold also caused her face to turn red and her lips to chap and split. Because of the cold, she and the other detainees would huddle together on the floor for warmth. The cold temperature made it very difficult to sleep....She and other detainees repeatedly asked that air conditioning be turned off but the CBP officers would simply laugh at these requests and the cells remained freezing.

Sites of detention combine material infrastructures of confinement, legal regimes of categorization, and exercises in subjectification. The *hielera* marks one extreme on a continuum of detention practices. In it, a punitive orientation toward migrants is produced alongside those conditions described in the complaint: confinement, overcrowded cells, inadequate warmth, and indifference to bodily needs and bodily functions. While often obscured, sites such as the *hielera* open many opportunities to actualize power, including establishing the conditions for intimate and “internal micro-economies” to emerge (Conlon and Hiemstra 2014), the disruption of social belonging and/or legal rights (Coutin 2010), and the reinscription of racialized difference (Boyce, Marshall, and Wilson 2015). For migrants not in detention but subject to the US detention regime, the possibility of entering into the carceral system contributes to a fearful atmosphere, often making migrants self-regulating, quiet, even “docile” (Harrison and Lloyd 2012; cf. Smith and Winders 2008; Stuesse and Coleman 2014). Numerous scholars across disciplines have traced the opportunities for economic accumulation and labor exploitation facilitated and perhaps produced by this system (e.g. De Genova 2005; Theodore 2007; Hiemstra 2010). But other types of detention exist as well.

2013 also saw the English-language release of Óscar Martínez's book *The Beast*. Martínez draws open the curtain on the journeys of Central American migrants through Mexico through long-form journalism. Chapter by chapter, moving from the south of Mexico incrementally northward, the book's subjects come to recognize themselves as encumbered by forms of spatial unfreedom. These Central Americans push their ways through Mexico, and Mexico pushes back, socially and through state institutions. Migrants find not only their movements arrested, but also qualitative limitations on their capabilities to even exist within space.

One particularly poignant story involves Erika, a Honduran sex worker in Huixtla, in the southern state of Chiapas. Erika arrived in Chiapas at 14 years old, with the intention of settling somewhere, anywhere, in the US. She never made it. Even at home in Honduras, she says, "I never had papers. I never had a birth certificate either. I'm like an animal" (Martínez 2013, 71). "Like an animal," she is unable to show social membership or legal citizenship by way of documentation. Erika's story – as related by Martínez – is not one of redemption. Nor is it a straightforward tale of victimhood. Rather it is a complex account in which Erika copes with exploitative sex work and, at the same time, maneuvers her history and situation into one that provides her with material benefits and a degree of agency. When she arrived in Huixtla, she was already pregnant after leaving abuse in Honduras. She sought work in bars, and recalls:

Her first days of prostitution with disgust: She'd close a deal with a man at a dive, and they'd go to a motel for half an hour. The room would fill with the smell of beer and sweat and she'd let herself be used. Sometimes it was like these men felt that they owned her for that

half hour....She remembers the many times the sessions ended with what she'd gotten to know so well as a girl: insults and violence. (Martínez 2013, 75)

By the time Martínez meets her, Erika is 30. Both her world and her circumstances have changed. Sex work provides her an adequate living, enough that she can scarcely imagine her initial goal of migrating to the US. Nor does she want to return to Honduras. Yet she is stuck. The same work that provides her livelihood stigmatizes her and leaves her without clear recourse to other employment with similar pay. The same phenotype that makes her “sought after” in sex work for her “fleshier” body and “lighter skin” (Martínez 2013, 76) also makes her stand out and hesitant to travel for fear of detainment and incarceration. Indeed, for undocumented migrants in and undocumented residents of southern Mexico, space is invested with relations of power via ever-present threats of targeted extortion, expropriation, and violence. As channeled by Martínez, Erika narrates a confinement to a single small city, a confinement not exactly caused by government but undoubtedly related to state practices. It is a confinement that conditions her choices as well as her subjectivity, what she can do and who she considers herself to be.

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The *huelera* and the Huixtla bar scene each mark a form of spatial detention for migrants. As scholars of the state system of immigration detention have long understood, incarceration need not be actualized for detention to become real. For instance, since 2001 the devolution of US immigration enforcement to local police and sheriffs has led migrants to limit

their use of public space and curtail their public presence, since even a pretextual police stop can lead to state custody, the *huelera*, and summary deportation (Coleman 2007; Winders 2007; Smith and Winders 2008; Harrison and Lloyd 2012; Boyce, Marshall, and Wilson 2015). Migrants find themselves circumscribed within communities and very small social worlds. For scholars who focus on the political economy, the “embodied experiences of ‘illegality’ shape the ‘productivity’ of immigration policy” (Harrison and Lloyd 2012, 366), which is to say that subjective experiences of one’s precarity serve to produce docile laborers. From the perspective of spaces of detention, however, different insights appear. First, “detention” might be productively considered through a relative emphasis on its temporal aspect – “detaining” – rather than the spatial form of enclosure. Second, a continuum of spatial detention arises in everyday life and through everyday life, without necessitating the presence of state agents. Third, productions of state detention might incarcerate, as in the *huelera*, but they might also enroll complicit actors, as in the Huixtla bar.

This chapter situates the *huelera* and the Huixtla bar as points along a continuum of spatial unfreedom achieved by political and economic means. I use the term “spatial unfreedom” analogously to the political-economy term “social unfreedom.” In political economy “social unfreedom” charts how people may be juridically free but socially unfree to choose their courses of action – such as juridically free not to work but bound socially to the wage (e.g. Chakrabarty 2000). Analogously, “spatial unfreedom” marks how even juridically “free” people – those outside legal detentions – may have hindrances on how, where and in what manner they can travel, move, migrate or exist. Migrants in transit toward the US also may

curtail their public presence, to be less vulnerable to Mexican state “rescues,” extra-legal detention by state agents, kidnapping, forced labor and the extraction of “rents,” “quotas,” or “tolls.” This list presents additional points on a continuum of migrant detention, but also to the relation between these extra-state “detentions” and state projects. For 20 years, the CBP has detained and delayed overland migrants within Mexico, as part of a documented strategy called “Prevention through Deterrence.” Or rather, the CBP has sought to promote conditions through which migrants are detained and delayed, while leaving such work to others.

Opportunities for accumulation emerge alongside detention practices and detention regimes. In the *hielera*'s detention regime, migrants are commoditized: their imprisonment makes them “captive and coerced consumers” (Conlon and Hiemstra 2014, 336), their bodies become sources of rents for the operators of privatized detention facilities (Martin 2016), and their labor reproduces the carceral institution from within (Urbina 2014; Sinha 2015). As part of an accumulation logic, migrant detention serves to create and maintain an abject “unauthorized” population providing cheap sources of labor as possibilities for accumulation arise “beyond the overt logic of national security” (Conlon and Hiemstra 2014, 335) that legitimates the un/authorized division (De Genova 2005; Hiemstra 2010; Doty and Wheatley 2013). In the detention regime of Erika's story, her constitution as a laborer occurs outside the US yet in relation to the mechanisms of power that structure practices of state bordering. Erika is one worker in an expansive economy that adheres to migration through Mexico, an economy that includes migrant work en route, the middlemen who may organize migrants' journeys, and the depredations and extortions paid by migrants and their *polleros* (smugglers or guides).

Focalized through forms of power rather than spatial processes, the two regimes could be said to mark detentions “interior” and “exterior” to the state while signifying their co-production. Where the “interior” detention regime orders institutions such as prisons, government bureaucracies and even corporations in order to materialize forms of power on migrants’ bodies, the “exterior” detention regime is comprised of the everyday forms of spatial unfreedom produced in relation to state bureaucratic objectives but apart from their direct administration. In its economy, the “exterior” detention regime substitutes the consistency of punishment - *hieleras* being one example - with the dislocating possibilities of violence and their accompanying physical burdens and intensities.

While the argument proceeds via textual and theoretical strategies, I do so drawing upon a deep involvement with migration in and through Mexico, including a series of ethnographic research trips to central Mexico since 2011; projects attending to incarcerated migrants in the US; nine months working directly in Mexican migrant shelters; and more than 90 formal interviews, and even more informal interviews, with migrants in transit through central and western Mexico. The next section describes how the bureaucratic logic of the policy of “Prevention through Deterrence” incorporates objectives of both interior and exterior detentions to target migrants largely without regard for territory, even while that territory conditions state strategies. The third section examines the generative economic effects of detention. The border regime appears to produce a labor force out of transit migrants. The emphasis on how forms of detention in Mexico are concomitant with migration economies configured by and through the US-Mexico “border regime” (Mezzadra and Neilson 2013)

comprises the second contribution of this chapter. The fourth section uses J.K. Gibson-Graham's (1996) diverse economies framework to ground more firmly the chapter's economic arguments. Gibson-Graham's work facilitates a reading of the external detention regime as generative of a novel class formation for migrants, one that helps regulate their social and economic integration as laborers but does so without presuming that they are subsumed by a unified, hegemonic capitalist economy. In asserting the interconnectivity of forms of detention and state-bordering practices, the contribution of this chapter is to propose that the external detention regime in Mexico represents an activation of power, rather than a refusal to manage a given territory, and results in a series of opportunities for accumulation that burden migrants in transit.

Prevention through deterrence

Since 1993 the US government has implemented a strategy of "prevention through deterrence" along the US-Mexico border. The strategy describes an active attempt to manage overland migration. No longer may "unauthorized" migrants cross in the relative safety of urban areas; rather, they must traverse remote, high-risk areas, walking through deserts and mountains, on the hypothesis that this should deter crossing attempts (Doty 2011; Maril 2011; De León 2013). The *Border Patrol Strategic Plan 1994 and Beyond*, which laid out the strategy, states its underlying logic:

The Border Patrol will improve control of the border by implementing a strategy of "Prevention through Deterrence" The Border Patrol will increase the number of agents

on the line and make effective use of technology, raising the risk of apprehension high enough to be an effective deterrent. Because the deterrent effect of apprehensions does not become effective in stopping the flow until apprehensions approach 100 percent of those attempting entry, the strategic objective is to maximize the apprehension rate. (United States Border Patrol 1994, 6)

Not only was the risk of apprehension to be raised, but the “cost” (1994, 8) of clandestine migration as well. Owing to epistemological difficulties in knowing migrants’ motivations, the policy describes “indicators of success,” including both a “shift in flow to other areas in southwest border” than urban crossing points, and “possible increase in complaints (Mexico, interest groups, etc.)” (1994, 9-10). These among other “indicators” would signal that the immediate tactics were working. Empirically, little evidence validates that deterrence practices reduce unauthorized migration into the US nor reduce the size of the undocumented population in the US (Massey, Durand, and Pren 2016). Yet other effects have come into force.

This section reads the “prevention through deterrence” policy in light of the failure of the strategy that it advocates. This failure contrasts with the significant success of CBP tactics, which, among other effects, have appeared to produce extra-territorial effects anticipated by the policy document. I conceptualize this process - the general alignment of policy statement, objective-oriented interventions, and largely anticipated results of the interventions - as the production of an exterior space of state management. Since the 1990s, the risks, costs, and length of overland migration journeys have increased dramatically. The Central Americans migrants who today comprise the bulk of the overland flow find themselves vulnerable both to

the appropriation of their bodies – as valuables to be kidnapped and ransomed – and to the economic exploitation of their labor (Vogt 2013; Furlong and Netzahualcoyotzi 2014).

However, harder and more dangerous journeys do not mean “less likely to be successful” nor “less likely to occur at all.” That difference invites a closer inspection at the logics and processes of deterrence and detention that produce a state exterior. The strategy here is textual, in order to excavate the avowed intents and instrument-effects that have driven the policy for more than 20 years.

First, the *Plan*'s “key assumption” that “a strong interior enforcement posture works well for border control” (1994, 5) codes the spatial extent of operations. The “posture” defines an orientation meant to propagate deterrence effects by both “agents on the line” and by means of effects visited on, potentially, all unauthorized migrants residing in the US. Via bureaucratic speech-act, activities “on the line” are made contiguous with those in the territorial interior. “Border control” may involve activities at the territorial margin and within the territorial interior, but rather curiously is only ever defined via the apprehension rate of those who attempt to cross. The apprehension rate, however, is literally unknowable and incalculable, since population sizes are unknown. One can estimate. But what the lack of definition for “control” indicates more faithfully is, on the one hand, that border spaces can be variably discursively configured, as “under” or “out of” control (1994, 7) as bureaucratic priorities warrant; and on the other, that border spaces can be variably extensive, that areas “under” or “out of” control can be expanded or contracted, or produced as new spaces requiring intervention.

A second implication of “Prevention through Deterrence” is that Border Patrol “success” derives from a “shift in flow” of migration. The shift’s purpose is anticipatory, to divert routes away from urban crossing points and into a terrain more suitable to Border Patrol priorities. It is not just that urban spaces make it easy for migrants to disappear after crossing, but that Mexican urban spaces can provide vital resources for potential “entrants.” Rerouting flows lessens migrants’ capacities to exploit the resources of urban space. Then, over time, the deterrence effect is to be realized as successive waves of migrants cross the desert and as hazards become increasingly recognized. This spatial reorganization entails changes on both sides of the border. That is, the policy directs flows through specific configurations of Mexican territory as well as US territory. It signals a tactic objective to effect material changes within Mexico, directly and through the actions of smugglers and others who end up complicit.

Third, the document anticipates not only that physical harm will befall migrants, including violence, but that these harms would become widely known. The indicator that “complaints” from interest groups and “Mexico” – a country of over 90 million people in 1994 – marks the work of a logic of differentiation and a geography of subjectivity. In burdening migrants with newly hazardous crossings, the policy produces them as fundamentally distinct from others who are not subject to such dangers. This effect persists even if – even though – the deterrence effect fails. Overland irregular migrants are forced to recognize themselves as differentiated. Even when individuals spatially and socially force their inclusion, they must face that such inclusion is not on the same terms as others’. If they succeed and enter the US without inspection, it is at the cost of having to physically submit to a hierarchy of movement, of

peril, and of continuing spatial unfreedom. The policy qualitatively differentiates these migrants and forces them to make choices and recognize themselves through its operations.

Because the exterior effects here occur outside of the US, they are made to appear as at once outside state responsibility, within migrants' (and others') deserts, and as apart from everyday life. "Prevention through Deterrence," in imagining migrants as a legible population who respond to higher migration costs with fewer attempts, tries to produce effects in the borderlands that will change migrants' preferences. Moving migrants to perilous environments operates as part of this bureaucratic logic, and the production of effects on the Mexican side of the border is an intended outcome. In practice, violence, longer journeys, and higher costs all detain migrants. In turn, this marks migrants as Other, distinct and yet nevertheless subject to state power. What makes the exterior modes of detention so interesting, however, is the bureaucratic disavowal of management. Although the US-Mexico border may have, as Roxanne Doty argues (2011), areas where the US government refuses moral responsibility for the harms to migrants and deaths that occur within them, moral responsibility is non-identical to causal responsibility. Instead, the discourse of "moral refusal" marks the active production of an exterior. This exterior is produced in and through discourse, but also via border-enforcement strategies and cross-national alignments - notably, with the CBP's Mexican counterparts in the Instituto Nacional de Migración (INM) - that impress differential degrees of spatial unfreedom on migrants. Forms of detention, however, are not fully reducible to forms of confinement. Detention may also coincide with forms of bordering that organize circulations of people, of labor, of money, and of services. The forms of power external to state territory and exterior to

state management coincide in the management of circulations, and in the North American corridor, migrants' movements might provide a link for glimpsing the border regime's distributed spatial effects.

Border regime as method

Along the US-Mexico border, state management implicate everyday economic practices and everyday economic life. Moreover, as the effects of management practices at the border spill out into territory far distant from the borderlands, opportunities for accumulation extend outward as well. A critical question animating discussions of the political economy of migration involves the relations between border regimes and accumulation regimes (Castree et al. 2004; Bauder 2005; Akers Chacón and Davis 2006; Smith and Winders 2008; Gentsch and Massey 2011). Yet the mechanisms of the interior detention regime marked by the *hielera* present both empirical and theoretical challenges to scholarship in how it is operationalized, how it operates, by whom, and for what ends. I turn here to Sandro Mezzadra and Brett Neilson's *Border as Method* (2013), which provides a number of essential reference points for understanding how border regimes are structurally and economically embedded in daily life. Most notably, they describe how borders "shape the lives and experiences of subjects who, due to the functioning of the border itself, are configured as bearers of labor power" (2013, 20). In conversation with Mezzadra and Neilson, this section reads the political economies of both the *hielera* and the Huixtla bar against "Prevention through Deterrence" policy in order to give one account of the political economy of the "exterior" detention regime.

Mezzadra and Neilson theorize borders as “equally devices of inclusion that select and filter people and [devices of] different forms of circulation...Borders regulate and structure the relations between capital, labor, law, subjects, and political power even in instances where they are not lined by walls” (2013, 7–8). The processes of selection-inclusion and differential circulation are simultaneous analytically. Borders select and filter the capital flows that may enter and exit the territory, which individuals qualify as what kinds of labor and what kinds of legal subjects, the spatial extent to which legal regimes apply – including where they are excised – and what kinds of political powers are available where. But they also circulate capital through spaces, help time the entry and exit of laborers into markets, organize access to the law, structure national and affective belonging, and the political relations between individuals, between individuals and institutions, and between institutions. Simultaneously borders exceed their physical manifestations, Mezzadra and Neilson say, because they are characterized by an “elasticity” (2013, 8) that stretches or compresses them according to political and economic imperatives. For migrants, “border struggles” implicate “the set of everyday practices by which migrants continually come to terms with the pervasive effects of the border, subtracting themselves...or negotiating them through the construction of networks and transnational social spaces” (2013, 13).

The same border struggles, however, are also constitutive elements in “the formation and regulation of labor markets” because the conditions of crossing physical borders alter both the mobilities of migrants as well as their inclusion as both political subjects and embodied labor power (Mezzadra and Neilson 2013, 263). On the one hand, projects “to control

migrants' mobility" - to direct rather than repress it - are "essential to the workings of capitalist accumulation" (2013, 58). On the other hand, a key aspect has been the historical process to disarticulate worker and citizen, and conversely to construct a hierarchy in which legal rights - notably to mobility and to labor - multiply as attached to a "multiplicity of statuses" of citizenship (2013, 256). This "differential inclusion" of migrants and others is also to be understood as an instrumental form of control, as difference is put to work within processes of precarization, the production of migrant illegality, and multiple demands for migrant loyalty that cleave to certain bodies (2013, 164). Differential inclusion is part of a dynamic "interplay of 'internalities' and 'externalities'" across borders, boundaries, ethnic fault lines, and mobilities that doubly inscribe nations and identities onto one another. We might also read these "'internalities'" and "'externalities'" as dual processes of state power that subordinate subjects to power and separate migrants from power's workings.

Like Mezzadra and Neilson's analytic lens, the *Border Patrol Strategic Plan 1994 and Beyond* is scaled to the state. Both use similar scalar imaginaries and scalar objects. In its "strong interior posture," the 1994 Plan advocates "closing the loopholes that allow illegal aliens to gain equities in the United States" (1994, 4). Over time, it anticipates, first, a "change in traditional traffic pattern," second, a "reduction in use of social services and benefits in the US" - without specifying from or by whom - and, eventually, "pressure for another 'Bracero program' (temporary worker program)" due to "economic changes in US" (1994, 4, 11-12). As a product of the CBP, the *hielera* participates in the *Strategic Plan's* stated objective to catalyze substantial social and economic changes. More broadly, the document corroborates both

selection-inclusion (e.g. the reconstituted “Bracero” guest-worker program, or migrants’ attempts to “gain equities”) and differential circulation (e.g., the traffic pattern, or in the document’s emphasis on highway accidents).

The operations that the 1994 *Plan* defines, anticipates, and orders also mean to alter inclusion and circulation outside US territory. “Strategic objectives,” tactics, “coordinated actions,” and effects are muddled in the document, but key is the conception that full deterrence will only occur by increasing both the risk of apprehension and “the ‘cost’ to illegal entrants sufficiently to deter entry” (1994, 8). Bluntly, the Plan materially establishes a political economy in the borderlands: increased economic burdens to migrants, the propagation of a migration economy via increased recourse to *polleros*, altered timings and routes of passage, and proliferating the danger of transit (“Violence will increase as effects of strategy are felt”; 1994, 4). Crucially, “Prevention by Deterrence” must have a spatial extensivity that spills out beyond US territory. The regime of border management affects circulations. In lieu of traveling long-established routes with trusted companions, today migrants employ professional *polleros* both to guide them through and keep them safe in dangerous locations, especially in risky environments (Doty 2011; Maril 2011; Boyce, Marshall, and Wilson 2015). It also affects selection-inclusion: migrants are subject to specific economies, such as that of voluntary migrant-smuggling, and to specific forms of violence, including kidnapping and forcible labor (Vogt 2013; Furlong and Netzahualcoyotzi 2014). The anticipated “violence” around the passage is not a “double effect,” but a means to the state’s ends, and a mechanism that collectively punishes everyone living near migration routes or in the borderlands.

In the spaces of migration routes such as Huixtla, Mezzadra and Neilson offer an analysis of the interfaces between logics of state power and economic governance. State governance of migrant circulations, Mezzadra and Neilson aver, shifts the “parameters of time and space” (2013, 132) to make hierarchies within labor markets. Erika, as an illegalized laborer in a stigmatized field of employment, hindered in her onward movement as a migrant, perhaps epitomizes how labor-power can be made available from an otherwise-mobile body via the continual making and remaking of borders within interior spaces. The twin processes of bordering serve to differentiate her, they direct her into a specific workforce – although this is a tendency rather than an inescapable structure – and constitute her in a class of subjects set apart from unmarked citizens. Erika’s subjective constitution occurs both in her choices within exploitative conditions of the work she does but also by an extralegal regime meant to arrest her movements. Martínez depicts Erika as deeply self-aware, and especially cognizant of those identity terms that constitute her difference: as Honduran, as “older” for her employment, as a sex worker, but also coerced into staying in Huixtla without testing the exact boundaries of her spatial unfreedom. Even more, her income serves as one of her few bases to claim local inclusion. Set apart bureaucratically by citizenship and culturally by employment, her capacity as a consumer conditions her ability to socially integrate where she lives, as one of the few ways she might “gain equity” with others. Mezzadra and Neilson term this a species of “citizenship” (2013, 244ff.) whereby governance facilitates some economic formations and forms of economic participation while proscribing others. In the continuum of spatial unfreedom, economic effects extend across interior and exterior detentions, linked by state-sanctioned

processes that govern the terms of inclusion and circulation. Erika, successfully “deterred,” is made or makes herself an economic subject.

The system’s complexity indicates the limitations of using geopolitics to understand its political economy. Exterior detention regimes implicate contingent and locally-specific, but state-sanctioned, relations between labor and accumulation, and indeed novel class productions alongside increased precarization. Certainly, the ways that states have spatially reoriented border-enforcement activities to their exteriors or to quasi-territorial spaces, the US included, fundamentally concerns economy. A complex calculation occurs as some states attempt to foist off the activities of border enforcement onto others, especially as a foreign aid condition (de Haas 2008; Hiemstra 2012; Wahlia 2013). In addition, the burgeoning scholarship on border externalization is right to argue that those activities backstop entry and exit enforcement through policing minority and immigrant communities, especially in the United States (Hiemstra 2010; Conlon and Hiemstra 2014; Stuesse and Coleman 2014). Yet externalization often moves rather than alters interior detention regimes. Exterior detention regimes produce the restructuring of social fields as migrants adapt, are delayed, have their journeys extended, diverted, impeded. The broad economies implicate duration, violence, subjectification, and class conversion.

Class and detention

While Mezzadra and Neilson’s work is a key contribution, local application in Mexico may be a challenge. *Border as Method* presupposes the contemporary World System, and

capital and capitalism are its privileged movers. But in Mexico capitalism exists among a diversity of economic formations. An accounting of just those economic forms that involve migrants would include: the commoditization of migrants through the instrumentality of detention, both by states and by kidnappers (Guillermoprieto 2011; Sánchez 2014); neo-feudal conditions that have long physically, socially, forcibly, and/or economically detained migrants, especially in agriculture (Chávez 2012; Marosi 2014; Ortiz Acevedo 2014); coerced labor, including the forcible conversion of migrants into minor drug smugglers (Espinoza 2014); protection rackets orchestrated by local or federal police (Mendoza Aguilar 2014); share work, for instance in parts of the Mexican fishing industry; forms of work-trade; begging; and the scores of migrant shelters located along common routes that freely give food, water, and clothing to migrants. The length of this list only sketches the profound extent that, while the political economy of migrating bodies involves capitalist social relations, capitalist social relations fail to fully explain migration economies.

This incompleteness then poses a challenge. The political economy of the Huixtla bar is misrepresented if reduced solely to capitalism. Erika's choices are configured but not determined by the border regime, which also facilitates the conversion of certain bodies into laborers. This section uses Mezzadra and Neilson's too-brief encounter with the work of J.K. Gibson-Graham (2013, 300-02) as a point of departure, tentatively proposing that one feature of the exterior detention regime is an attempt to differentiate subjects in such a way that they are produced as a class. To the extent that Erika's detention in Huixtla locates a point within a continuum of detention practices, Gibson-Graham's conception of class – as a relation to

surplus value – can more firmly ground the ways that detention implicates economy, for individuals and within broader analytic framings. Where previous sections argued for a continuum of state bordering practices and a continuity of economic effects across detention regimes, this section attempts to specify one way in which the subjects of exterior detention regimes are produced as a class of “migrants.” The invocation of the language of class here is, avowedly, not meant to flatten difference. On the contrary, drawing from feminist economic geography, the goal is to give a proposal for how difference is created and put to work, and subsequent to this production how it may generate opportunities for exploitation.

Gibson-Graham’s major and celebrated contribution in *The End of Capitalism (as We Knew It)* hinges on the separation of the “economically differentiated and complex” social world (1996, xl-xli) from the hegemonic discourse that capitalism is the inescapable condition of contemporary life. Diverging from economistic accounts that posit a global capitalism determining the social, Gibson-Graham argue that any given capitalist practice (e.g. factory work, in their example) is overdetermined by processes, events, situations, institutions, relations of power and so forth that are exterior to it (1996, 16). Where theorists like David Harvey might view the varying forms of violence and exploitation in Mexico as along a continuous gradation of capitalist, precapitalist, and “ancient forms of labor process” (1992, 153), Gibson-Graham’s “diverse economy” refuses any easy teleology. Instead, Gibson-Graham anchor a notion of plural economic space and the coexistence of multiple economic formations. Discourses of hegemonic capitalism serve to obscure but not obviate such formations.

In a key moment, Gibson-Graham reimagine the location and ontological status of class. While Mezzadra and Neilson do operate with a nuanced and complex understanding of class in both its technical composition (the relation to the means of production) and its political composition (class as a subjective and affective relation), in their work class iterates fundamentally from struggles between labor and capital over surplus (Mezzadra and Neilson 2013, 98ff.). That presumes the primacy and hegemony of capital in determining the form and landscape of the social world. By contrast, Gibson-Graham's work retains class as a processual relation, but to the creation, distribution, and appropriation of surplus value. Gibson-Graham's terms elaborate how multiple class positions, across a diversity of economic formations, may not only be present within a given site but also how multiple positions may be held by a single individual. A factory worker may be classed through wage labor in the workplace and an appropriator of surplus value produced in a (feudalistic) home structured by patriarchal gender roles. Similarly, migrants in Mexico may be simultaneously exploited and appropriators of surplus value produced by others, they may occupy class positions outside of the wage relation, but most importantly they often occupy a position with regards to exploitation and distribution of surplus that has not only been configured specifically for their political, social, and subjective control but that is exclusive to those subjectified as "migrants."

Erika's story is once again exemplary, and through it we might trace how a configuration of forces produces her as a migrant. The circumstances of her trip placed her in Huixtla. Her journey was slowed first by an inability to board an airplane - a cheaper, faster, and more secure form of transport than the overland journey. Sex work presented itself as one of but few options

for work available to her, and her need to work within Mexico has clear relation to the conditions of passage to and across the US–Mexico border. Erika’s lack of mobility as much as the inclusion her income allows – that, while stigmatizing, sex work pays much better than any other option she can conceive of in Mexico – condition her decision to remain, that is, essentially to give up her onward migration to the US. Border-enforcement practices, together with the production of her exterior detention, may be understood as a technique conjoining state power, bordering, and economy. Erika finds herself economically subjectified within this network of relations, produced both qualitatively as a migrant (having less or no claim on the state, in its view) and as the bearer of labor-power.

Gibson-Graham’s language of class provides a means to extend and deepen the relation between the identitarian work of bordering and the production of migrants as bearers of labor-power. The intimate economies of Erika’s story – the complex relations that comprise the production and division of work and wealth in, through, and articulated with everyday, embodied experience – represent a convergence of myriad social forces. Erika’s national origin, her life on the streets prior to migration, violence and patriarchy within and without sex work, exploitation, the underdevelopment of Honduras, and poverty all weigh in her situation. They serve as inextricable elements of that situation. She finds herself multiply marginalized, via her irregular immigration status, through her lack of any documents to demonstrate identity or origin, and by her legal vulnerability as a worker in a criminalized economic sector. Her sector itself may even differentiate her, as migrants are sought for the work (Martínez 2013, 76). Because Erika’s relationship to the creation, appropriation, and distribution of surplus is

configured inextricably from her economic participation and inclusion as a migrant, “migrant” can be said to be a class position. While Erika retains much of the income from her labor, some is appropriated by the bar where she works, and she had no say in its distribution. Following Gibson-Graham, this is not to present a totalizing view. Neither is this class relation Erika’s only position nor is it the unique way of comprehending the class relations of her story. What Erika shares with fellow migrants similarly classed, however, is the combination of everyday forces that align and push them towards certain forms of economic inclusion while excluding them from others. They share the conditions of possibility for movement and work.

Conclusion: Detention at the interface of state and economy

Reading Gibson-Graham’s work alongside Mezzadra and Neilson’s reveals the close – or intimate – connections between economic life and exterior detention regimes. Forms of spatial unfreedom, articulating through class processes, subjectify migrants traversing Mexico. Where a political economy produces migrants as bearers of labor power, the designation of a body as a migrant’s body—and the subject’s self-recognition as a migrant—enables multiple and differential exploitation of a newly accessible labor power. Mezzadra and Neilson argue that the proliferation of migrant-detention apparatuses worldwide is “less a means of excluding migrants than of regulating the time and speed of their movements into labor markets” as wage-laborers (2013, 132). Whether or not wage-labor is the *ne plus ultra* of detention, both interior and exterior detention regimes make for class-formation projects. From the perspective of a state, the proliferation of detention helps to order how migrant-subjects will enter their management,

and likewise accounts for one way in which states “profit” from both organized and disorganized border violence.

From the perspective of a migrant, subjectification appears as varying forms of “time-space expansion,”³ as a series of delays, deferrals, and detentions avoided, or a series of delays, deferrals, or detentions endured. This chapter has argued for a continuity of forms of migrant detention from state detention facilities to the production of exterior forms of detention. The *huelera* and the Huixtla bar represent points towards the extremes of this continuity. My argument has been that this continuity is, in the US-Mexico border regime, consolidated through the CBP policy of “Prevention through Deterrence,” that it is productive of and reinforced by the migration economies that have emerged alongside the state project. Further, I have proposed that this political economy, as it attaches to migrants individually, configures them by means of their difference in relation to the creation, distribution, and appropriation of surplus.

In this argument, my hope is to present one way of connecting literatures on carceral geographies and border studies, which have in many ways been discrete. One area where they have had fruitful collaboration, in work on the externalization of border controls, has largely focused on interior modes of detention that are outsourced (cf. Collyer and King 2015). From the critical perspective offered here, such outsourcing does not convert externalized controls

³ This phrasing comes from a comment made by Keith Woodward.

into exterior detention regimes, even while the spatial effects are numerous and important. Rather, the labor of my argument is to recognize those exterior detention regimes in areas where a state attempts management but disclaims influence.

In focusing on political economy, the argument may further extend to future work looking to how detention beyond incarceration serves as an “interface” between state and economy (cf. Gilmore 2007, 11-12). State coercion of bodies often occurs in organized ways outside of but in concert with a textual legal regime. As I complete this chapter, Mexico is in the midst of a deep militarization of transit-migration governance. Nearly all of Mexico’s border-enforcement practice is legally extra-textual, in that it is in flagrant, intentional, and open contradiction to Mexican law (Morales Vega 2012; Castilla Juárez 2014). The effects of this produce an interior detention regime of significant size within Mexico - more than 180,000 detentions in the initial 11 months of 2015 (Secretaría de Gobernación 2016, 122-23) - but also an exterior detention regime within Mexico configured by actions of Mexican state agents. The ambiguity of whether the militarization and deportations are inside or outside the law indicates that legal texts may not be the primary producers of state detention, nor the difference alone between interior and exterior detentions. What legal documents - and, here, an operational document - can provide is a stated objective for the practices that state institutions use to produce exteriorized effects. For scholars, the important point is that the US and Mexico produce both interior and exterior detention regimes, but that the terms signify not a relation to bordered territory so much as a geography of the spatial extent of state practices. And the internal and external detention regimes may only ever work simultaneously. The consolidation

of occasional practices of detention into the dependability of a detention regime also constitutes that regime's outside. I suggest here, then, that research on border studies and incarceration may be "incomplete" as a field without attention to this interconnection. As to the present moment in Mexico, in which the stability of detention remains elusive, we can locate neither an empirical internal nor empirical external detention, but the co-presence of both, attesting to their multiplicity, continuity, and complicity for subjectifying those in transit.

Chapter 2:

A relational approach to unaccompanied minor migration, detention, and legal protection in Mexico and the US

Introduction

This chapter considers the state systems of protection for unaccompanied migrant minors in Mexico and the United States. The transits and arrivals of Central American minors – from El Salvador, Guatemala, and Honduras – offer important opportunities for scholars to consider the sociolegal practices of migrant care, especially how legally accepted but institutionally unfulfilled claims might signify something more than system failures. Instead in this chapter we⁴ take the law and state institutions as sites for power relations to play out, rather than as outcomes of legislative power struggles or as resources for mutual claims by states and individuals. Our objective is to analyze the distinctive – and perhaps constitutive – tensions that govern state systems of protection for unaccompanied minors, looking to both legal texts and the empirical realities of state activities in Mexico and in the United States.

US and Mexican legal systems systematically limit migrant minors' rights and agency, in large part through determinations that children are not full legal subjects. Although migrant minors often make considered decisions as individuals and as parts of a family unit, they are

⁴ This chapter is co-authored with Luis Enrique González-Araiza. See Appendix A: Statement on Coauthorship for information about individual contributions to the chapter.

generally not granted legal rights to make decisions regarding their best interests. Writing in the US context, Lauren Heidbrink emphasizes a paradox of child agency:

“Without a legally recognized caregiver, the law views unaccompanied children as existing alone, though paradoxically still dependent. Without a recognizable parent, the child cannot meaningfully access the state to petition for legal relief...Yet as social actors, migrant children challenge conceptualizations of child dependence and passivity, explicitly through their unauthorized and independent presence in the United States, and implicitly in the ways they move through multiple geographic and institutional sites in search of care, education, or employment.” (2013, 138-39)

We follow Heidbrink in emphasizing the problem of unaccompanied minor migrants’ agency for systems that attempt to erase it in legal discourse and minimize it in everyday practices. Our analyses highlight the important work that “childhood” does as a category and as a legal resource. Yet we also recognize that the contradiction that Heidbrink examines also constrains the state, because one cannot rid minors of agency by judicial or institutional fiat (Martin 2011, 478)].

Through this method, we seek to make several contributions. First, in dialogue with work on humanitarian borderwork (Williams 2011, 2015; Vaughan-Williams 2015; Pallister-Wilkins 2017) and the “politics of life” - in Didier Fassin’s words, “the evaluation of human beings and the meaning of their existence” (2007, 500-01) - we demonstrate how state systems of unaccompanied migrant minor protection reveal tensions between care for children and

policing for undocumented migrants (cf. Heidbrink 2013). Scholarship on humanitarian borderwork shows how the exclusionary use of formal, state-mediated belonging can operate through practices of carework, in both subnational state organizations but also by those non-state actors that attempt to challenge the fixity of state-centered boundaries. We emphasize how affirmations of value may support exclusionary projects, even as we emphasize the radical disunity and polyvocality of the state. The disunified state's contradictory practices serve as both a field of struggle and engine of differentiation in which unaccompanied migrant minors are figured as the most dependent and vulnerable figures in the system as well as the figures that the system most disprivileges and disadvantages.

Second, and inscribed within our approach, we make a descriptive-interpretive account of the Mexican everyday institutions that serve unaccompanied migrant minors, and their legal bases, accessible to Anglophone readers. At one level, we respond to changes in Mexican law since 2011 that have been inadequately described in English. At a different level, our collaboration works to sketch Mexican legal contradictions and frameworks for scholars less familiar with the complex social practices and understandings that subtend Mexican law and political institutions. As scholars have long observed, the law relies on external categories to prescribe and proscribe behaviors, and it further relies on a strategic indeterminacy to invest law-enforcement agents and agencies with a practical power to coerce behavior (Harcourt 2005; van Wichelen 2015; Woodward and Bruzzone 2015; Gorman 2017). We put pressure on both the US and Mexican systems' irregularities, where the law fails to recognize adequately the social fields that it attempts to organize as well as where everyday practices subvert the law.

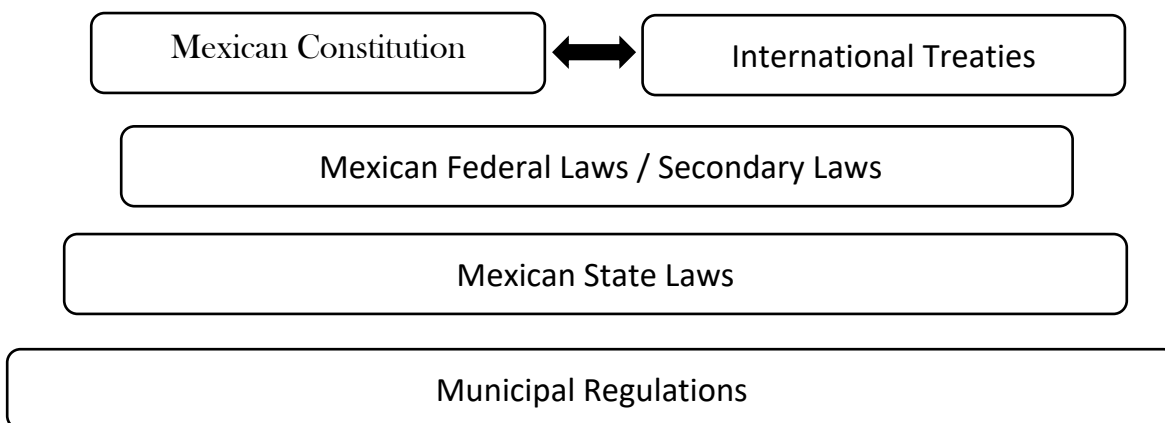
Third, we recognize that unaccompanied minors make decisions in a system that is configured in part by a bi-national effort to restrain Central American migration (Villafuerte Solís and García Aguilar 2015; Seelke and Finklea 2017; Vogt 2017). We argue that migrant protection in North America should be seen as a “geolegal” space (Brickell and Cuomo Forthcoming) provisionally unified by minor migrants’ mobilities, rather than segmented by national territories. The broader system of US-Mexico state protection of unaccompanied minor children acts to stabilize the potentially chaotic consequences of minor migration and yet is checked and delimited by its own internal tensions. This proposal extends recent works that highlight how migrant minors exhibit agency throughout their journeys (Heidbrink 2013; Aitken, Swanson, and Kennedy 2014; Swanson and Torres 2016; Thompson et al. 2017; cf. Puga 2016). Few unaccompanied Central American minors enter Mexico with the intent to stay. Rather, focalized through migrants’ access to social services and forms of protection, minor migrants’ strategies en route can reveal the series of reciprocities between subnational institutions that take place across borders.

The Mexican system for protecting minor migrants

The Mexican legal framework for protecting unaccompanied migrant minors is broadly oriented to favor migrants’ rights, and especially those of unaccompanied minor migrants. However, this pro-claimant orientation in legal texts belies the legal and institutional realities. We offer the story of “Milton” as a vehicle to explore the severe difficulties for minor migrants to access their rights to remain in Mexico. Finally, we offer a critical analysis of the enforcement

of migrants' rights in Mexico by taking departures from statute not as exceptions to the law, but as the law's normal operation.

FIGURE 2.1: Hierarchy of Mexican law.



Legal framework

In June 2011, a Mexican legal reform dramatically reformed the legal framework for the protection of migrant children. The reform's foundation begins in Constitutional Article 1:

- a) All persons present in Mexican territory will enjoy the human rights recognized in this Constitution, as well as all international human-rights treaties to which Mexico is signatory (Article 1, Paragraph I)
- b) All related human-rights standards [*normas*] must be interpreted to favor the greatest degree of protection for the individual (Article 1, Paragraph II)

c) The Mexican government as a whole is obliged to “promote, respect, protect and guarantee” the human rights of people in Mexico, in accordance with the principles of universality, interdependence, indivisibility and progressivity (Article 1, Paragraph III)⁵

The reform amended many more of the Constitution’s 136 articles, including Articles 3, 11, 15, 18, 29, 89, 97, 102 B and 105. Across these amendments, the reform recodified the legal recognition of migrants’ rights and provided some legal tools for rights enforcement and legal remedies. The Constitutional reform was, however, only the first step. Following the organization of Mexican law, while each Constitutional Article recognizes a specific right, those rights must be specified in application and in their mechanisms through statutory or “secondary” federal laws.

A further reform in October 2011 incorporated “the best interest of the child” (*interés superior de la niñez*) into the Mexican Constitution:

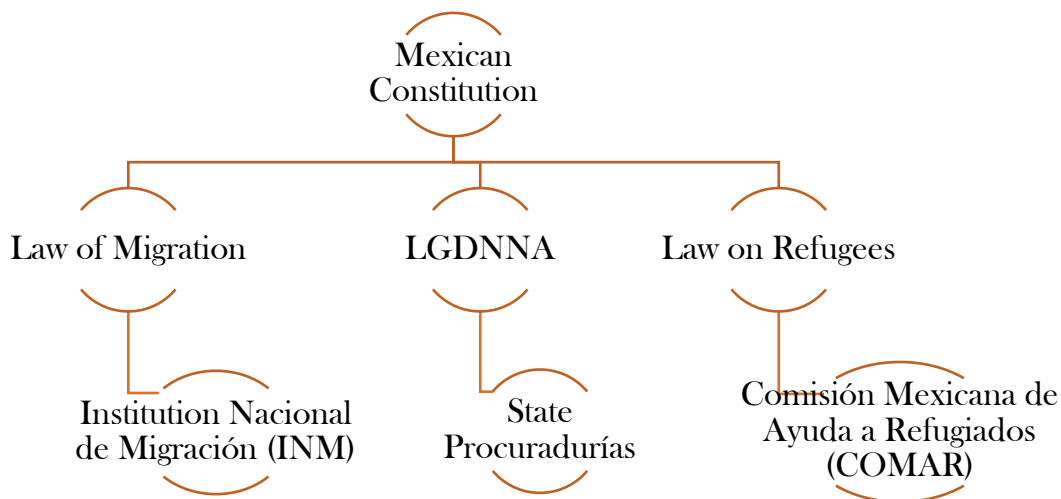
In all decisions and actions of the State, the principle of the best interest of the child will be observed and complied with, fully guaranteeing children’s rights. Children have the right to satisfy their needs of food, health, education and healthy recreation for their comprehensive

⁵ At time of writing there is no generally accepted English translation for the current Mexican constitution. Because international legal terminology can be extremely nuanced, all translations should be treated as paraphrasis.

development. This principle should guide the design, execution, monitoring and evaluation of public policy aimed at children. (Article 4, Paragraph IX)

As a legal concept, the “best interest of the child” guarantees children the affective and material conditions for a “dignified life” (*vida digna*), as well as the material goods and services necessary to their present well-being and future growth. Although space precludes a significant treatment of the legal conception of “dignified life” in Latin American jurisprudence and legal thinking (see Pasqualucci 2008), it is foundational to understanding the Mexican uptake of the “best interest of the child.” For our purposes, “dignified life” implicates a set of affirmative duties or positive obligations that states must provide for citizens, as well as the converse, that neglect or the failure to provide constitutes a violation of the child’s individual rights.

FIGURE 2.2: Laws governing Mexican institutions involved in migrant protection.



The Constitutional reforms led to three distinct “secondary” laws relating to the rights of refugees and migrants: 2011’s Law of Migration (*Ley de Migración*), 2011’s the Law on Refugees, Complementary Protection and Political Asylum (*Ley sobre Refugiados, Protección Complementaria, y Asilo Político*; “Law on Refugees”), as well as 2014’s General Law of the Rights of Girls, Boys, and Adolescents (*Ley General de los Derechos de Niñas, Niños y Adolescentes*; LGDNNA). The Law of Migration and Law on Refugees followed from Article 11, establishing that “every person has the right to seek and receive asylum” in Mexico (Article 11, Paragraph II). The Law of Migration enables minor migrants to regularize their status for “humanitarian reasons” (*razones humanitarias*) and further, if unaccompanied and detained, transfers responsibility for housing and protection to Mexico’s national child-welfare agency (DIF) and out of detention centers (Article 74, Law of Migration). The Law of Migration and the Law on Refugees direct the Mexican Commission for Refugee Aid (COMAR; *Comisión Mexicana de Ayuda a Refugiados*) and the migration-enforcement agency INM (National Institute of Migration; *Instituto Nacional de Migración*) to guarantee the “best interest of the child” for all minors, including noncitizens (Articles 9 and 20, Law on Refugees; Articles 11 and 120, Law of Migration).

The third law, the LGDNNA, is the main legal instrument for enforcing children’s rights in Mexico. Beyond the “needs” specified in Article 4 (above), the “best interest of the child” standard has obliged the Mexican Congress to harmonize programs and obligations for children’s well-being across federal, state and municipal levels of government (see Figure 1). We

list the rights recognized in the LGDNNA in full, as part of this chapter's objective to sketch the Mexican legal framework:

1. Rights to life, survival and development;
2. Right of priority [in relation to others' rights-claims];
3. Right to identity;
4. Right to live as a family;
5. Right to substantive equality;
6. Right not to be discriminated against;
7. Right to live in conditions of well-being and healthy development;
8. Right to personal physical integrity and a life free from violence;
9. Right to health and health-care;
10. Right of inclusion for children and adolescents with disabilities;
11. Right to education;
12. Right to rest and recreation;
13. Rights to freedom of ethical convictions, thought, conscience, religion and culture;
14. Rights to freedom of expression and access to information;
15. Right to participate;
16. Rights of association and assembly;
17. Right to privacy;
18. Rights to legal security and due process;
19. Rights for migrant children and adolescents; and

20. Right of access to information and communication technologies. (Article 13, LGDNNA)

In addition, the LGDNNA includes a special section with 12 articles (Articles 89-101) that grant protections to migrant children and adolescents. The LGDNNA, the Law of Migration, and the Law on Refugees act complementarily, and have come to define and even expand the Constitutional protections for unaccompanied minor migrants (See Figure 2).

Mexican migrant-minor protection in practice: The story of Milton

This description of minor migrants' legal rights appears to illustrate an orientation that prioritizes care of minors over migration enforcement. In practice, unaccompanied minor migrants have little practical access to state protection. Here we follow the story of "Milton" (a pseudonym), to elucidate how the Mexican system for migrant-minor protection militates toward a disinterest in the well-being of its charges. Heidbrink's paradox of migrant-minor agency arises as Mexican state institutions treat migrant minors as if they lack functional agency and produce them as legal subjects without rights to make decisions, and yet state protections are unavailable unless minor migrants make use of the very agency they are purported not to have. Further, as we detail, minor migrants' access to Mexican state protection is extremely difficult without outside social and legal support.

Milton arrived at the FM4 Paso Libre Shelter in Guadalajara in February 2017 as a 17-year-old traveling alone from Honduras. Similar to many Mexican migrant shelters, FM4 has a

formal intake procedure for new arrivals, involving an interview as one step. In his interview, Milton mentioned two contributing causes for his departure. First, the economic conditions in his community of origin were precarious. Second, the “Mara 18” gang had begun forcible recruitment of young men from his neighborhood into its ranks. Milton had not (yet) been targeted individually; instead he left because the gang “was just about to come for me at my house to take me away.” Because he was an unaccompanied minor, FM4 offered to assist him in regularizing his migration status in Mexico, cautioning that the process could take months. Both the economic factors – which negatively impact his right to development in the context of the LGDNNA – and gang-related insecurity offered “humanitarian reasons” (Law of Migration, Article 52, Section V; and Article 74) for regularization in Mexico. Milton accepted.

FM4 personnel contacted the Jalisco State Agency for the Protection of Children and Adolescents (“the Procuraduría”; *Procuraduría²⁶ de Protección de Niños, Niñas y Adolescentes del Estado de Jalisco*) by telephone. The Procuraduría is the legal representative for all unaccompanied minor migrants (LGDNNA, Article 136) and charged with determining, enacting, and evaluating “special protection measures” for children under its supervision. Procuraduría employees, however, did not come for Milton. When FM4 personnel contacted the Procuraduría a second time, they were told that the agency “did not have the operational capacity to make it happen” – and directed FM4 employees to deliver Milton to their office

⁶ Procuradurías are government agencies charged with helping individuals access their legal rights. One translation would be “ombudsman,” but for Latin American legal contexts, “ombudsman” lacks the obligation to help that is crucial to *procuraduría*.

themselves. This request to FM4 - which was also a denial of services to Milton - put shelter workers under legal risk. Because the Procuraduría was not yet legal custodian, because Milton's legal guardians were not consenting to the transportation, and because Milton was legally disqualified from consenting, transport in any private vehicle met the Mexican legal definition for trafficking minors (Mexican Federal Criminal Code, Article 366). Instead, and with Milton's participation, FM4 personnel formulated and presented a legal petition for state protection through the Procuraduría as well as the first steps toward a humanitarian visa.

FM4's senior staff travelled with Milton to present the petition in person. Upon delivery, the Procuraduría chose to leave Milton with FM4, and to leave his guardianship in a state of legal limbo while it decided on Milton's case, continuing the legal risks for the shelter and its employees. A full month passed before the Procuraduría gave its response. The response offered two fundamental decisions: first, it granted Milton "urgent protection measures," consisting of the safekeeping and legal custody by FM4; and second, it affirmed that legal representation and immigration procedures were the Procuraduría's sole remit, and that FM4 was barred from assisting Milton's regularization. The Procuraduría did not communicate with Milton nor FM4 to follow up on the case for the next two months.

After those two months, FM4 filed a legal-neglect complaint on Milton's behalf with the Jalisco State Human Rights Commission, responsible for investigating legal violations committed, commissioned, or enabled by public servants. Following the letter of the LGDNNNA, the complaint listed the Procuraduría's titular heads: the governor of Jalisco and mayor of Guadalajara. Within three weeks, the Procuraduría sent a response for Milton to

interview with its psychologist, social worker, and lawyer in short order. Again, none of these workers showed up for Milton. FM4 staff accompanied Milton back to the Procuraduría offices to force the issue. After the interviews, however, Procuraduría officials demanded a photo identification from the Honduras Ministry of Foreign Affairs. Milton lacked this document, but Procuraduría officials said that they could take the necessary steps to get one on Milton's behalf.

Another month passed without contact from the Procuraduría. The nearest Honduran consular authority to Guadalajara lies in San Luis Potosí, two states' and 330 km distance away. FM4 had assumed that the Procuraduría had regular contact with the Consulate and familiarity with its procedures, but after the month, FM4 staff contacted the Consulate directly. The Consulate was willing to speak with FM4 as Milton's legal custodian in Mexico, and staff said that they had no record of contact from the Procuraduría of Jalisco - indeed, they had no knowledge of Milton's case until FM4's communication. The Consulate processed Milton's request and delivered the ID directly to the FM4 shelter.

FM4 and Milton made a strategic decision to bypass the Procuraduría and submit the application for legal status directly to the INM. FM4 recontacted the office of the State Human Rights Commission, to note the Procuraduría's failure to contact Milton's consulate and to charge that this neglect violated Milton's rights under the Vienna Convention (Article 5, paragraphs e, g, h) as well as a violation of his rights under the LGDNNA. One week later, the Procuraduría summoned Milton and, with staff of both the Human-Rights Commission and the INM, finalized his regularization in Mexico. Milton's "humanitarian" regularization had taken

just under 11 months. He received his official documentation nine days prior to his eighteenth birthday.

Understanding minor migrants' claims to protection in Mexico

We find Milton's experience both unjust and infuriating. We hasten to add that Jalisco is widely considered a Mexican state "friendly" to migrants, both in bureaucracy as well as in cultural discourses and prevailing attitudes. Yet while the impediments were both numerous and drawn out, they were not, and are not, atypical.

Before progressing to discuss the US system of migrant minor protection, we want to draw out three points. Our first point concerns rights. Neither the Procuraduría nor the INM contested Milton's legal claim to a humanitarian visa, as formulated in his initial petition. An account based in liberal political theory might highlight problems of determining and guaranteeing justice for migrants and others outside the state polity (e.g. Carens 2015). But we might instead read for the social tensions that exist between the law and its exterior. One law, the LGDNNA, has both mandated the institutions that are to care for unaccompanied minor migrants, including the Procuraduría, and left those institutions unaccountable, or barely accountable, for failing to do so. The toleration of rights violations is indicative of both an economy of rights - differential allocation based in social practices, which manifest in law and institutions - as well as an intimate economy of migration (Hiemstra and Conlon 2016) to control and distribute who should pay for the social reproduction of some children and all migrants. We should be hesitant to assume that all the individuals carry equal standing, which is

a crucial point of departure for liberal political theory. Instead, the organized neglect of Milton enacts a social process that decides whether paperwork is worth filing, a legal status is worth adjudicating, rights are worth protecting, and a life is worth legitimizing. Milton's experience describes an agency that shunts off the responsibility for keeping him alive to an NGO, and continually reperforms Milton's lesser status as a certain type of political subject, one who is constructed as – but, we caution, not automatically *lived* as – less “grievable” (Butler 2015) and “less-than-fully-human” (Philo 2017).

Our second point concerns knowledge. Claiming rights within this system, even rights that all participating agencies agree are due, requires a profound knowledge of both legality and procedure. To receive his legal protections, Milton had to know: (a) Mexican law regarding unaccompanied migrant minors; (b) whether his case qualified under Mexican law; (c) the agency (the Procuraduría) charged with his legal protection; (d) how to write a legal petition; (e) how to petition that agency in particular; (f) how to petition for legal status to a second agency, the INM; (g) how to file a complaint with a third agency, the Human Rights Commission, inclusive of whom to charge with neglect, when the first agency did not fulfill its legal obligations; (h) where to get a Honduran photo ID while in Mexico; (i) how to get a Honduran photo ID while hundreds of kilometers from the nearest consulate; (j) how to fill out the various necessary forms for the application process; (k) how to work around the Procuraduría in order to solicit legal status from the INM, using (l) Human-Rights Commission workers for assistance; all while knowing (m) how to support himself, without legal authorization to work, during a process lasting close to a year. Recently both media and UN officials have implied that growing

numbers of successful asylum claims in Mexico indicated better state protections for migrants in general and particularly for unaccompanied minor migrants. As the sheer difficulty of managing this system should attest, no valid inferences can be drawn about asylum trends in Mexico if they ignore, black-box, or elide the actions of the non-governmental organizations that make asylum possible.

Our third point concerns the power relations between and within institutions. Milton barely interacted with any worker or individual in any of the agencies involved as a person, without the social norms around reciprocity and respect that “personhood” typically implies. Rather, Milton was an obligation, a chore, a name on a form, and finally a cause for a lawsuit. Simultaneously the agencies involved all evinced competing, even surprising priorities. The Procuraduría did not help the figure who its entire existence is based around. The INM did not attempt to deport the migrant, contrary to much of its institutional, cultural and funding priorities. The Jalisco State Human Rights Commission assisted with a case only marginally within its legal purview, possibly because of the governor’s or mayor’s fears of bad publicity. The temporary alliances in Milton’s experience are less mission- or morally driven than related to struggles between and within agencies. Those struggles play out in part across a binary of migrant care and migration enforcement. The claim to the Human Rights Commission against the Procuraduría was that a failure of care was also a de facto form of punishing Milton (Doering-White 2018, 44): legally Milton was to do nothing but wait. The capacity to use the Human Rights Commission to enforce rights is limited as a tactic; it is less permanent safeguard

than an indicator of a broader power configuration in the moment when Milton attempted to claim his legal rights.

The US system for minor migrants

We continue with the US system for minor-migrant protection as well as for the arbitration of unaccompanied migrant minors' claims to state protection. We summarize the relevant legal procedure and agencies briefly, in deference to the many strong accounts elsewhere. Our focus lies in a pair of contradictory state imperatives that inform our account of Mexican state protections. First, US agencies are caught between political directives to punish unaccompanied minors as undesired immigrants and alternatively to protect them as endangered children. Second, US agencies contradictorily treat unaccompanied minors as both "adults in miniature" and as dependents incapable of agency (Aitken, Swanson, and Kennedy 2014). As we show, these imperatives' overlap is an important point of contact between humanitarian borderwork and children's geographies, both within the social-work system and within the legal system.

US legislative framework for migrant minor protection

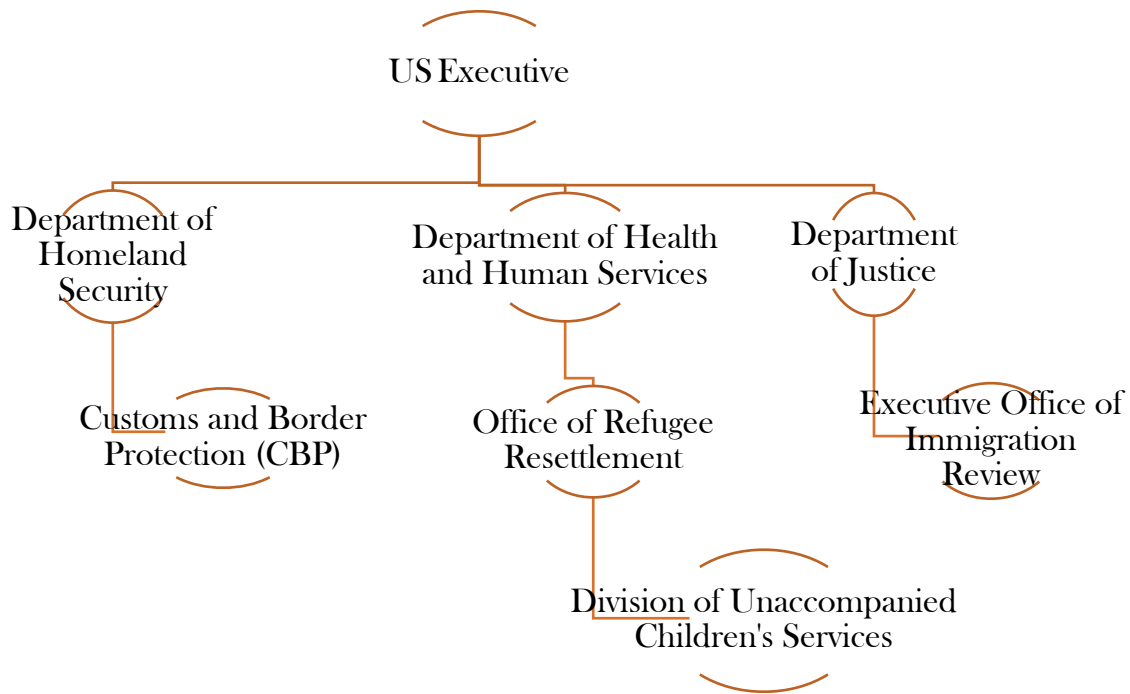
Two major pieces of US legislation have configured the legal framework of unaccompanied minor migrant³⁷ protection. The first is 2002's Homeland Security Act. The Act transferred the care for unaccompanied minor migrants out of the hands of the US immigration-enforcement bureaucracy and into the auspices of the federal Department of Health and Human Services. However, the "best interest of the child"⁸⁴ standard was never formally extended to children in immigration detention, although it is both a mandated "consideration" and a key principle of the domestic child welfare system. The second piece of legislation is 2008's William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA), directed specifically at unaccompanied migrant minors. TVPRA both clarified and expanded the set of protections for migrant children in the US from non-contiguous countries. Section 1232(a)(3) mandates that personnel of US Customs and Border Protection (CBP), which operates migration controls at US territorial borders, determine four items when detaining an irregular migrant minor for possible repatriation. The CBP can immediately repatriate only minors who (a) can and do accept voluntary return, (b) have no possible claims of asylum, (c) have not been potential victims of trafficking, *and* (d) are Canadian or Mexican

⁷ The US legal system uses the term "unaccompanied alien minors," or UAMs. Our references to "unaccompanied minor migrants" encompass UAMs when referring to legal contexts.

⁸ US legal discourse uses both "best interest of the child" and "best interests of the child." We use the singular "best interest of the child" to underscore parallels between the Mexican and US conceptions.

nationals. All others are to be transferred to the Office of Refugee Resettlement (ORR), outside the Department of Homeland Security.

FIGURE 2.3: Organizational chart of US migration-enforcement and unaccompanied minor migrant protection agencies



The CBP must decide all four of the above items within the first 48 hours, as a consequence of legal settlement in the case of *Flores vs. Reno* (1997). As a safeguard, even minors for whom the CBP has not made a determination within the deadline are transferred to ORR custody, specifically the Division of Unaccompanied Children's Services, although the

CBP might make an alternative determination after 48 hours has elapsed. A separate bureaucracy, the Department of Justice's Executive Office of Immigration Review, conducts hearings to adjudicate the rights of unaccompanied minor migrants' cases. The ORR often releases unaccompanied minor migrants to "sponsors," who assume legal guardianship of the minor and who may not have regular migration status. Thus, when unaccompanied migrant minors encounter a CBP agent, whether at a port-of-entry or between ports-of-entry, they move across migration-enforcement and social-services bureaucracies, sometimes several times (Byrne and Miller 2012, 7). Without detailing the multiple legal avenues that migrants have for establishing their continued or permanent residence in the US, it suffices to note that minor migrants' cases can take substantial amounts of time, and that permanent detention is often not practicable for the US government.

Internal tensions in US protection of migrant minors

Unaccompanied minor migrants' initial contact with state agents occurs with the CBP, which is both metaphorically fitting and indicative of a broad state orientation. A deep distrust of migrants pervades the system. CBP agents do not evaluate minor migrants' "best interests" or protection needs, nor elicit testimony that might be favorable to them as rights claimants. Rather, CBP agents evaluate unaccompanied minor migrants' stories for their perceived truthfulness and their adherence to definitional standards of asylum (Mountz 2010; Fassin and Kobelinsky 2012). Yet this skeptical consistency belies an inconsistency: CBP agents are widely regarded as poorly trained in asylum procedures, much less for work with children, which

entails inconsistent application of rules for protection (e.g. United Nations High Commissioner for Refugees 2014). Indeed, a major complaint of CBP agents' union has been that agents must care for minor migrants without really knowing how (National Border Patrol Council 2014). Conversely, ORR provides unaccompanied minor migrants with access to education, housing, health care, mental health services, and legal-assistance services. These social-welfare imperatives exist alongside discretionary powers, for example to determine minors' housing placements on a continuum from sponsored release to "staff-secure" facilities with severely restrained mobility (Terrio 2015). In practice, ORR and DHS decide individual minors' confinement through both mission and cost, especially social-reproductive costs (Terrio 2015; cf. Williams and Massaro 2016).

Judicial oversight is characterized by a second set of tensions. On the one hand, CBP and ORR have an affirmative duty of protection after apprehending unaccompanied minor migrants, and - apart from deportation - may only discharge that duty by placing minor migrants with "sponsor" caregivers, because minors cannot be legal agents. The legal scholar Sarah Rogerson writes that "rather than existing as persons with individual substantive and procedural rights, children are subjected to the presumption that they lack self-sufficiency and are therefore innately dependent" (2017, 846). On the other hand, in court minor migrants are treated as "adults in miniature" - subject to identical evidentiary and burden-of-proof criteria, responsible for finding legal counsel, and without age-specific protections from expulsion when contrary to their best interests (Heidbrink 2013; Terrio 2015; Rogerson 2017). Mexican minors are likewise capable of consenting to their removal, as above. Such a system leads to the absurd

spectacle of 3- and 4-year-olds “representing themselves” in immigration court (e.g. Coxon-Smith 2017).

The Federal Appellate case *Flores v. Sessions* (2017) provides a concrete example of both sets of legal tensions. *Flores v. Sessions* considered and then affirmed minor migrants’ right to a bond hearing while under ORR custody – that is, a hearing to determine if they may be granted release on bond⁹⁵ in certain circumstances. At first glance a minor procedural issue, the right to a bond hearing also establishes other rights for minor migrant detainees, including rights to be represented by legal counsel, to an assessment of detention by an immigration judge outside the ORR, to present evidence and respond to government evidence, and to build a public record of custody (Prandini and Kamhi 2017). The exercise of any of these rights, however, comes within an ORR context in which minors have few rights to exercise on their own behalf – because they are not legally competent to exercise rights, nor carry responsibility for potential immigration offenses (Martin 2011; Bosniak 2013; Heidbrink 2013; Rogerson 2017). The very form of legal challenge used, the class action, is metaphorically apt. A class action posits that some group has rights but is unable to exercise those rights in a practical way. Thus in the first instance, the court adjudicates that rights exist and are denied – that, for instance, unaccompanied minor migrants have rights to bond hearings. In the second instance, the legal system removes the negotiations over the content of those rights to a level where class

⁹ The ORR guidance as of February 2018 states that “Although these hearings are known as ‘bond hearings,’ ORR does not require payment of any money in the event a court grants bond” (2.9).

members are not present, such as legal proceedings in which minor migrants are not competent to practice and require others in order to have rights.

These bureaucratic tensions offer two points of contact across scholarship on humanitarian borderwork and children's geographies. First, the titular "Flores" of the above legal cases is a single person: Jenny Lisette Flores, a detained migrant who was a minor in the 1980s. *Flores* lawsuits concern the dual use of confinement for both policing and protecting unaccompanied minor migrants. In the 30-year history of *Flores* lawsuits, the INS/DHS have continued to defend confinement as the single, combined, appropriate response to both enforcement needs and humanitarian emergencies (Terrio 2015; cf. Williams 2011; Vaughan-Williams 2015). Detaining children both protects them "from threats by smugglers, traffickers, and gangs" (DHHS, section 6.2.2) and protects a social body outside of detention from a minor migrant who "poses a danger to himself or others, or...presents an escape risk" (DHHS, section 1.4.2). "Protecting" unaccompanied minor migrants does bordering work without a necessary recourse to expulsion or deportation, in part but not exclusively by spatially segregation (Coutin 2010). The discursive conflation of policing and punishment is a productive instance of confinement practice, even as representation organizes practices and procedures of who to confine, where, in what forms of facilities, and to what ends.

A second point of contact appears within the law, which both distinguishes political rights and differentiates individuals. The US legal system lacks a workable conception of children's agency, instead burdening children with contradictory positions of independence/dependency and responsibility/irresponsibility. If immigration judges in

courtrooms are to settle competing interpretations of law, they must also arbitrate what a child is, can do, and might be responsible for. A context that is external to the law is necessary for the law to function. Legal contradictions arise when the legal petitioners comprise a set of actors who are not “full” citizens or fully endowed with legal forms of liberal subjectivity (Aitken 2001; Varsanyi 2008). Yet the terms on which that context is absorbed into the law – judges have a large leeway to declare “legal facts” but cannot enact any reality they choose – reveal a broader set of power relations. When judges adjudicate questions of statutory language, as in *Flores v. Sessions*, they arbitrate how a classificatory status of a generalized human condition – childhood – is recognized against an immigration status. Unaccompanied minor migrants thus have two corresponding figures of contrast, at once adult irregular migrants but also citizen minors invested with legal rights. At the level of borderwork, the critical power relation concerns how non/agents’ claims to security and assistance are made function in a territory that is refusing them residence, perhaps temporarily and perhaps indefinitely (Gorman 2017), as unified interpretive and normative questions.

Discussion: Towards a relational account of minor migrant protection

This section draws out four points of convergence between the Mexican and US state protection systems to analyze how protection that is granted or withheld in one jurisdiction implicate unaccompanied minor migrants’ decisions and experiences in the other. In refusing to stabilize the border as the single site of differentiation between systems, and thereby incorporating longstanding critiques of methodological nationalism (Glick Schiller 2005), we

offer an account of migrant protection as a set of interrelated systems that operate across borders rather than within them. The continuities occur twice over: first, in the meshing of the boundaries of the systems of protection, the “geolegal space” in which agencies rather than nation-states provide the relevant boundaries; and in the continuities and linkages that minor migrants as well as state agencies create across space.

To begin, we suggest that “best interest of the child” be understood as an international discourse, notwithstanding national difference in its uptake, that includes institutional conceptions of childhood and child dependence. In facilities and for parent institutions, social-service provision is directed at children rather than collaboratively working with minors toward their development. Milton’s case illustrates this nicely, since the FM4 shelter was both the only organization concerned with his Milton’s participation rather than acquiescence but was also forbidden from helping him. Facilities for unaccompanied children in both countries commonly evaluate their success based on services provided rather than outcomes for individuals, especially so in terms of psychosocial, educational, or health outcomes. Further, unaccompanied migrant minor “protection” takes place in the facilities and general processes that are veiled and largely closed off from exterior scrutiny. Protecting the “vulnerable” and “dependent” minors within (Terrio 2015; Doering-White 2018) is to be judged only on its alignment to the checklists of proper humanitarian responses for the right sorts of victims (Fassin and Kobelinsky 2012; Galli 2018). Yet recurring motifs present children as consumptive burdens, and facilities are put under consistent pressure to cut costs or operate with greater economic efficiency. US facilities in particular are oriented to presume that detained children

are inherently potential risks to the public, which means that as a class they are burdens to systems of law and order (Heidbrink 2013), and that burden must be weighed against their claims to services.

Next, both the Mexican and US systems presume and legally produce “unaccompanied minors” as non-agential children. On the one hand, the repetitious attempts to call the figure of the dependent child into being presume that the child conform to the figure necessary for the organization of institutionalized services (Heidbrink 2017). As Susan Terrio’s work (2015) has shown, minors can be severely sanctioned when they fail to do so. On the other hand, the impossibility of creating a non-agential child in an embodied person makes both the institutions, and the care-enforcement tension that they manifest, vulnerable to unruly behaviors. For facilities and their organizing institutions, unauthorized behaviors and departures fail the institutional mandate to confine and control children, the bureaucratic need to compete with other agencies for state resources, and the moral imperative to care. When children do not receive adequate care, they strategize for ways to leave and to find what they need – and they do so without especial regard for borders.

The messy everyday relationships between care and enforcement should further trouble a state-centric approach that takes state borders as the primary boundary. While we implicitly conceptualized care and enforcement (or policing) as two poles on a single continuum above, the lived experiences of both unaccompanied minor migrants and social workers in actual facilities tend toward oscillations between discrete practices of care and enforcement. We see less broad state prerogatives towards care or enforcement taken up by agencies than instances of

care or enforcement responding to immediate institutional needs. For example, Mexican state procuradurías, their counterparts in the federal agency DIF, and facilities in the US's ORR system are often poor caretakers. At the same time, what qualifies as legally sufficient care for individuals is often morally insufficient. This situation may appear to place social workers and care workers in an unenviable bind between state power, shifting institutional priorities, and their ethical and occupational obligations to minor migrants. Yet it also multiplies the sites for resisting a dominant state priority of expulsion within agencies and institutions. As the story of Milton demonstrates, agencies can work to undermine one another's projects, rather than multiplying power by subordinating one agency to another as in the US.

Finally, shared categories (such as “unaccompanied minors”) and principles (such as “the best interest of the child”) are key sites for a production and regulation of subject positions, as well as a production and regulation of differential mobilities (Mezzadra and Neilson 2013; Williams and Massaro 2016). But when political subject-positions are shared both across agencies and across national boundaries, new possibilities for alliances emerge. Agencies such as the Procuraduría, INM, and the State Human Rights Commission all claim an authority devolved from the Mexican national state even as they may refuse to share in the priorities of other agencies and/or take up priorities opposed to their missions. The Jalisco Procuraduría might, for instance, work with the INM to enable unaccompanied minor migrants to arrive at the US border, transferring the “burden” to US asylum and border-enforcement officials. So too do the INM and CBP have an extensive history of collaborations that exceed the legal mandates and statutory authority of either agency, and more recently have collaborated to

subvert Mexico's Law of Migration (Hernández 2010; Márquez Covarrubias 2015). More humanely, "best interest of the child" is an international standard, which at once proposes an effective abnegation of national difference - the standard of "best" might be fulfilled in either the US or in Mexico for unaccompanied minor migrants - and positions the Mexican and US systems as allied rather than competing. Shared categories and principles comprise one condition of possibility for strategic alliances across agencies, but these alliances are not automatically constrained by state borders.

Let us conclude by returning to the question of minors' agency. Migrants can and do make choices within this system, even though its workings are continually obscured, sometimes by bureaucratic functioning as in Milton's story and sometimes by deliberate acts to undermine migrants' claims to stay (Terrio 2015). Doering-White (2018) briefly discusses several minors who chose not to undertake the Mexican asylum process or who abandon it to continue their US-bound journeys. Minor migrants leave the Mexican process not because it is "bad" for them, but because it takes too long, subjects them to humiliations, and denies them access to everyday and developmental needs. Glibly, we might recognize these non-agential minors to make decisions regarding their "best interests," revealing a final interrelation between the Mexican and the US systems of protection: that migrants themselves employ a calculus of their best option. Yet a necessary reciprocity also exists. The reality of minor migrant agency enables a bureaucratic "game," similar to that between FM4 and the Jalisco Procuraduría, in which the latter gambled that FM4 would assume the costs of Milton's survival. The logic of the "game" crosses borders, enabled by shared conceptual forms and discourses of protection. Mexican

agencies including but not limited to the state procuradurías can engage in a certain strategic withholding of services. On the one hand, an absence of provision can mean that other agencies will take up the slack, whether in Mexico or in the US, without denying minors their “best interest.” On the other hand, agencies in Mexico know they are effectively backstopped by US protections because, for the vast majority of Central American unaccompanied minor migrants, Mexico is not their final, desired, or best choice to make a life.

Conclusion

Our discussion of the Mexican and US systems of protection recognizes that both systems share a tension between care and enforcement, specific orientations to what the “best interest of the child” means, and in their attempts to declare minor migrants as non-agential children. We suggest that minor migrants’ agency and their strategies reveal how the social limits of a common “humanity” (Butler 2015, 35–44) are continually produced and enacted, that is, the terms on which unaccompanied minor migrants are normatively valued and the outcomes of the social processes of valuation. These valuations are not, however, ever finalized; they are contested both by migrants and through the struggles that bureaucratic institutions’ internecine struggles, within state states and across borders. Further, both the care-enforcement tension and the problem of child agency are fundamental to the present organization of systems of minor migrant protection. These problems arise from a political orientation toward migration and asylum, as well as judicial system that must adjudicate questions outside of its purview to adjudicate the problems inside its domain.

The regimes to protect minor migrant children, in both Mexico and the US, establish a subject-position of the unaccompanied minor migrant. This subject-position gives both a criterion for prescribing individual minor migrants' behaviors and a reference point to establish how far deviations will be tolerated by institutions and their workers. This account tracks closely with recent work in feminist geopolitics to account for how geopolitical initiatives can be lived through individuals' bodies when individuals are made to present as political subjects (Brickell and Cuomo Forthcoming; Massaro and Williams 2013; Williams and Massaro 2016). In the law - and the categories and principles that the law codifies - socio-spatial experiences are co-constituted with identities and perhaps with subjectivities. So too do shared categories and principles become key sites for a production and regulation of subject positions and a production and regulation of material mobilities for the different subjects marked out through these processes.

Epilogue, Summer 2018

We complete this chapter in a moment in which the US government has been punitively separating minors from their parents, including for asylum claimants. Framed as "zero tolerance," it manages to be both extrajudicial punishment and in contradiction to settled understandings of immigration law and *Flores* lawsuits. We can observe the US bureaucracy moving towards migration enforcement and away from migrant care, in part by exploiting children's status as migrants (such as no right to counsel). Future judges may very well decide that the practices are legal - obviating much of this analysis, among a set of much-worse

consequences. Yet we caution that such an event would corroborate our orientation here: that the law is a field of struggle. From a sociolegal perspective, we should not assume that the law is inherently stable, but rather that any apparent stillness results from the relations of power that configure it.

Chapter 3:
“To not be a human being”:
Ungrievability, performative appropriations, and undocumented
Central American migrants who assemble by dispersing

Introduction

In late August 2010, Mexican military authorities announced the discovery of the bodies of 72 migrants outside the town of San Fernando, Tamaulipas. Of those who could be identified, most were Central Americans. Attributed to the Zeta organized-crime group, the “San Fernando Massacre” soon became a major moment in the politics of migration through Mexico and in media discourse across North America. One memorial came from the celebrated Mexican journalist Alma Guillermoprieto (2011), who solicited biographies of the dead from prominent Mexican authors and photographers, compiling them into a public “altar.” Yet an importance difference arises in how the San Fernando Massacre is used for Spanish-language and Anglophone audiences. Today, the San Fernando Massacre is commonly invoked metonymically in Spanish, to exemplify that which migrants must endure to cross into the United States. A recent headline from Honduras’s *La Tribuna* newspaper is a case in point: “Kidnapping of Hondurans revives ghosts of Tamaulipas Massacre,” it reads (La Tribuna 2018). Yet in English, the Massacre is invoked in association with Mexican corruption (Corchado 2015), the incapacity of the Mexican government to protect its citizens (McDonnell 2017), and the brutality of Mexican organized crime (Grillo 2011). The former tends to

incorporate the history of the Massacre as within a shared social milieu; the latter tends to use it to mark a constitutive outside.

The San Fernando Massacre provides a point of departure for this chapter's inquiry into how norms about the value of migrants' lives connect with representations that attest to how migrants are harmed with impunity. I am aware of no public response to migrant deaths in English that operates equivalently to Guillermprieto's public expression of mourning. Schematically, the San Fernando Massacre manifests a divergence in what Judith Butler has referred to as the "hierarchy of grief" (2004, 32). Spanish invocations, including but not limited to Guillermprieto's, tend to ask questions concerning migrants' "grievability": All people are asserted to be equal, but can this be true when migrants' lives are easily ended and the social acknowledgement of their deaths fails to translate into political action? By contrast, English invocations are blunt rather than interrogative. Migrants live and migrants die as consequence of struggles between powerful figures. English accounts implicate a social valuation of migrants' lives as "ungrievable," which is to say that the losses of their lives fail to be "the kinds of losses that we can avow as loss," or simply that they are not avowed socially as loss (Butler 2004, 32). Yet if references within both conversations are citational (Butler 1996), then they implicate divergent audiences even while they are not autonomous circulations. The citational web performatively separates circulating discourses in English and Spanish.

Media accounts cannot exhaust the spaces in which discourses of migrants' ungrievability circulate. In interviews, transit migrants in Mexico commonly express a fatalism about the dangers of their journey, evoking their structural vulnerability both narrating personal

experiences and circulating advice and warnings about surviving the journey (Hagan 2008; Vogt 2013; Moreira 2015; Brigden 2016). Through oral worship, offerings, and petitions for protection, migrants' religious practices explicitly recognize the risk of death (Hagan 2008; Soto 2016). Migrants also describe how they are marked and othered through their journeys, often with gallows humor (Van Ramshorst Forthcoming, 12ff.; Campos-Delgado 2017, 10-12). I read the fatalism, the religious practices, and the jokes as recognitions that migrants' "suffering" (Holmes 2013), their lives, and their deaths are worth little in the wider political field - that one's life is "devalued, not worth supporting and protecting as a life by dominant schemes of value" (Butler 2015, 197-98). I put migrants' interview accounts in conversation with Judith Butler's work on "ungrievable life" because her work resonates with ongoing scholarly theorizations of how migration's representations coincide with the material practices of bordering and exclusion. Butler asks how "someone, anyone, who already understands him- or herself to be a dispensable sort of being, one who registers at an affective and corporeal level that his or her life is not worth safeguarding, protecting, and valuing" (2015, 197) may conduct his or her life in such a circumstance.

In this chapter, I consider the conjuncture of, first, how mobilities against the state might enact political meanings and, second, how the representations of North American migrations have a political geography. Migrants' own representations identify but also contest, and to a limited extent constitute, a social relation in which they are positioned exterior to those lives that are fully invested with value. On the one hand, migrants who recognize their exclusion rarely have viable opportunities or purchase to contest exclusion directly, instead acting strategically in

other ways. On the other hand, migrants' mobilities against state prohibition might enact a "demand" for inclusion in migration as a plural action, whereby migration figures as a politics of presence analogous to the political assembly (cf. Butler 2015, 27-28). Butler's account of "assembly" identifies a possibility of resistance through a politics of presence, presuming a partial inclusion from which a "someone" may act in expressive enactments that "signify in ways that are, strictly speaking, neither discursive nor prediscursive" (2015, 8). When read together with migration scholarship that theorizes migrants' cross-border movements as "autonomous social action" (Rodríguez 1996; see also Spener 2009) that demonstrates "collective agency" (Wheatley and Gomberg-Muñoz 2016), what emerges is an expressive content to migrations that can never be fully translated or enunciated, a content made sharper when the mobility is contrary to state power. In this way, circulating discourses in both Spanish and English and migrants' bodily movement relate at a level of political contestation. The norm of migrant ungrievability reveals how signification comprises the stakes of mobility and migration, equally or more than migrations are the stakes of representation.

Performative inconsequence and the representation of migration

When the San Fernando Massacre is invoked, such as through its social "ghosts," its invocation identifies the violence and precarity of migration journeys. Taken as citations, the set of invocations indexes a representational stability of the individuals, events, and the social landscape of North American migration. Linking mobility and representation, this stability supports, and in some sense is presupposed by, a "migration industry" (Hernández León 2008;

Gammeltoft-Hansen and Sorensen 2013) that both allows migrants to travel via smuggling routes and exploits them as customers, sources of labor-power, and commodities (Vogt 2013). For example, Wendy Vogt has written that for migrants “the prevalence of racial profiling, sexual assault, forced labor, and kidnapping of Central Americans cannot be understood outside migrant subject-positions as unauthorized, racialized, and gendered others struggling to survive in contexts of state-sanctioned violence, transnational security policies, and an unequal global capitalist system” (2018, 5). For Vogt, the context of migration through Mexico produces subjects with an inextricable discursive element that names an individual as a migrant, as a foreigner, as a racial minority, and so forth. The discursive elements intersect with lived experiences of being othered that often are named but do not require naming.

In this context, consider Efraín, a Honduran who had been deported from San Antonio after only three days in the United States and who was returning north. I interviewed him in the Casa ABBA shelter in Celaya, Guanajuato, in February 2016:

Many of us Hondurans rob one another, then the same guy who robs you in one place you see working for the Zetas in another...One example, from here to Nuevo Laredo it's terrible, Zetas everywhere, who kill you if they catch you, or they kidnap you, or they ask you for your family's telephone number and they begin to disturb your family. They'll burn you or do a shitload of things [vulgar: *un chingo de cosas*] to make you talk. And this is what I ask of anyone [*le pido a cualquiera*], it could be you, it could be your friend, it could be any country even, because we're human beings: We come from the same God and we deserve respect because we're not animals or traffickers. I'm telling you, I'm it like it is.

[Short pause.] If you don't have a hundred dollars, they hit you with a bat [*te bajan a garrotazos*], or they beat you, or they hit you with a board and it makes your ass purple, and yeah...An example, you're a Zeta and I'm a migrant, and I'm arriving at your location but before I arrive I circle around it, well, it's just like if I were going to the US, to San Antonio, and have to circle around the border checkpoint. (30 years old, originally from Choluteca, Honduras)

At one level, Efraín catalogs the social and corporeal vulnerabilities that kidnapers and others exploit in extorting migrants, as well as how migrants might participate in the victimization of other migrants. His words corroborate Vogt's work on the relation between subject-positions and material violence. Efraín's first sentence recognizes the importance of national origins: he identifies as a Honduran, linking vulnerability to expropriation with nationality. When Efraín identifies as the migrant in the hypothetical, he makes reference to the structural obstacles that migrants face (in the form of cartels), the possibility of death, and to his own recent migration to San Antonio. At another level, although Efraín might identify as a Honduran and as a migrant in the singular, neither status entails vulnerability, vulnerability does not depend on either status, and Efraín is not responsible for his vulnerability. Yet the statuses do invoke a vulnerability to direct forms of violence. In this way, the relation is of "being a migrant" and "being Honduran" to vulnerability is plural and collective, because the shared basis of the statuses constitutes the discursive basis of the vulnerability that Efraín describes.

Efraín also invokes a plural grammatical subject, the "we," and an implied, plural subject-position. In the middle of the excerpt, the second-person voice switches momentarily

from its impersonal use (“the same guy who robs you”) to a use that is audience-directed (“this is what I ask of anyone, it could be you, it could be your friend”). By appealing to his status as “human being,” and calling on “anyone” to recognize it, Efraín recalls Butler’s discussion of un/grievable life. Butler observes that “there are ‘subjects,’ who are not quite recognizable as subjects, and there are ‘lives,’ that are not quite – or indeed, are never – recognized as lives” (Butler 2009, 4). Those “humanly unrecognizable” subjects lead lives that are “outside” the bounds of recognized “life” and of the law (Butler 2004, 11ff.; 97–99). When those lives end or are ended, the subjects are “ungrievable” because the loss is not considered a loss, although individuals may indeed be grieved. Fiona Jenkins describes this movement, a double bind of the subject who is outside the category of life and yet produced within the social field, as follows: “the key political question thus becomes who is addressed by universal precepts, for instance precepts the precepts associated with ‘humanity’; and whether social conditions support that precept being appropriable by particular subjects” (Jenkins 2014, 120–21). Likewise, Efraín claims an intrinsic worth as a “human being” who is fundamentally alike others yet who is also not alike those who are valued.

For Butler, “grievability” becomes embodied in social norms that render individuals legible, for example as migrants, and pertains to demographic groups and social multiplicities rather than individuals. Butler writes “we can see that norms of the human are formed by modes of power that seek to normalize certain versions of the human over others , either distinguishing among humans, or expanding the field of the nonhuman at will...For those effaced or demeaned through the norm they are expected to embody, the struggle becomes an

embodied one for recognizability, a public insistence on existing and mattering” (Butler 2015, 37). Efraín’s denied or diminished humanity iterates a norm that includes scenes of migration violence, and he offers conditions under which the violence might be non-salient (being an animal) and salience and its application to a deserving party (being a trafficker). Yet his apostrophe is asserted against that violence, against the conditions by which membership in the group of migrants that is ungrievable. If Efraín refuses the norm while he accepts the consequence and social reality of ungrievability, then this suggests both that the ungrievable norm operates through representation even as it exceeds representation. It further suggests that the operation of the ungrievable norm does not depend on its iteration by those subject to the norm, but rather by the web of actors who would configure the target of the norm as “outside” of it.

Where Efraín refuses the injunction that his life not be a “life,” his words affirm Butler’s observation that not “we cannot take for granted that all living humans bear the status of the subject who is worthy of rights and protections” (Butler 2015, 196). Yet accepting that one’s social inclusion is partial may be a survival strategy. For example, I interviewed Eber in the San Juan de Dios shelter in Irapuato, Guanajuato, in February 2016. His voice cracking, he told me that

They don’t matter, the things that really happen to you on the road. You’re not a human being. [Pauses.] You have to not be a human being. If you want to be a person who is someone in life...[trails off.] You want to have any kind of life, well, it’s what’s necessary. You have to. (27 years old, originally from Escuintla, Guatemala)

While Efraín's words seem to both accept and contest his status as ungrievable, Eber's account suggests that ungrievability may arise as a reaction to real events. In the moment, Eber seems to recognize himself as both a person without social or meaningful life while in transit and a biological life for which or for whom social forms of personhood are denied. At once a link is forged between "those things that happen," "mattering," and "being a human being": if one were a human being, "those things that happen" would matter. When one is not a human being, they do not matter. Yet Eber's description recognizes a two-way movement: one is not recognized outwardly as a human, so one's suffering does not matter; if one suspends that same recognition inwardly, choosing "to not be a human being," one might both psychically survive the journey and, perhaps, achieve some "kind of life."

Noelle Brigden (2015) has observed that many migrants through Mexico perceive their transits as removed from their life stories, as trials combining their luck, their choices, and God's will. When migrants recognize a separation in the journey, they presuppose a temporal bracketing that can complement the subjective bracketing that Eber describes. Certain opportunities may arise for migrants who suspend their belief that they qualify as "human beings." Inwardly, the suspension may legitimate or enable a migrant to participate in activities that would otherwise be anathema. Honduran migrants who rob other Hondurans may not participate in criminal activities outside the migratory context. Outwardly, a declaration of one's migrant status may provide material benefits in certain circumstances. Migrants in Mexico, for instance, have access to shelters to which the local indigent population is typically excluded (Brigden 2018). Migrants begging at intersections are commonly tolerated by many locals when

they are perceived to be migrants, although they also suffer police extortion and harassment (Mendoza Aguilar 2014; Hernández 2018; Rubio 2018). Further, migrants may wield discourses of exclusion, participating and performing their status as “outside” the social in a form of performative in consequence. In the next section, however, I turn to the material politics of migrant bodies and migrants’ mobilities, to consider how those mobilities enact a “demand” for inclusion when taken as a plural action.

Grievability, precarity, assembly

Butler’s account characterizes those who are ungrievable as those who “do not and cannot appear as ‘subjects’ within hegemonic discourse” (2015, 37). In this way, the regulatory production of “human life” hinges on a norm that is necessarily representational, with the caveat that norms can never be fully contained in discourse. The frames that act as representational reference-points are themselves sites of power relations and of struggle. Here I bring grievability into conversation with scholarship in geography and cognate disciplines that concerns the visibility of migration, whether its “spectacle” (De Genova 2013), the political use of its visibility and even hypervisibility (Mountz 2015; Tazzioli and Walters 2016), its presence on the landscape (Soto 2016; Brigden 2018), or how migrants and their physical remains “get absented” in death (Pugliese 2008; De León 2015). Butler’s account focalizes how at least two distinct registers are put into play, one of representation and another of signification. The distinction between representation and signification might inflect accounts of how migration is “seen,” because it positions bodies as capable of a signification that is directed but not in

language and yet which might repel the representational framings of migrants, as well as more precisely locate the forms of political contestation.

The Kafkaesque impossibility of “one group of humans [that] is recognized as human and another group of humans, ones who are human, is not recognized as human” (Butler 2015, 36) presents a problem-space that is familiar to border scholars, migration scholars, and political geographers. One example lies in the “humanitarian border” (Walters 2011; Pallister-Wilkins 2017; Garelli and Tazzioli 2018). For instance, at the US-Mexico border, the increasingly militarized border environment that forces border-crossers into perilous desert environments with unfamiliar guides is also that which provides the prevalence of border agents who (sometimes) rescue migrants when they call for assistance (Williams 2011, 2014). Migrants are at once not recognized as human – whatever crime “entry without inspection” may be, it is not legally punishable with death by exposure – yet recognized as human when their bodily organs begin to fail – although again, without remedial rights for their suffering. Likewise within Mexico, the federal government detains many or most Central Americans not on the basis of a legal violation but on the legal basis of the Constitutional power to detain and summarily expel foreigners (see Chapter 5), justifying these in press releases as “rescues” (e.g. Pérez Marín 2018). This is to say that migrants are to be protected as human subjects from their own national status as Central Americans, and the content of this protection is deportation to countries that are both the discursive foundation of their national status as Central Americans and, materially, much more dangerous than the country that is deporting them.

One way of making sense of such discourses is to bracket them as a form of political speech that does not require logical consistency. On this account, and convergent with Butler's perspective, US humanitarian action and Mexican migrant "rescues" iterate a norm of migrants' partial or absent political-subjecthood. The materiality of both bodily performances of the norm and the images and narratives that circulate allow an exchange between what Butler calls the "perceptual category" of the norm and its "material reality" (2009, 25). The norm organizes the action, both structuring understanding of what is happening and the responses to it. In Paul Hodge's words, "images and narratives operate as modalities of materiality establishing and delimiting public discourse and in this way work to cultivate and maintain citizen and non-citizen subjectivities" (Hodge 2015, 123). For Butler, the "frames" that differentiate subjects and which lives matter "organize visual experience, but also generate specific ontologies of the subject" (2009, 3). Yet Butler argues that the impossible logic of the "nonhuman human" (2015, 36) cannot be ruptured from within the norm or within the frame. An internal critique, which would expand the realm of the humans who are recognized as human, nonetheless "presumes the realm of the nonhuman human" (2015, 36) and reinscribes the operation of the norm.

The break between grievable and un-grievable subjects introduces a parallel break in the operation of the frame. Butler writes that the frame's "success depends upon a successful conscription of the public" into its terms (2009, xiii). But this public has always-already been differentiated, and those left "outside the frame" have their capacity to rework or reject the frame severely inhibited. This break between object of representation and audience is mirrored in a number of geographical works, particularly on bordering. For example, Alison Mountz's

work on border enforcement on remote islands describes the creation of publics premised on the simultaneous hypervisibility and invisibility of migrants and asylum-seekers (Mountz 2015; cf. Licona and Maldonado 2014). Mountz notes that states commonly circulate images that represent migrants as neutralized threats (for example, detainees in orange jumpsuits) in far-off detention locales. Images of distant detention sites produce a constitutive outside of detention practices in those who “witness” detention (Mountz 2015, 185), all the while exploiting geographical distance to keep their individual and collective suffering “hidden from view” (2015, 188). The images and their embedded meanings – for example, that migrants threaten the social and racial order – circulate, become “hypervisible,” and condition formal migration politics. States choose to make visible migrants on certain lines (orange jumpsuits) while making them invisible as suffering individuals. For Mountz, this is a “paradox of the ‘publicization’ of security practices” occurring across the Global North in the contemporary moment (2015, 186). Detained migrants may be aware of how they are portrayed, but they are not the publics or witnesses to detentions in any meaningful sense.

A number of scholars have described an analogous process of making migrants visible to publics that exclude them at the US-Mexico border. Over past 20 years, militarized migration policing throughout North America has grown increasingly common, extended across space, and intensified, despite the repeated failure of militarization to achieve its tactical objectives. Scholars have read the apparent problem – accelerating recourse to a materially ineffective tactic – by noting its efficacy as spectacle. On this “spectalist” (Pugliese 2008) account, enforcement actions are staged to characterize politicians as “tough” and to animated the threat

of the Other that would legitimate territorial policing and the state itself (Chavez 2008; Brown 2010; De Genova 2013; Andersson 2014; Licona and Maldonado 2014; Paret 2014; Doty 2016; Mainwaring and Silverman 2017). On these accounts, the audience precedes the spectacle's actualization, the spectacle's site iterates and legitimates difference, and spectatorship is rendered voyeuristically contingent to power (Adelman 2015; Adelman and Kozol 2016). As a positive political operation, the violence that manifests as part of migration enforcement is largely incidental, the responsibility of the migrant-transgressor, or both. For Nicolas De Genova, who has written prolifically on the "border spectacle" or "border scene" (De Genova 2002, 2005, 2013), the spectacle links othering to political economy as a site of differentiation both characteristic of and necessary to the capitalist mode of social organization.

Hypervisibility accounts in migration studies (e.g. Cancellieri and Ostanel 2015; Mountz 2015; Mainwaring and Silverman 2017) and the border spectacle describe an asymmetrical operation of power in which state agents and institutions propel a vision of migration and detention. Both may be said to provide an account of the enactment of a norm of migrants' ungrievability vis-à-vis the state. Yet both describe a circuit of power but not of politics. States animate the visual field, and propel imaginaries of "threatening" migrants which tend to affect publics such that the publics are affectively, emotionally, and/or politically stabilized by the state violence. This circuit appears deeply, perhaps troublingly, one-sided; nearly all agency resides in that initial propulsion of the visual by the state. This circuit might be challenged in two ways. First, if migrants' movement qualify as "minor performative disruptions" (Butler 2015, 138), then they signify apart from visual and narrative frames. The disruption lies in the register of

signification, following Butler's distinction and later account of performativity (Butler 2015, 178). Second, to the extent that migrants might participate in Butler's "visual and narrative frames," then the critical political moments involve the ways that their bodily enactments contest signification in ways that may not confront power directly, and how state agents may force migrants to choose whether to contest power or seek to survive as ungrievable.

Grievability across plural and individual action

My argument so far has described two tendencies, opposed and perhaps in contradiction. In one tendency, individual migrants may come to discursively and/or performatively embody their ungrievability, even without inward acceptance that they are unequal subjects. Efraín's interview sketches this possibility, because he both outwardly defers to the norm of ungrievability at the bodily level when circling around Zeta checkpoints, but also claims a fundamental equality with all other humans because "we come from the same God." In the second tendency, migrants are discursively rendered as lesser subjects even while the plural action of their movement over state borders and against state borders contests their ungrievability. For example, Anglophone accounts that invoke both the San Fernando Massacre and "border security" would reproduce differentiating norms of recognition - between citizens and migrant others - and the in/security of those norms, even when they are sympathetic to migrants' plights (e.g. Olivares 2018). A text that does not name San Fernando may also exemplify the second tendency: Óscar Martínez's chronicle of Central American migrant experiences was titled *Los Migrantes Que No Importan* (*The Migrants who do not Matter*;

2010) in Spanish and *The Beast: Riding the Rails and Dodging Narcos on the Migrant Trail* (2013) in English, swapping an intimation of readers' complicity in one language for narrative distancing and coded language of danger in the other.

The tension between the two tendencies may be read without contradiction by distinguishing three aspects. First, ungrievability can be analyzed through the body or through discourse. Efraín's story shows how ungrievability might operate in a single account in countervailing ways, depending on whether analytic priority is given to the body or to language. No contradiction arises if the body signifies in a way that counteracts how language signifies because the body and language neither operate nor signify in the same ways (cf. Butler 2015, 87). The power relation and the stakes of migration would lie in the competing significations of body and language, as well as the consequences of those significations. Second, ungrievability has distinct mechanisms and consequences for individual and plural subjects. Both Efraín and Eber are made differentially vulnerable, and they appear to inhabit their lesser status as individual survival strategies. They may protest and contest that status with language or through movement. Each iteration of the norm of ungrievability makes and marks some subjects, exposing them to forms of precarity as it denies their (full) subjecthood (Butler 2015, 143-44). The plural migrant-subject is constituted by the exposure to differential precariousness and in the course of individuals' movements. The movements and attempts to restrict movements are both material struggles and signification struggles that operate through "dominant norms regarding whose life is grievable and worth protecting and whose life is ungrivable, or marginally or episodically grievable...and thus less worthy of protection and sustenance" (Butler 2015, 96).

The third aspect lies within migrants' choices to respond to, embody, and perform norms of ungrievability. I turn here to a final migrant's account. Ricardo narrates a story in which he was kidnapped just prior to crossing the U.S. - Mexico border. Much of what Ricardo says is dubious, and my footnotes indicate some of his questionable statements in the excerpt. However, Ricardo's narrative may be useful because of - not despite - its questionable facticity and unreliable narrator. Since dissimulations function through an appeal to shared tropes and known subject-positions for both structure and verisimilitude, Ricardo's tale enables a reading of his dissimulations as both an embodied act (Arnold 2015) and a "pragmatic mode of sociality" (Davis 2010). The dissimulations give important information about the circulating discourse of the transit among migrant and shelter workers, but even more, corroborate that discourses that presume ungrievability may be wielded by migrants for material gain.

Mario: And you suffered violence in Mexico, yes? Here today, not even yesterday.¹⁰

Ricardo: Ah, yes, today, but I was also kidnapped. They tied me up.

M: You're gesturing with your wrists.

R: They had me tied up, they hung me up and were hitting me.¹¹

¹⁰ Ricardo had previously reported being punched by a migrant at a different, and nearby, shelter, which caused one of his teeth to come loose. He never speaks about this assault in the entire interview, despite (gentle) prompting.

¹¹ Reputable sources sometimes report that the *tabliza* or *tablazo* is done while the victim is hanging upside down (Izcara Palacios 2016, 17). It is unclear whether Ricardo is alluding to this detail, or if he means that he was suspended from (e.g.) his wrists.

M: Where?

R: In Reynosa.

M: How long ago was this?

R: The first days that I passed through here [Guadalajara] were two months ago, this was after, the first time I reached the border.

M: How did they catch you?

R: They forced me off the train.

M: Honestly? People who were armed?

R: With guns and everything. They put hoods on us so that we wouldn't see and they carried us off to a *galerón* [a large shed or warehouse]. At night, I heard some women who asked me for a telephone number and they beat me, they hit me with this board that they have [*me tablearon con una tabla que tienen*]. They beat you and they do a ton of things to you so that you give them a U.S. phone number, of your family, to extort you.

M: For how much?

R: 5000 dollars to 6000 dollars,¹² so that you can leave free.

¹² This amount is possible but unlikely. Most commonly for this period, extortion phone calls demanded sums between \$2000 and \$3500 USD.

M: Did your family pay?

R: No, because they freed me. I said to them that I didn't have anyone [to call].¹³

M: How long were you kidnapped?

R: Five days.

M: What happened after those five days?

R: They said, “no, let those dudes [*weyes*] go.” I told them that I was Mexican because they also caught another Mexican with me [on the route] from Puebla. And they were asking me but I was telling them that I was from Veracruz and I was making my way and they asked me, “What do you do in the river?” [Affects a feigned dialect.] “Well I bathe, but we still haven't got clean,” I said to him.¹⁴ [He laughs.] Five days later, when we went to throw out the trash at night and they let us go, but they had beat us, they hit us with boards [*nos tablearon*], our asses were swollen!¹⁵

¹³ This is very unlikely.

¹⁴ Ricardo is implying a linguistic shibboleth to test if he was in fact Mexican. Mexican state agents and organized-crime groups are known to use this sort cultural and linguistic “tell” to distinguish between migrants and Mexican peasants (cf. Brigden 2016). I have spent significant time in rural Veracruz, including research there in 2011–13 (see Bruzzone 2017a, 2017b), and I am quite familiar with *veracruzano* dialect. Ricardo's imitation would never pass a knowledgeable interrogator.

¹⁵ I met Ricardo again two months later, still in Guadalajara, along the train tracks. He recognized me, and told me a dubious story about being detained on the way to Lagos de Moreno, Jalisco, which is home to another migrant shelter. I believe that Ricardo never attempted the journey.

(45, originally from Francisco Morazán, Honduras)¹⁶

At one level, Ricardo presents a recognizable subject-position (migrant-victim) and constitutes himself as such a subject, not least as worthy of sympathy for his experiences (Campbell and Shaw 2008; Puga 2016). That subject is ungrievable, on Butler's account. Ricardo's story draws from imaginaries of events that unquestionably occur (Calleros Alarcón 2013; Izcara Palacios 2016; Kovic and Kelly 2017), but his presumptive embroidering – gesturing as if his wrists were tied, the *tabliza*, the *galerón*, taking out the trash, and so forth – might be best understood as the armature of the story. It is through these details that the story achieves some degree of verisimilitude (albeit imperfectly) as well as its moral, that violence against migrants is stochastic and meaningless, and that little political potential for change exists for them.

At another level, it matters that story is being told in a migrant shelter. Ricardo's story is sited. Researchers in shelter environments have noted that migrants commonly believe that shelters grant special privileges in exceptional cases (Brigden 2016; Vogt 2018; cf. Beneduce 2015) (Brigden 2016; Vogt 2018; cf. Beneduce 2015). That belief is not unfounded, as Milton's experience in FM4 (see Chapter 2) demonstrates. Indeed, Milton's case makes for an instructive comparison: where Ricardo's story did not grant him special privileges in the shelter or material benefits, Milton's story did. While Ricardo's motives are unknowable, his story is

¹⁶ While I do not generally check IDs as part of my interview process, FM4 records show that Ricardo displayed a *cédula*, or Honduran national ID card, to enter the shelter. His birthdate on the *cédula* corroborates his self-reported age.

both mutually and multiply construed, in its response to my questions – after I provision “People who were armed?”, Ricardo’s words quicken, his tone becomes more animated, and his voice drops in pitch to give off a note of confidence – and through the context and milieu in which it is recounted. The possibility that Ricardo is wielding discourse to gain a material benefit illuminates not just that migrants might use discourses of ungrievability to benefit themselves but also that the norms of the ungrievable involve or can involve the participation of migrants.

Regardless of his veracity, Ricardo is performing and iterating his ungrievability. This prompts a pair of implications for Butler’s account. First, recalling Jenkins’s question of “whether social conditions support that precept [of humanity] being appropriable by particular subjects” (2014, 121), Ricardo’s performance of ungrievable life and as ungrievable presupposes that lesser status is, indeed, appropriable. Yet Efraín’s account would offer a caution here: if as Jenkins holds elsewhere ungrievability can be understood as a “prohibition” on discourse (Jenkins 2014, 124; cf. Butler 2004, 35), such a “prohibition” gathers its force from material forms of signification, including migrants’ performative inconsequence, and not just those ways of speaking and acting that can be formulated in propositions. Second, Ricardo’s appropriation suggests that the “struggle” of the ungrievable norm is more complex than Butler describes. Butler writes that “For those effaced or demeaned through the norm they are expected to embody, the struggle becomes an embodied one for recognizability, a public insistence on existing and mattering” (2015, 37). However, nothing in the excerpt or in his wider interview suggests that Ricardo is particularly concerned with a struggle for justice. Ricardo embraces the

norm of the ungrievable migrant-subject, so as to become recognized in the shelter environment. If he is attempting to gain benefits from his story, then he is using his ungrievability to secure resources, and become marginally less precarious. My point is not that individuals are sometimes forced to participate in structures that oppress them in order to get by, nor that norms are not deterministic and may be subverted, although both are correct. Rather, ungrievability may be a struggle over norms but it is also a field of struggle through which power relations play out without deterministically subordinating those of lesser status.

Representations, visibility, migration, signification

I have shown how migrants may signify both for and against their ungrievability at the same time, have read migrants' movements as "plural action," and have argued that individual migrants exhibit a limited form of agency over the expression of their ungrievability. Here I return to the "frame," which operates in conjunction with and presupposes an audience of those who are grievable in order to integrate grievability and Butler's account of assembly in a migratory context. Butler argues that "norms are enacted through visual and narrative frames, and framing presupposes decisions or practices that leave substantial losses outside the frame" (2009, 75). The frames' circulation differentiates the viewer, and her imagined community, from the object of representation. One conceptualization of the relation of the frame to the norm is of specification. For example, Butler says that "precarity is at once a material and perceptual issue, since those whose lives are not 'regarded' as potentially grievable, and hence valuable, are made to bear the burden of starvation, underemployment, legal

disenfranchisement, and differential exposure to violence and death” (2009, 25). Precarity is not the linking term between “perceptual category” and “material reality” (Butler 2009, 25). Rather, precarity names a frame by which ungrievability and a differential distribution of precariousness co-constitute and reinscribe one another.

Butler argues that the only possibility for disabling the norm is to “take up a position outside” the norm (2015, 42). Butler proposes that “ways of avowing and showing certain forms of interdependency stand a chance of transforming the field of appearance itself” (2015, 43). “Assembly” is one response, defined minimally as the “exercising [of] a plural and performative right to appear” (2015, 11), and is neither determined by nor determines a specific spatial form. Although assembly does not always occur in the “street politics” of public protest (2015, 125–26; 153), does not require a described event-space (2015, 167), and may be spatially dispersed (2015, 170–71), “demonstrations against precarity” (2015, 20) are the privileged examples of Butler’s account, such as the Occupy movement (2015, 10 and *passim*), Spain’s *indignados* (2015, 137), and the Turkish mobilization against the privatization of Gezi Park (2015, 173). These and other assemblies, Butler says, “enact their plural existence in public space” under conditions in which the grievability of their participants has been abridged (2015, 26). They mark an enacted claim to rights “in excess of any particular written or vocal account of what they are about” (2015, 8), and they do so as a form of “plural action” that does not require uniformity of action or of claim (2015, 156). In the assemblies that Butler analyzes, the gathering of bodies contests both frames and norms of representation and grievability, to “signify prior to, and apart from, any particular demands they make” (2015, 8).

Protest assemblies are also the major analytic object of geographic studies on assembly (e.g. Iveson 2017; Rose-Redwood and Rose-Redwood 2017; Hodge Forthcoming). Yet bodies need not be “at protest” to signify in the way that Butler describes. If assembly is an “expressive action” (2015, 18) prior to the articulation of any reason for assembling, prior to any utterance (which in any case always presents a false unity), then protest does not exhaust the situations in which assembly “expresses” whatever it expresses (Butler 2015, 16). Instead, the conditions under which assembly can be identified, and through which expression becomes available, appear to be a plurality of bodies acting in concert (2015, 157), most commonly against precarity, such that they enact a claim that is also plural. My proposition is that Butler’s formulation of assembly is symmetrical: If when bodies assemble, they act in concert such that they enact a plural claim that signifies in excess of discourse, then when a group has been rendered ungrievable and their plural action enacts a claim or contests their status as ungrievable – such as migrants moving against state barriers to their mobility – they may be said to assemble. In this way, unauthorized migration presents a form of plural action and migrants “assemble” even as they disperse (see also Butler 2015, 167). If migrants assemble, then they signify, and they signify against a frame that legitimizes state restrictions on movement. Movements challenge a claim to and representations about state territory; actions in the name of the state iterate norms by which migrants’ movements are undesirable and repression of those movements is legitimated.

Butler’s account of “plural action” in assembly is capacious. Although *Notes Towards a Performative Theory of Assembly* does not fully specify the overlap between “plural forms of

agency” (2015, 9) and “plural action” (2015, 184 and *passim*), nor between plural action and “collective action” (2015, 71), it may still inform other accounts of migrant collective action. By contrast with Michael Kearney’s account, in which migrants’ capacities to act transnationally “escape the power of the nation-state to inform their sense of collective identity” (Kearney 2009, 280), plural action does not suppose a collective identity (Butler 2015, 59). For Abby Wheatley and Ruth Gomberg-Muñoz, migrants’ “capacity for sociocultural life” plays out as “migrants share knowledge, band together, and cooperate to enhance their safety and welfare, creating a collective agency that both multiplies the effectiveness of individual agency and transforms migrants’ social fields” (2016, 5). Their “collective agency” is more tightly bounded than that of Butler’s account, referring to an agency of small collectives that is an emergent property of those collectives. Assembly can operate in the absence of such groups. A different affinity links Butler with Néstor Rodríguez’s (1996) “autonomous social action” and David Spener’s *resistencia hormiga* (“antlike resistance”; 2009), both of which are predicated on a collective form of economic resistance to precarity. Spener writes that “*resistencia hormiga* permits migrants to partially reconfigure their relation to capital by evading interdiction at apartheid’s territorial border” (2009, 25). Butler, by contrast, locates the struggle both at the level of control over distribution of resources but also at the norms through which claims in such struggles play out. This conflict of signification occurs across incongruous registers with differing spatialities: the former a signification of a moving body, the other a set of representations.

Efraín’s account illustrates how audience- and public-inflected accounts might be supplemented through an account of assembly. Efraín’s plea for recognition presupposes a

norm in which he is not registered as fully “human,” and he does so as an individual speaking from a subject-position that is plural: “we’re human beings,” he says, “we come from the same God and we deserve respect.” He is both outside the public in two discourse communities but able to contest his status and suffering with language. At the same time, his words and particularly his pluralized plea of “we deserve” do not evince much hope for gaining better conditions for migrants. Instead, if Efraín contests his grievability as a co-construction of “perceptual category” and “material reality” he does so through signification and mobility. Rodríguez’s influential account of the “battle for the border” presents unauthorized migration as both “autonomous social action” and a “worker-led transnational sociospatial reconfiguration” in “a process that decenters the state as the regulator of human movements across international boundaries” (1996, 23). Assembly formulates the battle differently: migrants’ movements signify against the border; state productions of migrant hypervisibility and the “border spectacle” use representation against this signification. But where Rodríguez seemed to believe that social currents would mean that, for the state, “the battle for the border...will eventually be lost” (1996, 23), my position is instead that the “battle for the border” functions to focalize power relations that are unlikely to dissipate or to reach dynamic equilibrium.

Conclusion: Migration and the stakes of representation

The abbreviated discussion of migration visibility of migration implicates the political geography of migration representations. For hypervisibility and “spectalist” accounts, migrations might be said to comprise the stakes of representations: a state-aligned reading of space and

national territory, in which the nation can be harmed by spatial incursion, invites a public to identify with its territorial interior or constitutes its public as bound up with the spatial interior through the visual and narrative circulation. In this framework, the migrant-exclusion imperative arises doubly, first because the national identity is produced against its constitutive outside and second because migrants represent the state's exterior entering into and potentially integrating with the nation (Kaiser 2012; van Reekum and Schinkel 2017). The public then reproduces the state-aligned reading of space and national territory, which then invites or constitutes its public iteratively. Both accounts corroborate and extend work in popular geopolitics that consider how national identities invite subjects to read geographies and events through an us-them lens (Sharp 2001; Dittmer and Dodds 2008; Rose 2009; Jones 2014; Lukinbeal and Sharp 2015; Pottie-Sherman and Wilkes 2016). The representational cycle posits material action as the stakes of migration's representation through a power to invest with value.

Butler's account of assembly opens up a possibility of a reciprocal movement. If migration can qualify as a "plural action" and thereby as a form of assembly, then Butler's account of "assembly as a political enactment that is distinct from speech" (2015, 155) productively suggests that significations comprise the stakes of migration. Migrants as plural subjects signify by moving, and their movements conflict with nation-state imaginary. Both signify, but through different means and in different registers. This conflict inserts itself in every step of the representational cycle of hypervisibility, the border spectacle, and Butler's use of frames. The nation-state's constitutive outside is perpetually entering its territory through immigration, and the nation-state's inside is perpetually exiting its territory through emigration.

The nation-state's norm of its people is a people who are comprised of a perpetual inflow of people who both are and are not its people. My point is not that migrants' mobilities present an ironic inverse of the logic of un/grievability, so much as that both migrants' ungrievability and its any inverse arise in part through material mobilities and enforced stasis. Even more, while hypervisibility and border-spectacle accounts do incorporate limited degrees of migrant agency, understandings of migrant agency can be enriched by accounting for how migrants can signify against their frames apart from and in excess of the words they might say or by making those frames fail through their actions.

In the North American overland migration corridor, violence against migrants has been available in plain view for many years. The Tucson-based Colibrí Center for Human Rights (2015) tallies 6330 documented deaths of U.S.-Mexico border-crossers between 1998 and 2015. The non-governmental organizations La Coalición de Derechos Humanos and No More Deaths (2016) estimate that the true figure over the same period exceeds 8600. Thousands, and perhaps tens of thousands, of additional migrants have perished in the transit through Mexico.¹⁷ These deaths are produced through political processes, and they help to iterate a frame in which, in Butler's idiom, each migrant lives "a life that is not 'recognized' as life" (2009, 16). This is not to say they are invisible: deaths and violence against migrants have been, and continue to be, seen, counted, aggregated, analyzed, classified, verified, and debated. They are

¹⁷ Aggregate data on migrant deaths in Mexico are not easily obtained. The Movimiento Migrante Mesoamericano alone has registered 2,223 disappeared migrants, of whom the majority should be presumed dead.

not seen, and yet they are seen. Gillian Rose has cautioned that “while it is not the case that everyone is equally vulnerable to being condemned as non-human, it is the case that there is a complexity to that allocation which geographers have yet to acknowledge” (2009, 53).

Undoubtedly, ungrievability is not equally distributed among migrants. I have argued both that the plural subject of migration is implicated in a battle of signification that goes beyond representation and that migrants may accept rather than contest their status as the “nonhuman human.” Part of the complexity that Rose describes, then, is that migrants who accept that they belong or pertain to a group that “cannot be mourned” (Butler 2009, 38) may accept their nonhumanity strategically, as part of a process that they use to keep living.

Chapter 4:
“Each punishment should be a fable”:
The punitive-city diagram, punishment as technology, and punitive
analytics in Foucault’s works of the 1970s and 1980s¹⁸

Introduction: The questions of punitive power

Nearly three decades ago, the celebrated sociologist David Garland wrote that Michel Foucault’s *Discipline and Punish* “offers not so much a theory of punishment as a mode of theorizing about punishment” (1990a, 4). Garland recognized Foucault’s method, in which punishment cannot be extricated from the social systems and exterior relations that invest it with power. But Garland found this approach lacking: Foucault, he said, gave no integrated idea of the purpose and use of punishing; no accounting for who is and who should be penalized, for what offenses, by what authority; no thought to the expressive role of punishment; and no reckoning with how penalty and punishment fail their objectives (Garland 1990a, 1990b). Foucault’s then-available *oeuvre* then available was significantly narrower than the wealth of materials available today. Accordingly, some critiques by Garland and his contemporaries hold less weight in light the passing years.¹⁹ Even so, Garland’s view that in Foucault, “punishment is

¹⁸ This chapter is forthcoming in *Foucault Studies*, which uses Chicago-style citations. For consistency with the rest of the dissertation, I use in-line citations when the citation directs the reader to supporting literature. When the citation incorporates additional reference material, I have retained it as a footnote.

¹⁹ For example, Garland says that as readers of *Discipline & Punish* “we are asked to [simply] accept that the creation of a criminal class became a deliberate feature in a political strategy” in his *Punishment and Modern*

exclusively a utilitarian means of control” (1990a, 7) betrays a critical but unacknowledged divergence. For Foucault, punishment emerges as a prism and an “analyser of power relations” (Foucault 2015a, 12) as a technology of power, and as a field of struggle. By contrast with Garland, punishment is not a mechanism deployed to “utilitarian” ends, as if it were an object within society, or a weapon for a soldier, but most often a “force exercised on other forces” (Deleuze 1999, 30).

Foucault used the terms “punishment” and “punitive power” expansively in the periods preceding and following the publication of *Discipline and Punish* in 1975.²⁰ The recent release of his *Punitive Society* lectures, along with the publication of Foucault’s complete *Collège de France* courses, offers an important opportunity to augment understandings of punishment within and without Foucault’s thought. The *Punitive Society* lectures obviate many of Garland’s critiques, particularly those concerning the ends, normativity, and “strategic use” of punishment when it departs from its foundational rationale. However, in the lectures Foucault introduces a tense and tenuous overlap of punitive and disciplinary technologies. At the outset, Foucault makes a series of distinctions, such as a contrast between “the punitive regime of crimes and the disciplinary regime of labor” (2015a, 72). As the lectures continue, Foucault increasingly

Society, 160. Levelled today, after the publication of the *Collège de France* lectures and especially *The Punitive Society*’s discussion of the criminal as “social enemy,” the same critique would be less worrisome.

²⁰ Listed chronologically by publication or public lecture date, the subsequent works that treat punishment include *The Punitive Society*; “Truth and Juridical Forms”; *Psychiatric Power; Abnormal; Discipline & Punish*; *The Birth of Biopolitics*; and *Wrong-Doing, Truth-Telling: The Function of Avowal in Justice*.

superimposes disciplinary forms over forms of punishment,²¹ and by the lectures' conclusion, Foucault twice reads the punitive and the disciplinary together, including the remark – from Foucault's notes, rather than the spoken transcript – regarding “the analysis of a form of power I have called punitive, which it would be better to call disciplinary” (2015a, 237n). Yet Foucault does not stick with a progressive account, instead returning to implicit distinctions between the punitive and the disciplinary, between punishment and discipline, in subsequent works. Simultaneously, the *Punitive Society* lectures make clear that no stable exchange exists between punishment and penalty. For Foucault, punitive power represents a coercive correction that operates as a social force – not power crystallized in institutional form, as necessary to (state) penalty. Penalty operates orthogonally to punishment, as a system of mandated penalties and sanctions but which is neither exhausted by nor exhausts the punitive. The punitive-penal distinction opens questions, both historical and abstract, of their coincidence as relays of power.

The *Punitive Society* lectures also help to make sense of Foucault's peculiar claim that sovereignty, disciplinarity, and *Discipline and Punish*'s abstraction of the “punitive city” present “three technologies of power” by which the social may be organized (Foucault 1979, 130). While sovereignty and discipline are broadly familiar, the less familiar “punitive-city” conceit is Foucault's abstraction of 18th century proposals to maintain social order through public punishment. In the punitive city, public and publicized penalties – “at the crossroads, in the

²¹ For example, in the historical filiation of the prison through *lettres de cachet* in *The Punitive Society*, pp. 139–40; and in the worker's *livret* or work-log in *The Punitive Society*, pp. 193–94.

gardens, at the side of roads being repaired or bridges built” (1979, 113) – correct offenders and keep the potentially unruly in line; they send messages about what and who are to be punished; and they remind subjects of the political order in which they live. As a technology of power, sovereignty coerces obedience to the sovereign will via “non-isotopic” series of hierarchical relations, for example from king to seigneur to vassal and peasant (Foucault 2006, 42–45, 2009b, 11–12, 65). Disciplinary power creates docile subjects by habituating bodies and their forces in institutions. Analogously, the punitive city uses public punishments to guarantee a social order by exploiting representations, such that power passes across multiplicities, individuals, and individuals’ “somatic fragments” (Foucault 2006, 44). However, the “punitive city” is but one use of punishment – and a technology that never took root to the extent of sovereignty and disciplinarity.

From the point of departure of technologies of power, this chapter offers a minimal account of punishment and punitive power. I argue that Foucauldian punitive power operates when authority seizes the body; the imposed penalty targets the relations between the individual and the multiplicity, as well as “somatic fragments” and the individual; and the act of punishment imbues a causal story that differentiates the offender and any associated collectivities. The following section rehearses Foucault’s archaeology of punishment, dwelling on the punitive theories of criminology’s “great reformers” that resonate with contemporary problems of penalty and state punishment. The third section considers Foucault’s analysis of punishment as an operation “above,” at the level of, and in “fragments” of embodied individuals. Consequently, punishment presents a field of struggle or fields of struggle. The

fourth section turns to the “punitive city,” which I read both as a theoretical culmination of the 18th century penal reformers’ project, as well as a diagram of coercive deterrence. Here I depart from Foucault, and argue that his dichotomous choice of “punitive city or coercive institution” was misconceived because the functions of one may be used inside or alongside the other. By way of conclusion, I offer a speculation on the relations of disciplinary and punitive power in which the two might operate in conjunction rather than convergently or complementarily.

My principal reading method in this chapter is to “read Foucault with Foucault,” privileging points of convergence across Foucault’s various treatments of punishment and punitive power. Contemporary encounters with Foucault’s thought must span a variety of differing materials and genres, including books, lecture series, one-off talks, academic interviews, journalistic interviews, and editorials. Foucauldian scholarship offers various interpretivist strategies, including periodization accounts of the “archaeological phase,” “genealogical phase,” and “ethical turn”; periodization by published work, where lectures such as *The Punitive Society* and *Abnormal* prefigure texts such as *Discipline and Punish* and *History of Sexuality, Volume 1*, respectively; and fledging Foucault’s materials as projects independent from his published books and essays, with each text the momentary capture of slowly morphing set of projects and intellectual interests (Dreyfus and Rabinow 1984; Paras 2006; Lloyd 2012; Gamez 2018). In this chapter, I fall into the last of these, looking to the ways that one text might inform another while allowing that the texts may contain contradictions both internally and in juxtaposition with one another.

Notes toward a punitive archaeology

By beginning his analyses of punishment with classical antiquity, Foucault immediately troubles any congruence between punishment and institutional or state penalty. In the eras prior to the emergence of the state,²² violators of the social order might well be “punished” (Foucault 2000b, 18); but this punishment was quite dissimilar to the sovereign penalty that would later emerge. In Foucault’s examples of the classical Greek system, the medieval German system, and pre-capitalist feudalism, punishment responds to interruptions of the social order. All three repaired violations of the social order by appeals to force: the prevailing party in a dispute would be the party who could call upon greater violence, physical strength, glory, or status.²³ In the juridical apparatus of classical Greece, as Foucault describes it, claims presented in legal testimony were mediated by the speaker’s social status – claims which might concern events in question or the claimants’ authority. The magistrate or judge recorded the proceedings, arbitrated the status of the litigants, and made points of order. Foucault’s interest lies in juridical procedure as part of a project to historicize truth and the production of truth: how Greeks determined who is legally right and what penalties apply for the one who is legally wrong (Foucault 2014, 27ff.). In a context where the “demonstration of truth becomes a

²² Foucault dates this to the end of the sixteenth century in 2009, 165.

²³ While all used institutional or sovereign punishment at times, it was not a major strategy; regarding Greek punishment, see Foucault 2015b, 10; regarding medieval German punishment, see Foucault 2000b, 35; finally, Foucault gives several examples of punishment under feudalism, such as during the Nu-pieds rebellion, in the notes to his 1 December 1971 lecture in Foucault 2015a.

political task” (Foucault 2013, 183) the court acted as arbitrator of a social order that was never completely static and enrolled the penalty as a consequence for a legal wrong.

Medieval German society settled disputes more actively, through an ongoing and private “war between individuals” where each violation that one suffered could be rectified by retribution on the party that caused it. The Germanic judicial apparatus intervened not to mandate a return to order, but to offer a venue for either a “regulated way of making war” or a brokered settlement (Foucault 2000b, 34ff.). Penalties were payments, but also methods of equilibrating the balances of social forces. In this sense, the court served as both the scene of and the field for struggles over the social order. The court has a similar place in Foucault’s exposition of feudal dispute resolution, centered around the test: “the test did not serve to name, to identify the one who had told the truth; rather, it established that the stronger individual was, at the same time, the one who was right” (Foucault 2000b, 39). The feudal test – from verbal formulas for oaths, to physical tests, to physical combats – did not establish the right social order so much as it allowed that order to be manifested. Where punishment appeared, it appeared in the form of the stronger party wishing to level its force on the weaker, rather than from the institutions of adjudication.

Monarchies reconfigured the place of jurisprudence and punishment as they accumulated and centralized the means of force, beginning in the twelfth century and then again during the late medieval period. Institutional punishment arose here, with an epistemic shift. The monarchy took on the role of creating and maintaining order, no longer content to be the most powerful force among forces. This shift entailed that offenses created both concrete

victims who had been cheated, robbed, assaulted and so on, as well as an abstract victim: the sovereign who was “injured by the mere fact that an offense or a crime had occurred” within “his” purview (Foucault 2000b, 42). If the sovereign could be injured by violations of “his” order, then “his” response would necessitate the full right of “his” power: the sovereign righteousness to punish, the sovereign privilege to do violence, and the sovereign interest in its control over the social multiplicity. The famous execution of Robert-François Damiens, with which Foucault opens *Discipline and Punish*, epitomizes the sovereign restoration. It was not enough simply to imprison nor to execute Damiens, who had attacked the king with a penknife and presented little real, political threat. Rather, in a demonstration of the full power of Louis XV, Damiens was tortured, pierced with red-hot pokers, drawn and quartered, and finally burned at the stake. Foucault emphasizes across works that the sovereign responds to violations of “his” authority by pitting “his” power against the individual’s and demonstrating the excess of violence that the sovereign wields over the individual (Foucault 1979, 47ff., 2003a, 82ff., 2015a, 33-34). What Foucault terms the “penal ensemble” – which is to say, penalty – originates in this “practice of justice organized by reference to the exercise of sovereign political power” (Foucault 2015a, 111).

However, monarchical penalty was practically constrained by the friction of multiplied relays. The growth of the administrative and tax-collection apparatus by the French monarchy – Foucault’s major example – extended its legal reach and extractivist capacities but also

legitimated nobiliary privilege in the regional *parlements*.²⁴ Most sentences were mandated by the king's laws but adjudicated and carried out by a local elite emplaced in a way that the king and king's agents were not. At times there was deep judiciary resistance to carrying out mandated sanctions, including the refusal by individual judges to enforce laws and whole *parlements* to register certain edicts (Foucault 2015b, 3ff.). The non-elite classes also engaged in popular refusals of unjust laws and sentences – at times without disputing any underlying truth to the charge – to force a sort of negotiation with the juridical authority or appropriate juridical power through spontaneous sedition (Foucault 1979, 59ff., 2015a, 139ff.; 155ff.). The abstract victim had aggravated sovereign power's vulnerability and multiplied the sites where it might be resisted. If the sovereign could be harmed in the market plaza and in the storeroom in addition to the field of battle – through petty theft and tax evasion, and beyond interpersonal violence – then the means for subverting and diverting the sovereign will were multiplied to an equal extent. Thus, if Frédéric Gros is correct that in this period “social equilibrium depends on alliances and tacit agreements between certain classes to bypass laws” (2016, 262), then such “illegalisms” present a constant counterforce to monarchical use of sovereign power.

In the late 1700s a juridical movement emerged in opposition to the instabilities and unreliability of absolute sovereign power. The “great reformers” of the movement – Beccaria,

²⁴ This point appears in consolidated form in the notes for the 1 December 1971 lecture of *Théories et institutions pénales*; additionally, Foucault's extended treatment of Boulainvilliers in “*Society Must Be Defended*” hinges on the nobiliary struggle for their place in the late French monarchy's distribution of the relays of sovereign power.

Brissot, Servin, and others to whom Foucault returns across his works – took sovereignty’s “bad economy of power” (Foucault 1979, 79) as their problem. Their historical moment was marked by four features. First, violations of the social order were shifting, toward property crimes and away from regulatory and violent crimes, largely with the growth in capitalist relations. Second, prior to the emergence of the reformers, the law had increasingly indicated for severe sanctions for minor offenses, which, third, had been applied with increasing irregularity. Fourth, the reformers largely believed crime to be increasing – despite, Foucault tells us, contemporary empirical evidence to the contrary (Foucault 1979, 75–79). The social order, the reformers reasoned, was breaking down, and in their proposals they responded with a series of substitutions and exchanges. Two are especially pertinent to this article. The first exchanged abstract victims of crime. Where the abstract victim had been the sovereign, with the reformers it is “society.” In their theory, criminal violations present an “attack” on a society that all subjects are invested in, and penalty is society’s “counter-war” (Foucault 2015a, 33). With “society” as the abstract victim of the offense, the reformers’ beliefs about what made good laws led them to formulate deterrence, rather than sovereign revenge, as the moral basis for punishment (Foucault 2000b, 53–54). Deterrence appears because society can only be injured in its interests but retains a righteous power to defend those interests and the juridical and penal systems are granted privilege to do so.

The second exchange made punishment (or its threat) the basis for social order. The reversal of the “temporal direction of punishment” (Foucault 1979, 126), from restoring a past state to protecting a current state of order from future disobedience, also inverted the analytic

priority of order and punishment. The reformers proposed a series of public punishments that were to act as “semio-techniques” (Foucault 1979, 94; 103; 255), as public lessons, linking crime and punishment for observers. If every crime is a wrong against both its concrete victim but also, abstractly, a wrong against all, then in the production of the criminal as “social enemy” (Foucault 2015a, 44) everyday subjects should hear an implicit appeal to identify with authority. Sedition would decline. By substituting abstract victims, the reformers naturalized the prevailing political authorities and the prevailing social order as a proper arrangement of “society.” As each punishment would “teach a lesson” (Foucault 1979, 113) punitive power would ground the social order. The reformers thus solidified a rising bourgeois ideal of social order against both monarchical power and lower-class illegalisms, substituted an ideal of consistency for that of justice, and legitimated a “power to punish...distributed in homogeneous circuits capable of operating everywhere, in a continuous way, down to the finest grain of the social body” (Foucault 1979, 80).

Foucault describes the reformers’ historical moment, the point of inflection between sovereignty and disciplinarity, with a question: “punitive city or coercive institution?” (Foucault 1979, 129). The question concerns either state control and public punishment, or dispersed coercive correction and private punishment. Yet the reformers failed to foresee that social control would move outside the juridical system, and then outside the formal state. They had thought of punishment as within the ambit of state power, rather than a form of power with polyvalent application and dissociable from penalty (Foucault 2000b, 82-83). Punishment leapt outside of the formal state to all sort of other institutions, some tenuously connected to political

power – such as schools and asylums – and others outside the formal state yet sustained by exchanges of state power – such as factories and hospitals. The leap undermined their project (Foucault 1979, 211ff., 2000b, 79, 2015a, 209). Disciplinary institutions multiplied. Under the “whole network of nonjudicial power” within disciplinary institutions, punishment became invested in procedures to condition subjects’ habitual obedience, evaluated on visible behaviors “at the level of the behavioral potentialities they represented” (Foucault 2000b, 57). In other words, disciplinary power came to reproduce itself through norms derived through institutional observation and enforced by punishments (Foucault 2000b, 79, 2015a, 213–15).

Foucault’s analysis contains several suggestions for an analysis of punishment. First, punishment appears as an object of contestation but also, when actualized, to be allied with authority rather than working against it. Greek, German, feudal, and monarchical punishments all occur on behalf of authority and not against authority. Second, popular punishments recapture authority to deploy it on behalf of another group. The reformers’ project to ally “society” against offenders worked against the power of the sovereign but without dissolving the authority to punish. Third, conceptions of punishment and punitive power are reciprocal. The reformers’ ideal of the “punitive city” and the disciplinary institution serve as models and as concrete practices through which power can be actualized. Discipline multiplies institutions of government and privatizes them in “establishments [that] take the State structure as their model: they are all little States that are made to function inside the State” (Foucault 2015a, 209). While the coercive institution – the disciplinary institution – comes to a place of prominence in Foucault’s historical account, it does not exhaust either power or punishment. The next two

sections consider, first, the operations of punitive power and, second, how the supervision of the coercive institution may not render the punitive city outmoded.

What is it to punish? The elements of punishment

Foucault's engagements with punishment occur alongside a rising priority of genealogy in his thought and method. By contrast with Foucault's archaeological approach to track the discursive bounds and thereby conceptual possibilities within a place and time, his genealogical method locates the force relations by which discourses, institutional forms, procedures, and technologies of power come into being and are stabilized. In many ways, Foucault's work on punishment formalizes and refines Nietzsche's unsystematic provocations on its uses and force-relations, producing, in Garland's words, "a kind of penological rendering of Nietzsche's *Genealogy of Morals*" (1990b, 168). For Nietzsche "the concept 'punishment' presents...not just one meaning but a whole synthesis of 'meanings'" (Nietzsche 2007, 53) that defy any attempt at unity. Punishment takes many of tactical forms that Foucault studies - the repayment of debt, the punishment as settlement to end cycles of vengeance, the punishment as war against "an enemy of peace, law, order, [and] authority" (Nietzsche 2007, 54) - all the while remaining "absolutely undefinable" (Nietzsche 2007, 53). For Foucault, by contrast, "the concept 'punishment'" is too limited an approach. "Punishment" denotes a state of affairs and is thereby descriptive, but punishment is also a strategic field of - but not limited to - discourse and discourse's perlocutionary effects, as well as a technology of power through which an order is

created, retained, repaired, or extended in new form. The problem of punishment lies not in its meanings but its operations as a strategic field and the strategic use of penal institutions.

A persistent critique of Foucault from criminology and the sociology of punishment has held that Foucault “presents the utopian ideals of the 18th-century reformers...as though they were actual reforms of the 18th and 19th centuries” (Alford 2000, 134; see similar critiques in Garland 1990b; and Wacquant 2009). Yet the *Punitive Society* lectures make clear that Foucault’s interest as a “genealogist” lies in the disjuncture between proposal and adaptation, indeed how the prison-form can only be derived with a moralized notion of religious repentance (Foucault 2015a, 139ff.; Harcourt 2015). His impelling question is the strategic use afforded by a penal institution. A minimal problematic of punishment remains necessary to such an account. This section draws out the points of convergence in Foucault’s accounts of punishment, to analyze punitive power’s operations and capacities. I argue that, for Foucault, punishment describes authority’s corporeal appropriation of an offender, a narration that the offense is the cause of the punishment, and a leveraging of that causal story to subordinate. I close by considering Foucault’s distinction between the punitive, which concerns the operations of punishment, and the penal, which concerns sanctioning. The critical point is that punishment need not be carried out through state or carceral means – indeed, to think punishment only through a modern state evacuates historically contingent formations of punitive power that Foucault sought to analyze.

Punishment is neither a trans-historical category nor a process necessary to the social, but rather a series of relations partially and temporarily unified by its exterior. Following Paul

Patton's observation that Foucault operates through an Aristotelian armature of multiple levels of causal explanation (Patton 2016), there is no ultimate "source" of punishment but rather a set of conditions necessary to punishing. First, authority²⁵ serves as the "crucial emergent field" (Jessop 2006) for any sort of punishing to arise. Those who punish include family patriarchs (Foucault 2006, 80; see also Taylor 2012); the heads or "spiritual directors" of Benedictine monasteries (Foucault 2014, 172ff.); factory owners and foremen (Foucault 2000b, 83); doctors (Foucault 2006, 10-12); King Louis XV and his agents (Foucault 1979); "society," in the reformers' ideal organization (Foucault 2015a, 72); and distributed actors who appropriate statistical methods of biopolitical regimes to set desired norms that differ from observed norms (Foucault 2008; see also Chantraine 2008). All are invested with authority, yet few are state agents. Authority is wielded over subjects through punishment across both practical and theoretical distinctions internal to forms of power, such as public-private and state-society. Conversely, the subject of punishment is "the correlate of [a] governmental power" (Newheiser 2016, 13) yet which is not state authority. Foucauldian punishment requires a subject attached to authority whom authority attempts to correct. Consequently, punishment constitutes a binding of the subject to power in a form where that power is constituted through sociality. If such a power is the state under disciplinary and sovereign governance in recent centuries, then it

²⁵ "Authority" is Foucault's own term in 2015b, 208.

is not that punishment requires a state but instead that the state is the dominant structure of authority-individual relation in the context of the analysis.

Second, punishment refers to an operation of power that invariably involves power seizing a subject's body,²⁶ to differing intensities. Foucault makes this point early in *Discipline and Punish*:

But we can surely accept the general proposition that, in our societies, the systems of punishment are to be situated in a certain 'political economy' of the body: even if they do not make use of violent or bloody punishment, even when they use 'lenient' methods involving confinement or correction, it is always the body that is at issue - the body and its forces, their utility and their docility, their distribution and their submission. (Foucault 1979, 25)

He offers at least two registers in which power seizes the body. At one level lie the material forces of punishment. Foucault's *Punitive Society* discussion offers exclusion, redemption, marking, and imprisonment as the "major forms of punitive tactics" (Foucault 2015a, 6-8; 67ff.). To exile or deport is to cast out the body, to deprive it of its means of survival and sustenance. Redemption burdens the body with obligations; it often coerces labor and other forms of physical compliance, either as condition of the sanction or as the mechanism by which

²⁶ See the discussion on the body in Foucault in Dreyfus and Rabinow 1984, 110-15.

amends can be made. Marking, scarification, amputations and branding all seize the body of the criminal to alter its physical form. Imprisonment is the body's forcible or obligatory sequestration. At another level, punitive power would always seem to invest a "political economy" in the body that exceeds the individual as well as the offender-authority dyad. The operations of disciplinary institutions require that the body be passed over to power such that the subject can be reconstituted or differently constituted. So too the *supplice* or torture, famously exemplified in Damians, concerns the economy of power made manifest in suffering. The point here is that a penalty and a punishment may be leveled on a body, yet the body does not act as a limit for punishment's spatial operations. Rather, punishment leverages the body's triple character as the surface of inscription on which representations can be "read," as the target which must be made to conform to a multiplicity in its actions, and as the material through which intensities of experience are lived.²⁷

Third, methods of subordination through punishment are not uniform across modalities of power, nor historically. A major implicit contrast concerns the subject of punishment and the subject under punishment. For the pastoral power of the early monastics, punishment served as restorative practice – "penance was a medicine" (Foucault 2014, 183) – while simultaneously returning the subject to the pious multiplicity that could only achieve salvation together. Where the sovereign power descends to punish – to lay claim to, to manifest

²⁷ Foucault's (1998b) reading of the body in his essay "Nietzschean, Genealogy, History" corroborates my more limited point concerning punishment.

its power on – it does so devolving power to judges, intendants, executioners, and so forth, claiming power in the symbols of divine right and in the figure of the sovereign person. Foucault claims that, although it did individuate bodies of offenders at strategic moments:

you can see that the relationship of sovereignty is a relationship in which the subject element is not so much, and we can even say it is almost never, an individual, an individual body. The relationship of sovereignty applies not to a somatic singularity but to multiplicities – like families, users – which in a way are situated above physical individuality, or, on the contrary, it applies to fragments or aspects of individuality, of somatic singularity. (2006, 44)

Individual punishment serves to order multiplicities, which are the “subject-function” in the political technology of sovereignty. Punishment passes from the one to the multiplicity. By contrast, punishment under discipline marks out not the collective but the individual-qua-subject. Disciplinarity tends to refuse multiplicities as sites of intervention, because its “subject-function is fitted exactly on the somatic singularity: the subject-function of disciplinary power is applied and brought to bear on the body, on its actions, place, movements, strength, the moments of its life, and its discourses, on all of this” (Foucault 2006, 55). Punishment performs a joining function in discipline, coercing conformity to a norm and integrating the subject.

Analogizing to Foucault’s analysis of the concrete and abstract victims of criminal offenses may be generative to understanding the join. Consider punishment’s abstract target. In the economies of power of sovereignty, the penal reformers, and the pastoral monastics, the

offense separates the wayward offender from the multiplicity. Punishment restores the social order or state of grace through reincorporation. Under discipline (and, it would appear, biopower) the norm is the join by which the subject's relation to a collectivity is understood and corrected. The individual is given, and separate; punishment integrates him or her. However, punishment requires another integration, in which the elements "below" the individual are incorporated into a subject or subjects. Recalling Damians a final time, the geography of power with which the King's agents could punish him was limited, on the one hand, "below" him to the aspects of felt experience that could make Damians suffer, the intensities of pain he could be made to feel, but also the sympathetic experience of those who might observe the torture; and on the other, "above," to coding Damians as part of a collective subject of "the people" and in opposition to the sovereign. The abstract target was the relation of Damien's body, its forces, and his affects to Damians-as-subject; and Damians-as-subject to the multiplicity to which he was ascribed. Likewise, if Foucault's statement that "the other side of the disciplinary relationship is punishment" (2006, 51) would introduce a problem, we might dissolve it by recognizing that the power to punish allows modalities of power to pass across bodies' "fragmentary" pre- or non-individuated forms to singular individuals. To the extent that punitive pressure functions as the inverse or reciprocal form of discipline, disciplinarity uses punishment to shape a subject who will maintain the social order all on his or her own.

Fourth, punishment offers a narrative – a story about reasons for the penalty, if not a justification – both to the present and retrojected into the past. The "semio-technique" of punishment creates a motivated semiotic relation between the offender and a cause (Foucault

1979, 94ff.; Genosko 2013), one easily blurred into political technique of punishment that presumes the rightfulness of rectifying violations of the social order. For example, Foucault says:

when a so-called exemplary punishment was imposed on an action, even and above all when the action was apparently of little importance or consequence, it was in fact precisely with the aim of having a corrective effect, if not on the culprit himself – because he was hardly corrected if he was hung. On the other hand, the correction, the corrective effect was clearly addressed to the rest of the population. To that extent, the practice of public torture and execution as an example was a corrective and disciplinary technique.²⁸ (Foucault 2009b, 6-7)

Foucault's discussion uses sovereign punishment, which in its reconstitution of sovereign authority embeds an offense-response story. No "corrective" is available without such a link between behavior and penalty. Moreover, some collectivity must accept the offense-response story as meaningful, even if parts of that story are veiled. As a disciplinary function made to operate within sovereign power, the audience must juxtapose itself against the penalized offender but also, in the individuals who comprise the audience, identify with the offender, that is, self-identify as penalizable.

²⁸ Here I have preferred Foucault's audio text, given in a footnote on page 6 of *Security, Territory, Population*, to the editors' amended text, which I find less clear.

While sovereignty directs this causal story to a subordinated “population,” with discipline the causal story is duplicated. Within disciplinary institutions, behaviors create records, records invoke diagnoses, and diagnoses implicate treatments as the basis for correcting “mis”behaviors. Mitchell Dean writes that in the period when the disciplines came to prominence, “The object of the whole penal ritual... is not only the crime but also the circumstances, instincts, passions, desires, effects of environment or heredity, of the criminal manifest in the crime” (Dean 2002, 161). Something in the offender’s conduct or being – milieu, character, or upbringing, but also behaviors, opinions, membership or identity – had led to the scene of punishment. Discipline uses written records to discover these “instincts, passions, desires...manifest in the crime.” On the one hand, discipline imitates sovereignty to make an audience of the collected subjects whose comportment and habits are to be trained. On the other hand, the records make an audience of the diagnostician, who elects proper courses of treatment. “Mis”behaviors should not imply agency or causal responsibility, although they tend to blur: in Foucault’s example of the prison, the advance that enables imprisonment to supersede other penal tactics is the insertion of moral desserts (Foucault 2015a, 99ff.) via notions of wrongdoing for which an offender may not be morally responsible yet for which the offender is the final cause and thereby punishable.²⁹

²⁹ I thank an anonymous reviewer’s comments for the argument in this paragraph.

I close this section by returning to Foucault's criminological interlocutors. If punitive and penal phenomena such as the prison correlate only contingently, following Foucault through the punitive-penal distinction may help to clear up lingering confusion in commentators such as Loïc Wacquant. I use Wacquant here because his work exemplifies a pair of prevailing assumptions about Foucault's work on punishment. For Wacquant:

While its originary medium resides in the application of legal coercion to enforce the core strictures of the sociomoral order, punishment must be viewed not through the narrow and technical prism of repression but by recourse to the notion of production. The assertive rolling out of the penal state has indeed engendered new categories and discourses, novel administrative bodies and government policies, fresh social types and associated forms of knowledge across the criminal and social welfare domains. (Wacquant 2016, 121; see also Wacquant 2009)

While Wacquant has critiqued Foucault – more on that below – here I want to situate the impasse between Wacquant and Foucault at, first, the level of the penal-punitive distinction. Wacquant consistently conflates the punitive and the penal, which the subtle switch in the first and second sentences above exemplifies. Certainly the “penal state” has effected many changes along the lines that Wacquant asserts. But contemporary carceral power is only one instance of penal power. In the Foucauldian idiom, the penal concerns sanctioning – who gets sanctioned, for what, via what mechanisms, and through what channels – and punitive concerns punishment – how offense and penalty are linked, what penalties may do when employed, and the system of punishment in which a penalty is grounded.

A penal-punitive distinction destabilizes the presumption of continuity between a sanction and the punishment that it mandates, but even further, enables an analysis of how punishment operates apart from and in excess of the legal domain. In the *Punitive Society* lectures, Foucault claims that in the unified “tactic” of discipline at the moment of its consolidation

We have therefore two ensembles: The penal ensemble, characterized by the prohibition and the sanction, the law; and the punitive ensemble, characterized by the coercive penitentiary system. The first ensemble brings with it a certain theory of the infraction as an act of hostility towards society; the second brings with it the practice of confinement.

(Foucault 2015a, 111)

Both punishment and penalty have their most intense effects outside of court, on subjects who are never accused, who may never be prosecutable despite legally noncompliant conduct. However, punishment has no necessary relation to Wacquant’s “application of legal coercion.” For Foucault, relations of force within society determine but never permanently settle the boundaries that distinguish the illegal and the offense from injurious behaviors that fail to merit punishing and from tolerated noncompliant behaviors (Foucault 2000a, 462–64, 2009a, 24, 2015a, 67–68). The penal operates both “inside” the law and in the distribution of “illegalisms,” just as the punitive does. Yet one cannot analyze punishment by analyzing the penal sanction. Instead, the punitive and the penal might be understood as mutually inscribed functions, one for creating difference and another for selecting, extending, intensifying difference.

The second disjuncture occurs the level of the subject. Wacquant's most persistent critique charges that Foucault could not account for differentiation in punishment, that Foucault "overlooked both the steep selectivity of penalization and the enduring centrality of punishment to the symbolic projection and material exercise of state power" (Wacquant 2016, 125).

However, punishment is not just aimed at correcting the relation of an individual to an amorphous multiplicity, but to the specific social group; it is precisely a tool of individuation and differentiation. Wacquant has his own set of critics, who criticize his functionalism and unidirectional flow of power from "bureaucratic field" to subject, his reading of the bureaucratic field as a penal actor rather than an effect of governance, his lack of sensitivity to difference across sites, and his reading practices generally (Nelken 2010; Valverde 2010; Collier 2012; Dean 2015; cf. Hansen 2015, 302n.64). Complementary with these critiques, I want to suggest the presence of a real impasse between Wacquant and Foucault at the level of the subject. Wacquant's use of the "bureaucratic field" presupposes strategic agents with interests, goals, desires, and wills. Subjects predicate the field. For Foucault, in fact, none of that is clear; instead, subjects are constituted by power relations as much as they may bring power into play. Subjects cannot be assumed, as Wacquant does. Thereby Foucault can hold that difference is created in prison - punitive power materialized - after it had been extended in a sanction. At one level, the creation and perfection of subjects is an ongoing process in disciplinarity's "perfect continuity of the punitive and the penal" (Foucault 2015a, 194). At another level, punitive power operates outside the prison, the penal system, and the state as a matter of its very function.

The punitive city as technology and diagram

The 18th century reformers' theories responded to observed limitations internal to sovereign power's capacity to punish. Their proposal – the “punitive city” – was superseded almost immediately by the development of the disciplines. Yet it is worth dwelling on. In this section, I present a dual reading of the “punitive city,” first as fantasy-abstraction of the reformers, then as a diagram of power. Positing the punitive city as a diagram deepens the account of how punitive power is exercised at the joins of fragment-individual and individual-multiplicity, and proposes to link punishment and deterrence more robustly. Up to this point I have used Foucault to authorize a reading of Foucault; now I use Foucault to authorize a critique of Foucault, specifically the dichotomy of “punitive city or coercive institution” and the disciplinary replacement of punitive power. Two critiques ground the argument. First, I consider how disciplinarity operates by channeling or appropriating other technologies of power within its institutions, and point to how the punitive city diagram can serve as its exterior condition. Second, I argue that Foucault's preoccupation with bounded spatial assemblages proposes an unnecessary conflict between disciplinary institution and the punitive city, which does not operate as a spatial enclosure. Immediately, however, I describe Foucault's account of the genesis and key features of the punitive city.

The limits that judges and juries placed on the penal sanction taught the reformers several important lessons. One was necessity of attending to prevailing moral beliefs among those subject to the law and those charged with adjudicating it. They noted that when the law mandated sentences that were too severe or too lenient, judges and magistrates often evaded or

deliberately misapplied the law.³⁰ A second lesson was the impracticality of combatting the prevalence of a given offence with a drastic increase in the severity of its sanction. Adjudicators had resisted oversevere penalties with behaviors such as “pious perjury,” in which they could “avoid applying the penalty by disqualifying the crime” – that is, finding “facts” to undervalue or underdescribe sizes, distances, amounts, or quantities so as not to apply mandated but unjust sentences.³¹ This signaled that disproportionate punishments amplified resistance to the law. A third lesson was the danger inhering in an economy of power that overinvested in local administration. Powers of particularist application created opportunities for subversion and disorder. In response, the reformers sought to “to insert the power to punish more deeply into the social body” (Foucault 1979, 82) – in other words to eliminate the relays between sovereign command and penalty, to the greatest extent possible. They revised the aim of adjudication, from justice – a particularistic concern – to that of fairness – a general concern about consistency of procedure. At the same time, the reformers minimized the role of the individual uptake in juridical procedures: what is most important is that the mass of individuals recognize that they are subject to a punitive power, rather than their testifying to its moral legitimacy.

³⁰ Conflict between the sovereign and the local administration of the law was occasionally more open. In the 24 November 1971 lecture of *Théories et institutions pénales*, Foucault’s notes give an example of local administrators refusing to register a royal edict meant to punish those who participated in a series of local popular uprisings.

³¹ Foucault, *The Punitive Society*, 105; 119n.14. This concrete example owes its presence in this chapter to the excellent editorial apparatus of translator Graham Burchell and editor Bernard Harcourt.

The possibility of power's failure or, worse yet, its diversion led the reformers to propose several disjunct objectives for their technology of power. Foucault terms these "rules." The "rule of minimum quantity" mandates that material "disadvantage" of punishment must exceed the material "advantage" to the crime. Moreover, the representation of the material disadvantage must be enough to prevent future offenses. The "rule of sufficient ideality" specifies that punishment must be displayed or known to be preventative, and that it had to be known with an adequate intensity of psychological pain. Conceiving of the punishment had to give "displeasure" *per se*. Deterrence is formulated in Foucault's "rule of lateral effects": "The penalty must have its most intense effects on those who have not committed the crime" (Foucault 1979, 95). The "rule of perfect certainty" posits that each crime have a clear penalty, that the catalog of crimes be known to all in the form of laws, and that each crime must be punished. What defined each crime would be certain, its penalty would be certain, and it was to be certain that the crime would be penalized. The "rule of common truth" mandates that guilt or innocence be determined only through the idea of proofs and measures of evidence, and that the state banish lingering feudal forms of the test. With this latter pair, the reformers related two problematics: the first, of maximizing the social enforcement of obedience to the law, through the public proclamation of laws - which is supposed to generate a subjective investment in the law - and the second, of deterrence, which presupposes an epistemological relation between offense and punishment. Finally, the rules must allow for a contingency function, such that "silence of the law must not harbour the hope of impunity" for wrong behavior (Foucault 1979, 98). Nor may subjects find impunity within the law, since "the rich do not fear fines nor the notorious infamy" (Foucault 1979, 98). To effectively hold social control,

an individualization of the sentence to offender is needed, which Foucault terms the “rule of optimal specification.”

The reformers’ problematic culminated in the fantasy-abstraction of the punitive city. Foucault allegorizes a nearly unbroken extensity of “hundreds of tiny theaters of punishment”:

This, then, is how one must imagine the punitive city. At the crossroads, in the gardens, at the side of roads being repaired or bridges built, in workshops open to all, in the depths of mines that may be visited, will be hundreds of tiny theatres of punishment. Each crime will have its law; each criminal his punishment. It will be a visible punishment, a punishment that tells all, that explains, justifies itself, convicts: placards, different-coloured caps bearing inscriptions, posters, symbols, texts read or printed, tirelessly repeat the code...But the essential point, in all these real or magnified severities, is that they should all, according to a strict economy, teach a lesson: that each punishment should be a fable. (Foucault 1979, 113)

The punitive city is doubly teleological. At one level, the public display of punishments educates the population, presenting object-lessons that would testify to the consequences of violating the social order. By locating punishments in “hundreds of tiny theatres” across the city, the reformers could shape the urban order through representation and belief. Their punishments would both manifest and testify to “a functioning of penal power, distributed throughout the social space...[and] a power to punish that ran the whole length of the social network” (Foucault 1979, 129–30). At another level, the punitive city exploits visibility and everyday movement.

The “sights” of the punitive city turn on as much on their commonality – dependably encountered, mundane, and held in common – as on the viewer’s acceptance of the punishment’s representational content. That is, the punitive city would expose and habituate its residents to the sights of punishment, in order to “initiate” them as subjects through self-recognition and subjective identification.

The representational stakes are indicated by Foucault's summation: punishments are to be “fables.” Fables, of course, have morals. Likewise just as a fable has characteristic structural elements and narrative techniques, the punishments were to “shape the discourse that each individual has with others and by which crime is forbidden to all by all” (Foucault 1979, 110). In this way, punishment in the punitive city reiterates Foucault’s earlier discussion of fable in an essay (1998a) on Jules Verne. A fable, he says, has a “content,” a form of “public discourse” in how it is recounted, and a “speaking subject.” The reformers’ analogical system of penalties, in which “each crime will have its law” (Foucault 1979, 113), conforms to the “fabulous” order: “The punishment must proceed from the crime” – the content – “the law must appear to be a necessity of things” – the form of discourse – “and power must act while concealing itself beneath the gentle force of nature” as “speaking subject” (Foucault 1979, 106). Above each recounting, the united author-authority of the punishment remains. However, the punitive city is also a governing ideal, and must attend to its political subjects who comprise an audience. The penalty might falter as punishment if irregular and arbitrary penalty establishes not an offense-penalty causal story but rather, at best, a link between the penalty and being caught.

Likewise, it must to direct the punishment-fable into a reflexive understanding on the part of the audience, and it must sustain authority's position as arbiter of interpretation.

Through sight, movement, and material penalties the punitive city makes appear an asymmetric opposition of authority and individual offender. The punitive city orchestrates visibility. In this way it may be read diagrammatically, relating a set of non-discursive formations to a set of discursive formations. Foucault's most famous diagram, the panopticon, serves as "a mechanism of power reduced to its ideal form; its functioning, abstracted from any obstacle, resistance or friction, must be represented as a pure architectural and optical system: it is in fact a figure of political technology that may and must be detached from any specific use" (Foucault 1979, 205). In an echo of Foucault's distinction between "content" and "public discourse," Deleuze describes the panopticon to make a "correspondence" or "coadaptation" between, first, a discursive form of penal law whose content concerns criminals and whose public discourse concerns the purposes and procedures of confinement, and, second, a non-discursive formation with a content of the concrete structure and its "form" and function "to see without being seen" (1999, 32-33; 47ff.).³² Following Deleuze's analysis of Foucault, the diagram is two irreducible formations that rely upon "a mutual presupposition operating between" them, a

³² The four-part form is Deleuze's appropriation of Louis Hjelmslev's semiotic theory of the sign-function, which uses the terminology "content," "expression," "form," and "substance." Deleuze considers two dyads: content-form/content-substance and expression-form/expression-substance. I thank an anonymous reviewer for making this point.

novel function immanently caused through the intermingling of incongruous functions (Deleuze 1999, 33-34; Zdebik 2013).

The punitive-city diagram might be said to map points through which punitive power passes, without determining the use or outcome of that immanent organization (Foucault 1979, 205-06). The punitive city links residents' unwilling "'pain' of the idea of 'pain'" to the forced visibility of offenders (Foucault 1979, 94); each of these has a correspondence between representational and non-representational elements (an idea of pain to a feeling of "displeasure"; an identification of the scene to one's passing through it). The correspondences might be said to join fragments to individuals as much as, on a different level, the technology of the punitive city joins individuals to multiplicities. As a diagram, the punitive city is closely related to the panopticon: both rely on visibility and representation to, as Deleuze says, "impose a particular conduct on a particular human multiplicity" (1999, 34). They correspond in penalty, in the "system of language that classifies and translates offences and calculates sentences" (1999, 32). But where the multiplicity of discipline "is reduced and confined to a tight space," the punitive city's form utilizes not confinement but motion, not "seeing without being seen" but a dependable experience of "seeing another punished." Deleuze notes that "Form here can have two meanings: it forms or organizes matter; or it forms or finalizes functions and gives them aims," and defines the panoptic diagram's material organization as the prison itself, which restricts movements, and the function as punishment (1999, 33). In the punitive city, the formal matter is the built environment, allowing for circulations and movements, and the formalized function is deterrence. The punitive city expands rather than

segments; it habituates with representations rather than instruments of training; it deters with the goal of freezing a social world that is ever-moving. It couches a dream of stasis within itself.

Considering the punitive city as a diagram enables a revision to Foucault's thought. The punitive city and coercive or disciplinary institution may be functionally complementary, spatially non-exclusive, and may mutually articulate in a strategic practice that subordinates individuals and collectivities. This argument is, in a way, a Foucauldian one. In the *Security, Territory, Population* lectures, Foucault held that the major technologies of power in the Global North – sovereign power, discipline, biopower – form a “solid series” (Foucault 2009b, 108) rather than a supplantation, a symbiosis rather than succession. If so, their correlative diagrams might also operate in concert. To begin, how do we account for authority in punishment within the disciplinary institution, both in the forms of power that the disciplinary institution wields to make bodies docile, and in that which guarantees the exercise of disciplinary authority? In the “Truth and Juridical Forms” lectures, disciplinary power operates by coupling an economic power – in the form of exchange or production – to a political power – such as the rights to expel, differentiate, or impose rules – and, further, to a judicial power that renders decisions about punishment and reward (Foucault 2000b, 83, see also 2015a, 214–15). However, the institutional cooptation of non-disciplinary power to operate mechanically within a disciplinary strategy does not guarantee the institution's continual operation or reproduction. A fully self-contained institution is vulnerable to cooptation or takeover by the very individuals it operates to make docile; as Foucault says in the *Punitive Society* lectures, “the workshop could not function in the structure of the convent or the barracks if there were not the police or the army

alongside” (2015a, 209). In other words, disciplinary institutions require a form of power exterior to them and yet made to operate within the same function (Deleuze 1999, 43). At issue, then, is whether and the extent to which the sights of the punitive city could serve as the disciplinary institution’s exterior function. This question inverts the reformers’ problem: where sovereignty’s general discontinuity made it ineffective as a guarantor of the social order within the territory – according to the reformers – the disciplinary institution has effective continuity of power within but only on the condition of a power without.

Foucault offers a spatial juxtaposition between the punitive city and coercive institution. The punitive city is extensive, with punitive power “distributed throughout the social space” by means of spectacle yet within an urban site. By contrast, Foucault says that “the first action of discipline is in fact to circumscribe a space in which its power and the mechanisms of its power will function fully and without limit” (2009b, 45, see also 1979, 130–31). The coercive institution segments, confines, and then imposes a conduct. Despite the apparent contrast, both metaphors presuppose a space that is divided with a discrete inside juxtaposed to an unformed outside. The tendency to think of spatial relations as the occurrence of discrete objects that have interiors (and consequently, which might be fractured) and exteriors or limits is typical of Foucault’s writing (cf. Johnson 2008, 612–13; Crampton 2013). The list compiled by the French geographers who interviewed him for the journal *Hérodote* describes a “profuse use of spatial metaphors – position, displacement, site, field; sometimes geographical metaphors even – territory, domain, soil, horizon, archipelago, geopolitics, region, landscape” (2007a, 176). Similarly, in the 1964 essay “The Language of Space,” Foucault gives “the gap, distance, the

intermediary, dispersion, fracture and difference” as spatial metaphors (2007b, 163). One sees a preponderance of distance-delineated relations in bounded space. Yet analogizing the reformers’ ideal to practices within urban space risks circumscribing the operation of deterrent power to a territorial form. The diagram of the punitive city does not hinge on an architectural form analogous to how “stones can make people docile and knowable” (Foucault 1979, 172) in the diagram of the panopticon. Rather, the spatial proposition of the punitive city disperses the sights of punitive power, giving merely the appearance that the punishing authority’s power is spatially continuous. In contrast to a sovereign power that attempts and fails to blanket and saturate public space, the spatial model for the power proposed by the reformers is, on the one hand, a temporal irregularity in a regular spatial form, such that its location is constantly varying, like a sound wave or ripples when throwing rocks on a lake; and, on the other hand, described by a shape or topology that never exists except in representation of its predictable effects, such as an orbit or gravity. The use of violence and spectacle in the punitive city does not and cannot displace the coercive institution spatially because they are not mutually exclusive productions of spatial interiority by power and they do not produce space in substantially identical ways.

The problem that the punitive city attempts to solve is a functional equivalence of forces, rather than the asymmetry of force that it attempts to present. Its orchestration of visibility is meant to deter, to “indefinitely postpone” (Bogard 1991, 341) any actual combat between forces on the idea that, as Foucault paraphrases Hobbes, either the stronger would brutally subdue the weaker or “relationship of force would remain virtual, precisely because the weak are timorous” (2003b, 91). The reformers were limited by an inability to secure

compliance continually and uniformly across space, as biopolitical modes are similarly limited today. My own objective in this section has been to locate the punitive city as a diagram of power, one that might serve as a “tool” or a “‘gadget’ of approach or methodology” (Foucault 2007a, 174). One can both accept some or all of Foucault’s various claims about the transition to “disciplinary society” while contesting Foucault’s claim about the replacement of the punitive city by coercive institution. In a sovereign system, the punitive-city function gives the appearance of the sovereign will across space; in discipline, it models both an external deterrence against revolution within the workshop and an internal deterrence that would establish an individual’s obedience to the rules of the school, factory, or prison. Such deterrence is the recourse for, as William Bogard writes, a paradoxical “inability to exercise power,” perhaps a tacit admission of authority’s weakness (1991, 340).

Conclusion: Punishment, discipline, and the diagram of deterrence

Foucault’s account of the punitive city and disciplinary institution as competing models invites a final reflection. Foucault’s claim the “the other side of the disciplinary relationship is punishment” (Foucault 2006, 51) invites at least four readings on the relationship of discipline and punishment. Discipline and punishment might comprise a single, double-sided technology, as suggested by Foucault’s claim of sovereign punishment as a “corrective and disciplinary technique” (2009b, 7). Alternatively, discipline and punishment might be necessarily complementary yet distinct. In yet another reading, discipline might inscribe punishment within itself, either as a technology or as a historical formation. I find this the strongest reading, and it

has been that which I have used throughout this chapter. But in a final reading, discipline and punishment might operate on the basis of a “mutual presupposition.” If “discipline is a mode of individualization of multiplicities” (2009b, 12), and if disciplinary power requires each of the elements of punitive power to operate – authority, bodies, individual-collective and fragment-individual joins, and a causal story – then punitive power might condition disciplinary power’s field of intelligibility. The open question is whether disciplinary tactics are necessarily punitive or instead if disciplinary power rearranges the elements of punishment. I leave this question for future scholarship. But should punishment make discipline make sense, it would offer inroads to a second question, of the relation between punitive and disciplinary power considering Foucault’s unsaid but prepared remark regarding “the analysis of a form of power I have called punitive, which it would be better to call disciplinary” (2015a, 237n.).

This chapter has provided a minimal account of an analytics of punishment immanent in Foucault’s work. Punishment does not correlate to retribution or restoration, but rather to the government of a broad group of potential “offenders” who are “absolutely anyone whomever” (Foucault 2008, 253).³³ As an “analyzer of power,” punishment focalizes the power relations through which punitive practices and procedures arise, such as “pious multiplicity” of the early monastics and the sovereign economy of the body. As a technology, punitive power seizes the body in the name of an authority or reified power, targeting the fragment-individual

³³ See also Foucault, *Discipline & Punish*, 108: “But the guilty person is only one of the targets of punishment. For punishment is directed above all at others, at all the potentially guilty.”

and individual-multiplicity joins, to subordinate individuals and/or multiplicities. As a diagram, the punitive city maps the use of punitive power to order the social, as well as the limitations in so doing. Readings of the spectacle, especially Debordian readings, generally present representation as domain of state strength. My analysis here, particularly of the punitive-city diagram, would suggest that the state makes recourse to representation when it perceives that power differentials are not sufficiently extreme, when it cannot compel compliance to its will. This should not, however, imply an absence of power, but rather a deficit of the coordination necessary for sovereign governance.

The 18th century reformers' influence may be traced in contemporary practices that include neoliberal penalty, via "broken windows" policing and cost-benefit legal analyses (Dilts 2008; Harcourt 2015); migration governance that attempts to deter migration to the global north by increasing mortality (Squire 2017); and in the pervasive practice to identify subgroups as prone to wrong-doing, such as racialized tropes of criminality (Cisneros 2016). Foucault repeatedly emphasizes that the reformers were targeting the working class, not their own bourgeois peers and certainly not all equally (e.g. Foucault 1979, 276). He critiqued the punitive city as limited in use and reach, relying too much on the power of representation for its purposes. Yet if the punitive city serves as a diagram of deterrent power, then its activation might be widespread. Neoliberal penalty, migration deterrence, and racialized criminality all employ a directed punitive power that blurs the distinction between innocent and "potentially guilty" (Foucault 1979, 108) and reinscribes subgroup difference. Foucault had imagined that the semiotic operation of punishment would be effective for subordination when crime

faithfully implied punishment. This is not the only possibility. A different semiotic couple may take hold, as in the US, where blacks and whites use drugs at the same rates, and where whites are more likely to sell drugs, yet blacks are more likely to be arrested for drug offenses and more likely to be sent to prison when they are (e.g. Mitchell and Caudy 2015). The political rationality is that prisoners are incarcerated not because of selective effects but because of their legal guilt. This system is stable. It also indicates something about punishment and the punitive-city diagram: that the semiotics of punishment afford a political use when their “direction” is reversed, if a prisoner – and particularly a minoritized prisoner – faithfully implies a crime (Davis 1998).

Chapter 5:
Migrant punishment and migrant “deterrence”:
Foucault, the US-Mexico border regime, and the punitive governance
of mobility outside the sovereign territory

Introduction: Punitive power and the dialectic of migration deterrence

In September 2016, newly appointed US Border Patrol Chief Mark Morgan explained the dialectical challenge of border securitization and migrant exclusion:

Gatekeeper and *Hold the Line*, those are great examples of how we did all this [work] and the stuff [i.e. clandestine migration and drug smuggling] shifted. So at one moment we could say we had ‘operational control’ in an area, and - [*he snaps his fingers*] - the next minute it’ll change. (https://www.youtube.com/watch?time_continue=2599&v=dalr1b8E7ok)

Morgan’s testimony refers to a pair of 1990s border-militarization programs - Operation Gatekeeper (1994) and Operation Hold the Line (1993) - that inaugurated a broader migration-enforcement strategy known as “Prevention through Deterrence” (United States Border Patrol 1994). The “all this” of Prevention through Deterrence would, first, establish “operational control” near urban areas to thwart unauthorized entries. Migrants would be forced to cross in remote mountain and desert areas, where their journeys would be more dangerous, more time-consuming, and more expensive. The underlying theory of Prevention through Deterrence held that as US Customs and Border Protection (CBP) progressively raised migration “costs,” migrants would attempt entry to the US in progressively decreasing numbers.

Today, irregular migrants' journeys are more dangerous, more time-consuming, and more expensive than before.

Morgan's testimony also recognizes a dialectical challenge. Each Border Patrol tactic configures migrants' behaviors and practices even as each tactic is configured by migrants' behaviors and practices. Clandestine migration flows shift with changes in localized border policing in what the CBP occasionally refers to a "water-balloon effect" along the border (Rayas 2011; Dunn 2010; Schroeder 2014, 7; Spagat 2006). Tactically, Prevention through Deterrence succeeded in that it displaced clandestine transits and "raised the costs" of irregular migration (United States Border Patrol 1994, 8). But Prevention through Deterrence has not seemed to repress irregular migration flows across the US's southern border. Indeed, a body of scholarly research stretching nearly to the very beginnings of "Prevention through Deterrence" shows no widespread deterrent effect (Cornelius, 2001; Cornelius & Salehyan, 2007; Eschbach et al., 1999; Martínez, 2016; Massey, Durand, & Pren, 2016; Ryo, 2013). Even the CBP has acknowledged that its tactics worked even as deterrence strategy did not. An internal 2014 report asks, "Was deterrence and arrest a path to a secure border?" (Schroeder 2014, 5). The report concludes: "results led the US Border Patrol to acknowledge that no amount of resources could guarantee an immediate or sustained interdiction capability" nor migration deterrence itself (Schroeder 2014, 8). Nonetheless, "raising the costs" remains the model for CBP operations directed against irregular migration (Dunn 2010), including the recent iteration of the US Department of Homeland Security's "Consequence Delivery System" (Ewing 2014; Williams 2014).

Scholarship across political geography, migration studies, and borderlands studies has recognized a critical problem in the failure of Prevention through Deterrence to deter. A deterrence strategy that fails its animating principle may still produce social effects. One thread of scholarship links strategy and effect while bracketing effectiveness, such as Jeremy Slack and colleagues argument that US “border-enforcement strategy has centered on the development of a militarized logic and a strategic plan for enforcement that emphasizes pain, suffering, and trauma as deterrents to undocumented migration” (Slack et al. 2016, 8; see also Johnson and Woodhouse 2018; Wheatley and Gomberg-Muñoz 2016). A complementary project has sought link migrant trauma to state initiatives by demonstrating how “a border-enforcement strategy of environmental deterrence” (Johnson 2015, 1245) renders the deaths of irregular migrants both routine and outside of state responsibility (Doty 2011; De León 2015; Délano Alonso and Nienass 2016; Squire 2017; Jusionyte 2018). By contrast, and concentrating on “deterrence” as a signifier, scholars such as Lauren Martin (2012) and Nancy Hiemstra (2012) have argued that deterrence provides a rationale for new tactics of migration enforcement, such as the increasing criminalization of irregular migration and immigrant incarceration (Gilbert 2009; Riva 2017; see also Balaguera 2018). Finally, studies have argued that deterrence fails at restraining migration but succeeds as a performance of state sovereignty (Hagan 2008, 61-63; Lorenz 2016; see also De Genova 2013).

This paper responds and contributes to all four discussions by expanding to include a longer trajectory of migrants’ mobilities, from Central America, through Mexico, and perhaps to the United States. If the first two threads of scholarship might serve to recognize both “death

as policy” (Délano Alonso and Nienass 2016, 444) and that “border trauma is deliberate” (Jusionyte 2018, 98), then they critically consolidate deterrence as a tactic of migration enforcement. Complementarily, the third and fourth threads suggest that “deterrence” names something apart from a project to deter, and so must be treated nominally. Indeed, “deterrence” puts at least three “terms” in play: the sign of “deterrence”; the policies and practices to “raise the costs” of migration; and migrants’ “pain, suffering, and trauma.” Looking at “deterrence” as a tactic, I draw from Foucault’s works of the 1970s and 1980s to argue that “raising the costs of migration” manifests an expressive form in the right to punish.³⁴ The first contribution of this chapter establishes how punitive power animates the tactic of “deterrence” in the North American migration corridor. In formal terms, punitive power describes an operation that seizes the body, to subject it to a penalty; discursively renders the offense as cause of, or at least sufficient explanation for, the penalty; and leverages that causal story to regulate the relations of an individual to a collectivity, characteristically as a form of subordination. Migrant punishment thus characteristically takes the form of the diagram, with “correspondences” of discursive and non-discursive formations that can never be collapsed into one another and yet which depend on “a mutual presupposition operating between” them (Deleuze 1995, 33-34).

³⁴ I use “right” here not as a feature of liberal governance, but in a descriptive sense analogous to Foucault’s description of the unified sovereign right (Foucault 2000b, 42-43): as a social assertion of the state’s righteous authority; as the state’s privilege to kill, maim, or debilitate; and as the state’s interest in its control over the social multiplicity.

I argue that if so-called “deterrence” practices fail to repress migration, nonetheless “deterrence” logics succeed to punish migrants. I turn to punitive power because it resolves significant theoretical problems about the form and the spatial dimensions of state power over migration governance. When contextualized, Morgan’s testimony implies a pair of failures. The first is the failure of “deterrence” practices – found in Operations Gatekeeper and Hold the Line – to deter rather than displace migration. The second failure is an abstract failure of sovereign power to repress migration through logics of militarization and the use of military force. I claim that “deterrence” – which in North American names a project of punitive power – also serves as an ordering technology for migration enforcement and border militarization. In other words, my goal is to sustain an argument in which “deterrence” practices afford theorization as a complete or “terminal” (2006, 56) technology of power, in which the expression of power also serves as power’s “end.” To substantiate this claim, I draw upon Foucault’s abstraction of the “punitive city” in *Discipline and Punish*, and his curious suggestion that the “punitive city” can serve as analytic equal of sovereign and disciplinary power (1979, 130-31). I offer the “punitive city” as a diagram of deterrent power that has explanatory purchase for conceptualizing state power over migration outside the territory.

The next section reviews North American border militarization, understood as the framework through which migration crises are produced, understood, and responded to. Operations Gatekeeper and Hold the Line applied state sovereign force to the areas around the US-Mexico border line, to deter Mexican migrants from crossing. Today, US officials coordinate – and often collude – with Mexican officials to govern a largely Central American

flow. The third section develops the paper's major theoretical contribution: a Foucauldian account of punishment, which continues ongoing geographical discussions around space and power. I read across Foucault's works to sustain a broader argument about punitive power, in particular, about its characteristics and capacity to operate as a complete function. The fourth section employs the Foucauldian diagram of the "punitive city" from *Discipline and Punish* (1979) to change the frame of reference for deterrence from sovereign to punitive power, and thereby dissolve the state's spatial problem of migration governance outside the territory. Recognizing that the punitive-city diagram opens new questions, the fifth and sixth sections investigate punitive power's use as an expressive diagram of power, and they show how punitive power may resolve critical questions in sovereignty-centered accounts of North American migration enforcement. Together, this chapter shifts spatial understandings of state authority and state power, and calls for a recognition of punishment as an always-already political relation.

The logic of border militarization

A continuity of border militarization links US and Mexican migration enforcement. By border militarization, I mean to signal a logic, drawing from Iris Marion Young's germinal account (2003) of a geopolitical "logic of masculinist protection." Border militarization imagines state sovereignty as continuous with state territory; it reads threats to a state's territorial integrity as threats of national security (Andreas 2000; Walters 2010), thereby positing an essential similarity across illicit cross-border practices from undocumented migration to drug smuggling to invasion (Heyman and Campbell 2012; Massey, Durand, and Pren 2016); and it holds that

military force and military threat are the proper, most efficacious, or first-best responses to potential incursions into state territory (Mountz 2010; Jones and Johnson 2016). At first blush comprehensive and authoritarian, in practice militarization is less a coherent mechanism of control than a set of often-contradictory and mutually undermining practices that share discursive forms, including migration-as-threat. Militarization is not a comprehensive strategy, although public discourse often asserts and ascribes a strategy to militarization.

Border militarization has dominated the US political imaginary for nearly four decades. A genealogy might well take “Prevention through Deterrence” as the point of ideological succession and consolidation. But border militarization’s roots reach deeper: through INS Commissioner Leonard Chapman’s fabrications of a “silent invasion of illegal aliens” in the 1970s (Massey, Durand, and Pren 2016), to the extrajudicial deportations under retired General Joseph Swing in the 1950s (Hernández 2010), even the conceptual roots of migration deterrence in Cold-War analogies to nuclear deterrence (Bogard 1991). The fruits of militarization have matured, for example, in the 2014 “child migration crisis” in which approximately 68,000 unaccompanied minors and a further 68,000 “family units” traveling with minor children from Central America (United States Customs and Border Protection 2014) crossed the US-Mexico border to claim US asylum in large numbers. The “child migration crisis” became both narrated and responded to as a problem of social order. Then-prospective presidential candidate Hillary Clinton employed the coded language of migration “contrary to our laws” (Foley 2014) to describe the phenomenon. Likewise the union representing CBP agents released a statement reading that “this situation will continue if there are not

consequences for breaking the immigration laws of the United States...Mandatory detention and deportation is the only consequence that will resolve the problem” (National Border Patrol Council 2014). Both Clinton and the NBPC advocated for “tough” measures that would dissuade future asylum claimants. Those apprehended, however, were not breaking the law: the asylum system generally requires asylum-seekers to arrive and subsequently claim rights to stay. Clinton and the NBPC made claims about “law-breaking” that was not a claim about statutory content, texts, or common interpretation. They asserted inaccurate descriptions of the law as political speech. This disjuncture between (non)viable description and viable political speech discloses how border militarization develops claims of “law-breaking” from parent claims of social order and national belonging rather than claims about law or jurisprudence.

The 2014 “crisis” accelerated a series of handshake deals between several US and Mexican subnational agencies (Casillas 2016). Most have leveraged Mexico’s Plan Frontera Sur (Southern Border Plan), a national-level strategy “supported by the USA with the explicit goal of detaining Central American migrants before they reach the USA” (Kovic and Kelly 2017, 5). The post-2014 deals have transferred US funding for drug interdiction to migration policing, especially for Mexico’s migration enforcement agency, the INM (*Instituto Nacional de Migración*). The known quantities of financial transfers have been in the tens of millions of dollars – \$43 million USD in one 2015 report, and a minimum expected allocation of \$86.6 million USD according to a more recently released document written in 2014 (Kandel et al. 2014, 11-12n.58; Márquez Covarrubias 2015; Seelke and Finklea 2017). The funding has supported migration-enforcement materiel, including checkpoints, detention centers,

specialized inspection equipment, and physical impediments to clandestine travel such as fences and bollards. US migration-enforcement personnel have further assisted with both migrant interdictions, and in “trainings” to teach Mexican migrant agents how to “conduct humane repatriations” (Seelke and Finklea 2017, 10). As with 1990s Prevention through Deterrence at the US border, the post-crisis project has generally achieved its tactical goals, namely, to increase the difficulty, or “costs,” of transiting Mexico (Villafuerte Solís and García Aguilar 2015; Brigden 2016; París-Pombo 2016; Kovic and Kelly 2017; Vogt 2017). The continuity of tactics in the two countries appears, at this moment, matched by a continuity of the dialectic of migration deterrence, with an absence of verifiable effects that migrants have been deterred.

So too has Mexican elite political discourse begun to employ a dual discourse of state protection and migrant criminality common to border militarization (Parrini 2015; Villafuerte Solís and García Aguilar 2015; Treviño Rangel 2016; Vogt 2017). Consider the following communiqué from the Mexican Attorney General after meeting with US and Central American colleagues in 2014:

Today in Mexico City, the Attorneys General of El Salvador, the USA., Guatemala, Honduras, and Mexico met to discuss our shared responsibility to address *the criminal phenomenon* that affects great numbers of unaccompanied minor migrant children. The purpose was to agree on a strategy to protect their security and dignity, so as to effectively fight those criminal organizations that benefit from *the diverse crimes associated with migration*, such as trafficking and human smuggling. (PGR 2014, emphasis and translation mine)

The statement conflates the Mexican state's repressive power of policing with its positive obligations to its citizens, primarily through the trope of "dignity," the child's legal and moral claim to a *vida digna* or "dignified life" important in Latin American jurisprudence (Pasqualucci 2008; see also Chapter 2). Similar to US politics, the statement reveals a disjuncture of descriptive and political speech, for Mexico's 2012 Law of Migration effectively decriminalized irregular presence³⁵ for Guatemalans, Hondurans, and Salvadorans, and removed most sanctions including deportation (Morales Vega 2012). In the Attorney General's discourse of criminality, which invents "diverse crimes" that are actually not crimes - "human smuggling" refers to *coyotaje*, which as the practice of being a migrant's guide is not criminally sanctionable - the state claims both that its power and justification are to fight crime, but also that the state might contravene law to protect itself, its citizens, and its charges.

Unsurprisingly there is another wrinkle. Nearly all Mexican deportations of Central Americans - 176,000 in 2015, a further 150,000 in 2016, and 81,000 in 2017 (SEGOB 2016, 2018) - are conducted by the INM yet fall outside the INM's statutory authority under the Law of Migration. Instead, when pressed, the INM has claimed that, as part of Mexico's Executive branch, it can use the Presidency's plenary power under Article 33 of the Mexican Constitution to summarily expel "undesirable foreigners" (*extranjeros inconvenientes*; De Dienheim Barriguete 2013; Treviño Rangel 2016). Bracketing the considerable legal questions, two critical points may be made. First, the INM asserts that its power to detain and deport migrants is

³⁵ The Ley de Migración decriminalized presence, but not other actions migrants commonly undertake without documents, such as working.

above or beyond legislative law, and second, that the INM prioritizes the use of its power against legal non-offenders with the technical assistance of the US government.

The elements of punitive power

To substantiate the claim that irregular migrants’ “pain, suffering, and trauma” (Slack et al. 2016, 8) comes to comprise a tactic of migrant punishment, I turn now to a Foucauldian account of the punitive. Although Foucault’s analytics of punishment are best known from *Discipline and Punish* (1979), a complex formulation emerges in his broader *oeuvre* and especially through the *Collège de France* lectures. Drawing out the points of convergence in Foucault’s analytics of punishment across the 1970s and 1980s, I situate punishment as a form of power – punitive power – partially and temporarily unified in the set of relations by and in which it is produced. These relations both name enabling conditions for punitive power (e.g. authority, somatic existence, or the possibility of narrative) and the sites in and through which punitive power emerges (e.g. in the claiming of authority, in the embodied experience of the penalty, or through the causal story). Punishment does not name a rationale or, as applied to North American migration, a “motivation of the state”; instead it names a technology of power operationalized through a consistent set of elements or conditions. Applied to North American migrations, it marks a form of power operationalized in migration-enforcement practices and stabilized through institutional procedures and policy.

Foucauldian punitive power requires several linked elements: authority and bodies; individuals and collectivities; and a causal story established through the power of discourse. In

punishment, authority appropriates its object – the body – in triple character as an object capable of being written and read as a “surface of inscription of events” (Foucault 1998b, 375), as a somatic existence capable of experiencing affective intensities, as, and as a (latent) productive force that may act. The body differing uses, in Foucault’s description, for each economy of power. In one economy, Louis XV sends his agents to punish; in another, the monastics use punishment to restore the offender to a pious collectivity whose salvation was only possible together (Foucault 2014, 183ff.). Likewise, for the sovereign power at its French zenith, punishment emphasizes affective intensities and powers of corporeal suffering (Foucault 2003a, 83–85); for discipline, a “miniscule and continuous punitive pressure” (Foucault 2006, 51) is a productive tool for the formation of docile bodies within disciplinary institutions. No necessary relation between the body and authority is created, but rather a contingent relation is made between authority and the body. Likewise, while “authority” (Foucault’s term in 2015a, 208) serves as punishment’s “crucial emergent field” (Jessop 2006), the sources of authority arise in a multitude of forms. These forms include doctors (2006, 10–12), factory foremen (2000b, 83), the heads of Benedictine monasteries (2014, 172), King Louis XV (1979), family patriarchs (2006, 80), and “society” itself (2015a, 72). The variable instantiation demonstrates that there is no stable exchange between punishment and state penalty, and that punishment can be actualized on behalf of other individuals, collectivities, ideals, or arrangements of power.

While the authority-body relation suggests punishment as a direct relationship of force, punishment also appears to incorporate a social-regulation function. Turning to the variable instantiation of punishment that Foucault describes is again instructive. Under the economies of

power of the pastoral monastics, of sovereignty, and of the penal reformers, the offense separates the offender from the collectivity as, respectively, a carrier of malady (Foucault 2014, 182), a sovereign adversary (Foucault 2003a, 82ff., 2015a, 34), or a wayward juridical subject (Foucault 1979, 128). Under discipline and biopower, punishment upholds a specified norm (Foucault 2000b, 79, 2008, 253–60) that is also the join by which the subject’s relation to a collectivity is understood (Foucault 2015a, 211–15). Howsoever the individual or subject might be constituted, punishment’s role is regulative of a collectivity. Punishment adds a dual joining function, on one side from individual to collectivity and on the other from “fragment” to individual. This dual joining function in punishment is characteristic, and it marks an important divergence from Foucault’s other analyses of modalities of power.

By contrast, Foucault holds that the model of sovereign power is vertical, unidirectional, and orbits around a “relationship of obedience between a higher will, of the sovereign, and the wills of those subjected to his will” (2009b, 65). Notably to this chapter’s purposes, sovereignty is the analytic through which much discussion of state power over migration is understood. But Foucault also claims that

the relationship of sovereignty is a relationship in which the subject element is not so much, and we can even say it is almost never, an individual, an individual body. The relationship of sovereignty applies not to a somatic singularity but to multiplicities – like families, users – which in a way are situated above physical individuality, or, on the contrary, it applies to fragments or aspects of individuality, of somatic singularity. (2006, 44)

On this basis, let us recall Foucault's famous image of the *supplice* of Robert-François Damiens, which opens *Discipline and Punish*. Damiens had attacked the king with a penknife and presented little threat. In a demonstration of Louis XV's sovereign might, Damiens was tortured, pierced with red-hot pokers, drawn and quartered, and finally burned at the stake. "Above" the individual, sovereignty might code Damiens as part of "the people" (Foucault 1979, 58) to be coerced into compliance. Indeed, Foucault habitually depicts sovereign punishment as oriented toward the past, for example by terming the public execution as "a ceremonial by which a momentarily injured sovereignty is reconstituted" (Foucault 1979, 48). Conversely, "below" individuals, the king and his agents could install sensations and their intensities in bodies, intensities of pain for Damiens as well as the sympathetic experience of the observing crowd. The suffering temporarily pins a subject-function on Damiens' body. Even more, it joins somatic "fragments" in a general "terror" exceeding pure representation: the "physical fear, collective horror, images that must be engraved on the memories of the spectators, like the brand on the cheek or shoulder of the condemned man" (Foucault 1979, 110).

Damiens' *supplice* is also instructive as an example of punishment's discursivity. Carried out publicly, the *supplice* implies a narrative that at minimum explains and perhaps justifies the penalty, both to the present and retrojected into the past. Foucault terms this process punishment's "semio-technique" (1979, 94ff.). Visible punishment triply implicates a causal sequence: an offense leads to a penalty, a penalty implies that the penalized is guilty of the offense, and a person penalized means that a crime has in fact occurred. Punishment thus tends

to blur causal and moral responsibility. On the one hand, it relates enduring marks to a causal sequence (Foucault 1979, 55–57). Even if parts of that story are veiled, the presumption underlying punishment is the causal sequence’s existence. On the other hand, some collectivity must accept the offense-response story – linking a set of events, via a judgement about responsibility – as meaningful. As a political technique, punishment thereby produces a set of normative injunctions: to refrain from some voluntary acts, from some involuntary acts which nevertheless must be sanctioned, and/or from inhabiting categories and subject-positions that should be made to suffer. The normativity binds to the narrativity. An offender may not be morally responsible for base criminality at a subjective level, yet the offender is produced as the final cause and responsible to the causal story.

Sara Riva has offered an important example in her examination of the CBP’s use of *hieleras* (see also Chapter 1) through a Foucauldian optic. *Hieleras*, Riva argues, operationalize “a twofold goal: to manage and control populations of migrants and asylum-seekers at the border, and to deter others from attempting the journey” (2017, 311). While Riva does not trouble the notion of “deterrence” other than in noting its ineffectiveness, she does corroborate several of the broader features of migration enforcement as punishment that are of interest to this paper. First, there is a relationship between authority and irregular migrants’ bodies: “Petty sovereigns” – CBP officers – “are the condition of possibility of punishment” (2017, 316), and “women are punished... through overcrowding, inadequate access to medication, lack of beds, insufficient food, frigid temperatures, lack of toiletries, lack of control, uncertainty, separation from their children, and other penalties” (2017, 319). Second, the article recognizes a social-

regulation function: in *hieleras*, “punishment becomes ‘acceptable’, ‘deserved’, and normalized” (2017, 315). This regulation is both broadly racialized – the penalty is justified because of who the offender is, understood via identity categories – and as a measure of the severity of the offense of unauthorized territorial incursion. Third, while many of the women detainees she discusses are asylum-seekers, and by definition not “criminals” legally, nonetheless their presence in the *hieleras* retroactively justifies their treatment: “*Hieleras* become the place where the asylum-seeker, the immigrant who is always-already seen as a criminal, and migrant women embodying ‘deviant’ maternity get conflated” (2017, 319–20).

For migration enforcement, the “militarized logic...that emphasizes pain, suffering, and trauma” marks power’s capacity to effect violence and material harms on subjects without altering behaviors. Punishment is an effect of power, rather than anything like an “intent” of the state, even allowing that guards or bureaucrats may use state institutions for purposes of punishment. In other words, “punitive power” names both a tactic (punishment) and an emergent effect. The nominalist account allows both that *hieleras* are “part of the government’s deterrence strategy” (Riva 2017, 317) but also that what *hieleras* operationalize is not deterrence but punishment. More broadly, the punitive tactic of migration enforcement affirms that individual migrants are incapable of changing or challenging state power even in their mobile defiance of it. Riva’s work argues that “regimes of disciplinary and sovereign power coexist and constitute each other” (2017, 320) in the use of *hieleras*. Building off this, the next section offers an alternative: an account of how punishment might be the ordering force of the social.

The punitive-city diagram and spaces of migrant punishment

If punishment describes the relations of power in grounded encounters of migration enforcement, such as those that take place in *hieleras*, and if deterrence-as-punishment practices enable a critical optic for understanding the routinization of migrant trauma (Doty 2011; Délano Alonso and Nienass 2016; Jusionyte 2018), nevertheless the strategic use of “deterrence” remains to be explained. By “strategic use” I mean to invoke Foucault’s description of “those results for something that wasn’t envisaged at the start, but can very well have a direction and a utility” (2000c, 385). Punishment is a fundamentally productive operation of power, as described in the above section: it corrects, coerces, organizes. In this section, I turn to Foucault’s description of “punitive city,” which offers a diagram for punishment as an ordering force of the social. The “punitive city” affords a theorization of how the strategic use of “deterrence” practices can be understood without resort to functionalism, that is, as a “terminal” (2006, 56) form of power in which its expression is its final end. Punishment on this account is not a mechanism in service of, e.g., state racism or capitalist exploitation, but rather the reverse: the technology of power (Foucault 1979, 131) that makes use of disciplinary or sovereign power, and through which state racism and capitalist exploitation are made possible and concretized.

In the “punitive city,” in a nearly unbroken extensity of “hundreds of tiny theatres,” punishment appears as spectacle, as sign, as practice, and as technology of power:

This, then, is how one must imagine the punitive city. At the crossroads, in the gardens, at the side of roads being repaired or bridges built...will be hundreds of tiny theatres of punishment. Each crime will have its law; each criminal his punishment. It will be a visible punishment, a punishment that tells all, that explains, justifies itself, convicts: placards, different-coloured caps bearing inscriptions, posters, symbols, texts read or printed, tirelessly repeat the code...They should all, according to a strict economy, teach a lesson: that each punishment should be a fable. (1979, 113)

The mechanism is twofold. On one level, visible punishment attempts to subordinate by exhibition. Reiterating the older sovereign contest – what Foucault terms a “principle of excessive demonstration” (Foucault 2003a, 83) – the sights/sites oppose punishing authority and offending individual to make apparent an insufficiently marked power differential. On another level, the punitive city subjectifies individuals as much as it proscribes forms of conduct. To the diagram’s proposers, residents and visitors would be consolidated as legal subjects in travelling the punitive city and recognizing their social location within “a power to punish that ran the whole length of the social network” (1979, 130). With a conception of the subject closer to Foucault’s (2003b, 28–30), the sights/sites of punishment might be said to initiate residents and visitors as subjects by self-recognition and identification with authority, offender, or both.

Foucault’s punitive city descends from the “great penal reformers” – Beccaria, Brissot, Servin, and so on – whose project was to stabilize a society that, they argued, was breaking down for sovereign power’s general discontinuity and ineffectiveness (1979, 75–79, 2000b, 52ff., 2015a, 44 and *passim*). They identified two general problems: first, that sovereignty devolved

power through a series of relays, wherein each relay enlisted brought a diversion of the sovereign's power toward individuals' private initiatives; and second, that the sovereign was fundamentally reactive, failing to anticipate offenses and sovereign diversions alike. The reformers' solution was to relate a set of non-discursive formations – sight and movement through space foremost, but also institutions that would punish – to a set of discursive formations, primarily representational circuitry of recognitions and identification: a diagram, or an immanent organization of points through which power passes without predetermining use or outcome (Foucault 1979, 205–06; Deleuze 1999, 23ff.). In the punitive city, operations of punishment are said to deter behaviors that might threaten the social order, including legal behaviors; affirm a “civil society” (Foucault 2015a, 49) – a public – through representational circulations of penalties, which mark disqualification from juridical subjecthood; and seep through a determined “social space” to make punitive power appear continuous (Foucault 1979, 129–30). In the context of migration enforcement, so-called “deterrence” operations are said to deter unauthorized migrations that threaten state territorial integrity; use the frequency and severity of suffering to dissuade potential migrants, who are disqualified from state protection; and largely operate outside the sovereign territory rather than within the urban, literally or metaphorically. Punitive-city and migration deterrence operations converge in their order-maintenance procedures, in their categorical and collective qualifications and disqualifications, and in a certain spatial variability.

The operations of “raising the costs” in migration-deterrence practices presuppose a representational circuitry analogous to that of the punitive-city diagram. Migrants should

recognize the penalties for migrating, self-identify as subject to those penalties, and make economically rational decisions not to travel (Bruzzone 2016). Because violence and its threat pervades the process of clandestine overland migration (Brigden 2016; Izcara Palacios 2016), in North American overland migrations the self-recognition may take place long before any border crossing is attempted. One might recognize a differentiating function here. Scholars have marked both the lingering trauma of border-crossing journeys to the US (Crocker 2015; López Pozos 2015) as well as subjective subordinations of resident undocumented immigrants in the US (Harrison and Lloyd 2012; Herrera 2016; García 2017). Such a subordination does not require state agents, who are rarely physically present, nor should it be understood straightforwardly as a reactivation of trauma. It depends on the subjective recognition of one's membership in the targeted social group and a belief in a capacity to do harm. Further, it requires a "coadaptation" (Deleuze 1999, 34) between representational and non-representational elements as one's membership, such as the idea of potential harm and a feeling of "displeasure" (Foucault 1979, 94) that cannot be reduced to its representation.

Yet the punitive-city diagram contains several odd qualities orbiting the deterrent function. First, deterrence in the punitive city is inherently self-limiting. The more it deters, the fewer criminals arise to present "punitive scenes" and to disperse the sites and sights of punishment (Márquez 2012). Second, although the punitive city purportedly focuses on behaviors or offenses in "a discourse of pure penalty, which knows only the positivity of the law and not the immorality of the crime" (Foucault 2015a, 177), its mechanisms both presume and require complex subjects. On one level, the diagram implicates a dual identification by the

“observers” of punishment, both an identification between subject and punished individual *qua* individual as well as between subject and punished individual *qua* some group that is subject to punishment. On another level, power requires both that subjects believe in not only authority’s punitive capacity but indeed its “right to punish.” Third, if we put Foucault’s reading of the reformers’ problem – sovereignty’s “bad economy of power” (Foucault 1979, 79) – alongside his assertion that any legal prohibition “should also be analyzed in terms of those who prohibit and those on whom the prohibition weighs” (Foucault 2015a, 145), then the punitive-city diagram appears to punish in order to manage. Punishing is the solution to diversions and appropriations of power, from those who author the legal decision and by those who do not and cannot. Any deterrent effect is secondary to punishment’s management function for the differentiation and subordination of legal subjects.

Punitive power and sovereign power in migration enforcement

If “deterrence” names a state response to migration, and if evaluation of the effects of the response on migrants’ behaviors does not modify the practice, then what is the content of this solution, figured in terms the meanings invested in the action and ideology? In the final analysis, deterrence punishes. Perhaps at one time US agencies fully invested in a “deterrence” that would deter, in which case they relied too much on the power of narrativity to alter migrants’ behaviors. But a punitive account of “deterrence” relies rather differently on the certainty of “pain, suffering, and trauma” from what the authors of Prevention through Deterrence imagined. In the punitive regime, the imposition of the penalty marries coercion

and subordination to power. The punitive regime differentiates migrants both subjectively and to other collectivities and publics, for example a public of citizens. It subjects their bodies to physical burdens and risk of severe traumas, enrolling complicit actors to carry out exclusions that states will not and/or legally cannot (Williams and Mountz 2018), and to produce migration as the final cause of suffering and for no further purpose.

Migrant punishment manifests power immanently to the application of “migrant hardship” (Johnson and Woodhouse 2018, 977). In the US, migration-enforcement activities are regularly described as moral desert for offenses even with no violation of the law, as the National Border Patrol Council (2014) statement above demonstrates. In Mexico, the INM creates “law” from whole cloth. Further, we observe both individual and coordinated actions of migration-enforcement agencies that have no deterrent value and yet serve to punish migrants: forced haircuts (Hernández 2010), placing migrant detainees in uncomfortably cold cells known as *hieleras* and denying personal hygienic supplies to female detainees (Bruzzone 2016; Riva 2017), deporting migrants without their personal effects including IDs (No More Deaths 2014), destroying humanitarian aid (Warren 2017) and, in Mexico, “systematic” civil rights violations that include illegal detentions, physical assaults of migrants, and torture (CCINM 2017). Both US and Mexican institutions participate in the punitive stance toward migrants. The Mexican and US judicial systems give widespread protection to state agents who commit unquestionable crimes against migrants, including robberies, assaults, and murder. In courtrooms, US judges subscribe to the exonerative discourse of “split-second decision-making” in the face of rare prosecutions of agents. More pervasively, agencies fail to investigate: the CBP takes no action

on the overwhelming majority complaints filed (97%, from 2009-12; Martínez, Cantor, and Ewing 2014), and the INM is similarly unresponsive (CNDH/UNAM 2017). The CBP and ICE agencies hide reports of agents' excess use of force (PERF 2013), and the INM simply denies access (CCINM 2017).

Yet migration enforcement by state agents is a concentrated formation of a system of power that is far more dispersed and far more profound in North America. Tactically, “deterrence” practices make migration more dangerous, more time-consuming, and costlier, which is to say that they produce vulnerability to predation, violence, exploitation, and death. “Deterrence” requires an “incentivization” of complicit, non-state actors and requires their cooperation – that they align their behaviors to state prerogatives: The “coupled smuggling-interdiction industry” (Warren 2017, 865) producing Central Americans' bodies as both the bearers of accessible labor-power and as commodities to be exchanged for ransom (Vogt 2013; Izcarra Palacios 2016) is not a chance occurrence nor contingent to border militarization. Nor are the locals to extort and rob migrating individuals (Márquez Covarrubias 2015), the employers to employ them and then refuse to pay, the hotel owners and bus drivers to charge ten and twenty times their normal prices (Brigden 2016). They are part of a tactical project to make transits more dangerous (see Bruzzone 2016; Squire 2017). North American border-militarization logic is a punitive logic, in which deterrence practices converge on an attempt to use punitive power to organize the social order and the spaces in which migrants move.

Punishment as an “analyser of power” (Foucault 2015a, 12) politicizes punishment, moving beyond considerations that treat only its use and its justification. It does so triply. First,

the punitive power to make suffer is productive. In migration, it expresses itself, subjectifies individuals, and subordinates collectivities. Second, punishment presents a field of struggle that brings together material penalties, circulating representations, and affects. Yet the sites of punishment and the relations that punishments attempt to make apparent – visible, felt, and understood – cannot be presumed *a priori*. Third, projects to punish and practices of punishment immanently produce political relations. Punishment is not an effect of power but a relation whose common depoliticization in abstract terms – a neutral social practice that to be evaluated contextually as just or unjust – masks that punishment may enforce and maintain a social order beyond the imposition of a penalty. Yet it is agnostic with respect to its use: a penalty may transmit and produce relations of domination but also hinder or undermine those relations, just as punishment may implicate racist and white-supremacist norms or may be the ways that anti-racist norms are maintained.

Reading “deterrence” through punitive power recognizes a spatial extension of the power to make suffer. Scholars have struggled to capture how states govern space in their territorial exterior; most commonly, the exterior to state territory presents a lacuna or present absence in work on migration and border management. For example, Reece Jones and Corey Johnson write that “new border security projects [are]...part of a broader trend by sovereign states, their agents and their intermediaries that re-articulates sovereign authority at borders and within state territories” (Jones and Johnson 2016, 195). Likewise, Hannah Gurman writes that “efforts to distinguish between the ‘border’ and ‘interior’ are embedded in the legal and institutional roots of the modern nation-state system” (2017, 372; see also Vaughan-Williams

2009). I do not suggest that these accounts are factually inaccurate nor that their subject matter – border militarization and securitization, and migration policing within state territories – are less important developments. Rather, both provide examples of a spatial imaginary that explicitly considers an interior and the border – and implies an exterior, which is also a space of management. In the next section, I suggest that a critical use for punitive power is to offer an alternative approach to power in studies of state governance of migration, and moreover that punitive power can resolve or dissolve outstanding problems in sovereignty-focused accounts.

The project of North American migration “deterrence”

The means by which states go about migration enforcement present both a problematic that is both empirical and conceptual. This problematic parallels the dual disjunction of border militarization with which this paper began. On the one hand, empirical investigations into phenomena such as border externalization (Bialasiewicz 2012; Loyd and Mountz 2014; Dominguez and Iñiguez Ramos 2016) investigate the gap between what state sovereign power is operationalized to do (e.g., move borders outward to repress migration) and what it does (commonly, performing neocolonialist relations). On the other hand, theoretical investigations, for instance in the US-Mexico borderlands as a space of exception (Doty 2011; Sundberg 2015) offer a disjuncture between whom the law fails to protect and whom the law fails to sanction, in other words between the action of “abandonment” in what it appears to do (remove protections) and what it functionally does (facilitate predation). Abandonment suggests departures from the law – including violations committed by state agents – not as deviations

from a governance norm – and thereby as “corruption” when state agents are involved – so much as a functioning norm exterior to the legal order (Rajaram and Grundy-Warr 2004; Vaughan-Williams 2009; cf. Jones 2012). Yet where border-externalization recognizes the category of the territorial exterior to “fold” it such that sovereign border functions appear outside the territory, and where abandonment imagines continuities of sovereign-biopower that constitute a state exterior in the state production of spaces of law, punitive power suggests that state sovereignty and state authority are non-identical, and that states can respond to limitations of power by incorporating sovereign instances in alternative configurations of power.

If border externalization and abandonment optics both consider and require an emphasis on the securitization of borders – that is, through a sovereign modality of power – they have strong reasons to do so. States appear to be reacting to threats at the level of discourse with responses that do material violence to individuals and groups (De Genova 2013; Williams 2017, 276; Jusionyte 2018, 91ff.). The rising critical consciousness of migration corridors, dispersed spaces of confinement, and reactive exercises of state power reflect a broader social momentum to define and configure migration as a social problem to be solved via sovereign power – usually exclusion of the “undesirable” (Spijkerboer 2018, 15; Loyd and Mountz 2014; Vaughan-Williams 2009). Beyond this, migration enforcement largely concerns repressive arrangements of power that include but are not limited to state violence. As border walls have proliferated worldwide (Vallet 2016; see also Jones 2016), so too has the extended “migration industry” (Hernández León 2008; Gammeltoft-Hansen and Sorensen 2013) including state-adjacent, private migration-detention (see the collected essays in Hiemstra and Conlon 2016) as

well as migrants' dangerous, irregular transits to rich states. All are backstopped by state violence. Moreover, migration is largely conceptualized by reference to the state, and thereby to sovereign territorial claims, even as political geographers remain cognizant of the "territorial trap" (Agnew 1994). Conceptually, territory and territorial claims continue to provide crucial reference points for how individual's participation in and embodiments of state prerogatives.

Because border externalization and migrant abandonment describe state responses to practices of mobility, they offer optics on transformations in migration management, bordering practices and modalities of state power. Border externalization proposes to examine hand-in-glove uses of sovereignty, whether through coercions of other states into policing migrations or a sovereign dispersion to private security concerns. Abandonment offers a "governing of migration through death" both in what Vicki Squire (2017) calls "biophysical violence" and by allowing or facilitating predation on migrants that may be politically or economically useful (Rajaram and Grundy-Warr 2004; Doty 2011; Paris-Pombo 2016). To the extent that both border externalization and abandonment describe and assess how states employ power over migrants outside or apart from state territories, they imply failures of direct interventions to repress migratory movements at the border. The recourse to third parties in both border externalization and abandonment suggests that that sovereign power is practically delimited by the state territory - circumscribed, in part, by a set of international relations between states that restrain its use.

The disunity of the state puts further pressure on sovereign power's extensivity and pervasiveness. If border externalization investigates migration as a field of struggle, on one side

of which lie “persistent reconfigurations of sovereignty” (Loyd and Mountz 2014, 24) in ever more complex spatial formations, and if Agambenian sovereignty saturates the social field (see Vaughan-Williams 2009), then both share a state that by turns localizes, concentrates, and intensifies sovereign power. Yet US and INM collaborations functionally weaken Mexican state-sovereign capacities, notably in wage laws, working conditions, and health-care access granted to those without regular documentation (Carte 2017). Considered in terms of Westphalian, international legal, or interdependent state sovereignty, “more” US sovereignty diminishes and disperses Mexican sovereignty. Simultaneously, the CBP and INM have an extended history of cooperating to appropriate more power within their respective federal bureaucracies against other state priorities. They collaborate to diminish state capacities. For example, Kelly Lytle Hernández (2010) chronicles numerous coordinations between US migration officers and their Mexican counterparts to violate the law both in the US and in Mexico, including making extra-legal deportations possible. A scalar paradox arises. Sovereign structural antagonism between distinct territorial regimes instead appears as cannibalistic decrease when taken at the subnational scale.

Alternatively, if sovereignty names a relation of command-obedience to a self-authorizing will, a third problem emerges: that of complicit actors in migration enforcement. Understood strictly, border externalization “relies to varying degrees on the contracting out” of its operations to “foreign authorities or third party contractors who run processing and detention” (Williams and Mountz 2018). When theorized under the rubric of sovereign power, externalization-as-analytic has difficulty defining the point at which the sovereign dispersion

ceases to employ sovereign power. One might choose state actors, which then eliminates private security firms and private detention centers that police migration and incarcerate migrants; including only private state-contractors excludes other actors involved in bordering, such as airline carriers who deny travel to ticketed passengers lacking valid entry visas, most saliently for asylum claimants. Curtailing sovereign dispersion to state agents recognizes multiple operations of power yet collapses them under a single sovereign analytic. Extending sovereign dispersion appears to create as many sovereigns as actors to whom sovereignty is devolved.

In abandonment, this problem of complicit actors is exacerbated. When state agents routinely breach the law that ostensibly binds them and which invests them with authority – such as cases in which Mexican state agents kidnap and/or sexually violate migrants (Praga 2014; Guzmán 2016; CCINM 2017) – legal sovereignty appears as both precondition and as the effect, but appears absent in the action (see also Jones 2012). Yet what are Mexican migration-enforcement agents enforcing, and on what grounds? If Agamben offers a resolution by centering sovereignty's authority in the state capacity to join political and biological orders through broad exposure to killing (Coleman and Grove 2009), such an operation only functions as a political tactic of control if actors outside state directives are encouraged or incentivized to take advantage of an absence of legal protection. This places non-state actors as analytically necessary relays for state power. It is through these relays that extraterritorial migration management functions, especially North American practices of deterrence that seek to make migrations more “dangerous” (Bruzzone 2016) yet do not appear to diminish migrations quantitatively.

The dialectic of migration enforcement, with which this paper began, presents a recognized limit to the use of sovereign exclusion in migration enforcement. Where sovereignty's direct application loses hold with the end of its territory, a different spatial regime of power comes into play. External checkpoints and migration policing exist with limited effectiveness: they multiply the relays of sovereign power across states but also across legal systems, cultural practices and habits, moral economies, and constructions of subjects and subjectivities. However, as part of a project of migrant punishment, practices uneasily incorporated into sovereignty – found in the disunity of the state, the apparent sovereign polymorphism outside the territory, and in the enrolling of complicit actors – cease to be problems. As an analytic, punitive power does not posit a singular or exclusive authority as its enabling condition, accepting the state's disunity. Scalar polymorphism is retheorized to reflect a form of power not bound to the state territory, joining material impositions on migrants' bodies, affective suffering enforced on migrant subjects, and circulating representations about the journey and suffering to come. Punishment dissolves the problem of complicit actors because its narrativity allows it to be largely agnostic to its delivery so long as the causal story is retained.

Conclusion

This paper describes and responds to several problems. First, it argues for punishment as the strategic use of the practices nominally called “migrant deterrence” or “migration deterrence” in North America and yet which do not appear to deter. Second, it puts pressure

on accounts that take sovereignty as the dominant modality of power used by contemporary states to act outside their borders, through the case of both Mexican and US migration enforcement. Third, it attempts to resolve the problems to sovereignty through a Foucauldian reading of punitive power. Fourth, it provides a theoretical account of punitive power's operation.

Practices of punishment do not subsume all migratory movements, but rather are scattered across a landscape and fundamentally uneven in their effects. I have tried to recognize the outside import of the state while refusing it priority of analysis, to bracket both the representational overdetermination of state power and notions of any will to punish. As effects are borne individually, I might speculate that one of the effects of punishment is also the retrojection of the individual migrant subject into a putative collectivity that presents a threat of disorder. This is the perspective that gives analytic priority to the state. From the perspective that prioritizes migrating individuals I am not sure that any such collectivity exists. My contention has not been that deterrence does not work: rather, my project has been to discover how deterrence works, since it does not deter. The deterrence project's unified aim at inception was to make migration so bad that other migrants would not come. This project enforced suffering, to push a causal story: it is migration that makes you suffer. Such is punitive power, outside of state space.

Conclusion: A punitive politics of migration

The papers of this dissertation all focus on Central American migration through Mexico – save Chapter 4 – and they illustrate a range of approaches and engagements with geography. Chapter 1 sits at the confluence of political, carceral, and economic geography in advancing an argument that the US-Mexico border militarization serves to detain migrants within Mexico, making them susceptible to forms of labor exploitation. Chapter 2 draws on legal, political, and children’s geographies in its descriptive-interpretive account of the Mexican system of protection for unaccompanied minor migrants and a North American “geolegal” space of migration. Chapter 3 operates at the confluence of political and cultural geography, to consider how migrants may signify both for and against their ungrievability, and how Judith Butler’s account of assembly might be used to consider migrants as plural actors unified by mobility. Chapter 4 gives a close reading of Foucauldian punitive power, in anticipation of Chapter 5, which combines political geography with Foucauldian theory to argue that US border deterrence is a positive operation despite its failure to deter.

The range of approaches covers many of my intellectual interests. As Chapters 3, 4, and 5 were originally part of a single paper, and still bear traces of that origin, I would submit that the dissertation illustrates a range of interests and capabilities across certain subfields rather than a relative weighting of those interests. However, the papers of this dissertation are presented roughly chronologically, and so may offer an index of changes in my thinking. At the same time, they open a breadth of questions for future research. In what follows here, I discuss both the

intellectual movements that may be visible when reading across the papers, and some of the questions opened by the papers and by my fieldwork more broadly.

Trajectories, backward and forward

The form and content of this dissertation may be read for continuities, but they also may be read for the intellectual trajectories illustrated within. Two problems stand out for me, in compiling the text: The first is a problem of the subject, and the second problems an epistemological-ethical question of representation. Of course, one's growth is always partially known and partially unknown. Here I situate the growth through the two problems. While I do not think either the problem of the subject or the problem of representation have necessitated nor have precipitated full conceptual reversals, in these problems and others I have found a productive use for discontinuities in my thought. Indeed, the (re)consideration of problems is bound up with the continuing action of being alive – at least for me – so it is only right that questions be opened, provisionally solved, reopened in new circumstances, bracketed, reopened, provisionally resolved, and so on. I consider the capacity and willingness to shift one's views to be a virtue and I would like to manifest that virtue when appropriate – including the present moment.

The problem of the subject

Over the course of writing these papers, I have become uncomfortable with the concept of the subject and skeptical of my own critical use of that term. The movement from the first

chapter, where I discuss migrants as economic subjects, to the last chapter, where the analysis focuses on punishment as a technology of power, reflects that change in my thinking. I recognize an analytic utility to the subject, including its role in research for how words do things and how words might construct who people and peoples are, its usefulness in analyses of power relations and political agency, and its role as a concept that unpacks how individuals experience power relations. I continue to use it. However, its polysemy is the core of my concern. If consistency is important – at minimum, within a text – then I am uneasy about, first, the ease with which one specification of the subject is read together, confused, or conflated with another, and second, the explanatory sufficiency for how effects leveled against one formation of the subject implicate and are implicated in other formations.

What I came to recognize in my own work was both a fuzzy use of the term “subject,” but also that I was unable to specify in others’ scholarship exactly which version of “the subject” was being discussed. Commonly, semantic differences and overlaps were theorized implicitly rather than explicitly. At least three different versions of the subject appear in geographical and migration-studies scholarship: the grammatical subject, the political subject, and the phenomenal subject. These three versions of the subject can be further distinguished. One might further divide the political subject into the subject of a subject-position and the subject who is subject to a political power. In addition, one might differentiate the self-aware phenomenal subject from “the biological subject, meaning ‘the sensate folds where the body feels itself’” (Schramm and Krause 2011, 144). A further indeterminacy lies in the verbs that describe “the subject” as a processual relation or as the outcome of a process, such as

“subjection,” “subjectivation,” and “subjectification.” While individual authors are often internally consistent, these terms are malleable and inconsistent across texts. Consequently, one author speaking of “subjectification” may use it to indicate the political subject and an individual’s uptake of a subject-position within a system of power relations, while another author might use it to describe the phenomenal effects of power on individuals and in individuals’ experiences. Even for Foucault, a major theorist of the subject, the terms appear inconsistently in their French equivalent (usually but not always *assujettissement* for the English word “subjection” and *subjectivation* for the English “subjectivation” and “subjectification”; Kelly 2009, 87–89). The ambiguity of the critical vocabulary gives me pause, both in self-evaluation and in my evaluation and readings of other scholars’ texts.

The problem of political recognition and the migration vocabulary

Throughout this dissertation, I have been concerned with the political processes that force migrants to suffer in their transits across Mexico. The analytic stability of migration and migration-enforcement depends on an opposition, which is also the opposition that materially constitutes migration. If the papers of this dissertation vary in their language to describe the forces of that opposition – or if this account changes from chapter to chapter – then that variation illustrates the development of my concerns about whether we can and should recognize “migrants” on the same basis that we recognize the political process that creates “migrants” and visits material harms on them. When beginning this project, I was thinking of my research as on, roughly, a system: “the state” (however constituted) largely sets the terms and the conditions of possibility under which “migrants” must survive, suffer, and in which they

sometimes resist. Thus Chapters 1 and 2 offer a coherent group of “migrants” to be analyzed. This way of thinking positions recognizes the influence of socially constructed categories without requiring that they be naturalized or reified. It also presupposes that the importance of research is symmetrical with respect to the “author” of migrant suffering and those who are made to suffer. Chapter 3 considers how migrants may be unified as a collectivity or plural actor – both how they performatively enact “migrant” and how they may be contingently unified by participation in a plural action – in a way that descends from and yet exceeds a state categorization. Chapter 5 resists this problem, using “migrant” in relation to the object of state powers of migration enforcement, which is to say that “migrant” is a nominal marker.

I continue to believe that this research topic is important, politically and morally. However, I now suspect that setting up an ethical symmetry between “state” and “migrants” to be less a heuristic than a mistake, which is to say that a question opens about which categories are the right categories through which to offer recognition (see Butler 2018). The problem arises because “the state” and “migrants” are very different things, and morality must treat them distinctly. States have no moral claim to representation. My claim that their role in migration is important lies in the power relations that flow through the state, that people wield the state and that the effects it generates might be wielded, that the state is a site of contestation, that it can generate effects. I generally consider the state to exist only insofar there are “state effects” (Mitchell 2006; Foucault 2009b; Woodward 2014) that colloquial language terms “the state.” However, the state’s non-claim to representation should also hold if the state is understood as an abstracted “sovereign individual” (Agnew 2005), a collective or group agent (List and Pettit

2011), a defined elite discourse of a political organization, its territory, and the population subject to it (Jessop 2016), or broadly a “collection of institutions and practices...that mingle and jostle against one other as they carry out the shared function of governing people and places” (Gamlen 2008, 842).

“Migrants,” by contrast, do have moral claims to representation. Anthropology has long grappled the joint methodological-epistemological question of knowing the Other, the neo-colonialist legacy of ethnography, and the situated ethical dilemmas of mediating others’ experiences in circumstances of acute differences in social power (Gupta and Ferguson 1997; Abu-Lughod 2008; Clifford and Marcus 2009). While these considerations are important, and while I am aware of the longstanding conversations about the ethics of representation *per se* as well as the ethical difficulties of speaking for another, I am attempting to signal a slightly different problem. In affirming a minoritized group of “migrants,” the group is positioned as separated through its specification to enable a question of whether a particular researcher (or indeed any researcher) has the moral standing to represent that group, even with the best of intentions. But if I claim instead (e.g. in Chapter 3) there is a norm that produces migrants in which both non-migrants and migrants participate, then a different question arises: in what ways do we recognize the suffering imposed on a multiplicity by political means, when that suffering is stochastic and is borne by individuals but targeted at groups? Are the categories through which violence is mobilized also adequate to describe the suffering of individuals?

Today, I might say this: on one side of the opposition lies a structurally empowered collectivity that attempts to govern the epistemic and material conditions of possibility for

human mobility; on the other side lies the collectivity of those who move but who do not comprise, in whole or in part, the first group. The very circumlocution of the above sentence – “structurally empowered collectivity” and minoritized collectivity – illustrates the development of my concerns. But it also appears to lack both specificity and a ready capacity for political mobilization. When I speak, I generally refer to the minoritized group as “migrants,” which refers to how they are positioned by the (statist) world order rather than any internal coherency but retains a communicative utility. The difficulty of a recognition that does not produce or reproduce subject-positions can be seen in much of the migration vocabulary, including “undocumented,” “illegal,” “clandestine” and “no borders.” My intuition is that the problem cannot be solved in a single gesture or with a single new term, but rather that it is a negotiation with an unsettled world.

Open questions and next steps

The punitive turn in in/migration geopolitics

If one accepts my claims about punishment acting as a technology of power and as part of migration-enforcement practices, then one might also be able to recognize a broader turn to migrant punishment in Global North countries. The European Union has repeatedly justified its increasing investment in border militarization in the Mediterranean under the sign of “deterrence,” despite significant evidence that fails to detect deterrence effects (Gammeltoft-Hansen and Tan 2017; Baczynska 2018). Australia’s Operation Sovereign Borders is premised on both the absolute right of the state to permit entrance and exit, and on the idea that

representations of state cruelty will “modify the ‘choices, desires, needs, and wants’ of potential irregular migrants in ways discouraging them from migrating” (Watkins 2017, 284). The US incarcerates children and potentially makes them orphans (Moore 2018). Punitive power offers an inroad to thinking about a functional use for state cruelty, and the punitive analytic might provide an entry point into the forms of power that are shared across sites in the contemporary moment.

The spatial tactics of migration enforcement

My account of punitive power in migration governance characterizes it as a distinct form of power with a spatial form that differs from exclusionary forms of border management. This suggests the possibility of conceiving of migration-enforcement practices as spatial tactics with both material spatial processes and spatial imaginaries. Provisionally, an “alphabet” of tactics would include and differentiate between exclusion-filtration, which differentiates items by location, including emigration regimes (Fitzgerald 2006; Chávez 2012); expulsion, which selects and removes items from within a space, sometimes for the purpose of organizing the territory and sometimes with the purpose of causing effects in other territories, as when US states deported immigrants to other US states in the 19th century (Hirota 2013); differential inclusion (Mezzadra and Neilson 2013), which characterizes items within a space, for example by making migrants more easily exploited (De Genova 2005; Smith and Winders 2008; Harrison and Lloyd 2012); “community composition” tactics (Boyce, Launius, and Aguirre Forthcoming) that target the relations between items – typically between immigrants, or between immigrants and non-immigrants – such as described in some accounts of migrants’ automobility or, more

generally, in the racist policy of “Attrition through Enforcement” (Theodore 2011; Stuesse and Coleman 2014); and punishment, which levels effects on those who would enter a space.

In this heuristic, practices may take on different roles in different tactics, and some aspects of bordering and borderwork are reread through spatial tactics that they help to materialize. For example, the practice of confinement may be part of the temporal process of exclusion, part of a deportation regime, or a “community compositional” tactic when used to break up mixed-status families (Williams 2017). In this way, it approaches “polymorphic borders” (Burrige et al. 2017) through the power relations and spatial relations that borders put into play. However, there are risks involved. My sketch derives from North America practices, and may not be suitable in thinking of tactics outside the Global North. Some important trends take on less primacy than they may merit empirically, such as regulative mechanisms to direct migrant “flows” through certain areas. Finally, the heuristic may push some tactics that may be better served as separated – capture and immediate expulsion at the US-Mexico border, for example, and Australia’s policy of holding asylum-seekers on islands that it excised from its own territory (Mountz et al. 2013; Loyd and Mountz 2014) – into the same spatial tactic of migration enforcement.

Latin American migration in an era of punitive power

In the immediate aftermath of Donald Trump’s election, the popular media and prominent NGOs such as the Washington Office on Latin America (WOLA) fed a narrative of a “Trump Effect” of diminished northward migration (Solís 2017). The “effect” preceded the

availability of data to evaluate its causal claim. Its ostensible mechanism was straightforward: migrants would elect not to travel to the US because Trump's election identified a US hostility toward their presence. At heart, the "Trump effect" described a deterrence logic, but predicated on a cultural formation rather than militarization. While 2017-18 migration data do not support a quantifiable "Trump Effect," the US government has doubled down on the representational strategy to make the country appear inhospitable, often cruel, to all Latinos. The question for my research is the extent to which these representations of an inhospitable, majority-white culture might configure migrants' decisions in Mexico, as well as Mexicans' relations with Central Americans.

The possibility of a proleptic "Trump effect" invites several research questions that help specify the extent to which migration dynamics for Central Americans have changed since Trump came to office in January 2017. For example, my fieldwork opened problems of migrants' work practices in Mexico, in along unexpected lines. On the one hand, migrants commonly reported that they worked in unsafe conditions, in marginalized economic sectors, and with employers who did not pay them for their labor. Qualitatively, migrants recognized in interviews that exploitative employers hired them because of their precarious access to social and legal justice. On the other hand, and more often, migrants reported that they were paid between Mexican minimum wage and twice minimum wage for their work. This work largely occurred in unskilled occupations, which means that migrants' reported wages approximately align with Mexican prevailing wages. Qualitatively, one repeated explanation that migrants gave for why they were hired was a form of solidarity: employers had had family members who

migrated, or had migrated themselves, and hired Central Americans as a form of identification and belonging.

Difference and space in migratory contexts

The above schematic is insufficiently differentiated. It contains Mexicans and Central Americans, but not forms of identity that inflect co-identification and subjective belonging, the social identities and racial categories that may condition treatment in Mexico and offers a fundamentally “even” production of space. For example, the Garifuna are an African-descended people for whom the journey across Mexico is very different than other irregular migrants. Among shelter workers, Garifuna have reputations as being “difficult”; among migrants, Garifuna often keep to themselves to the extent that non-Garifuna migrants perceive the Garifuna as culturally standoffish and/or rude. But the Garifuna are also exposed and visible as migrants in Mexico to a much greater degree than other migrants, starting with phenotype and extending to bodily comportment and even language – Garifuna is also a language, and some Garifuna people are Anglophone. Because Garifuna journeys are socially distinct from other Central Americans’, they might challenge an undifferentiated account of social belonging – do Mexican employers who employ migrants out of solidarity identify with Garifuna to the extent that they identify with other Central Americans? – and an undifferentiated account of what “migrants” undergo in transit and the conditions of passage.

Additionally, migrants’ experiences may vary by location in dependable ways, generally and across subgroups. This line of research could complement emerging work in urban studies

on “new municipalism,” including how cities can be relevant to geopolitics and how urban governance intersects with migration governance. One example can be found in Mexican activism on behalf of migrants, which has found purchase locally rather than nationally. Chapter 2 charts the difficulty in accessing “Milton’s” legal right to remain in Mexico in part to chart that the Mexican federal policies over asylum and regularization exist in no clear relation with the quantity of migrants who are able to access those rights. Instead, activists work locally to procure national visas that are also functionally adjudicated and granted at subnational jurisdictional levels. Likewise, claims to resources on behalf of migrants have in recent years been more effective when directed municipally and, on occasion, to Mexican states than to the federal government. So too “toleration”: in Celaya, Central Americans live and work more openly than in other cities of comparable size. Migrants’ ability to gain work, to be paid equitably, and to be treated fairly in their journeys – both generally and as members of subgroups – may reveal a deeply uneven social landscape of migration through Mexico.

To arrive, arrive, arrive

Migrants have been the objects of political attention and targets of punitive policies for several decades without cease. “Operation Streamline” and DHS’s “Consequence Delivery System” (United States Customs and Border Protection 2012) present one illustration.³⁶

³⁶ Although “Operation Streamline” may refer to a specific 2005 initiative, it usually refers metonymically to CDS.

Justifying CDS and Operation Streamline as part of a deterrence logic, bureaucratic discourse has long advocated expanded uses of criminal legal remedies to raise the “costs” of apprehension to migrants:

“The CDS measures the consequences applied to persons illegally entering the country against defined alien classifications. CDS provides a process designed to uniquely evaluate each subject and apply the appropriate post-arrest consequences to that individual to break the smuggling cycle and end the subject’s desire to attempt further illegal entry.” (United States Customs and Border Protection 2012; see also Abrego et al. 2017)

US federal prosecutors regularly charge undocumented border-crossers with criminal violations, and in order to make the system function, use rapid *en masse* hearings before magistrate courts to process those charged and largely convicted. Like deterrence writ large, little evidence corroborates any deterrent effect of Operation Streamline on migration decisions or on the immediate returns of the migrants deported (Office of Inspector General (OIG) 2015; Corradini et al. 2018). The parallel with border militarization manifests in the continuation of a program recognized to not work, but also manifests in the production of differentials through the functioning of a legal apparatus. Leisy Abrego and colleagues (2017) have recognized that social criminalization – an outcome of punitive power – appears to be the major effect of Operation Streamline, not deterrence.

As I complete this dissertation, the US government under the Trump administration has undertaken a project of extralegal migrant punishment. The widespread media coverage –

of family separations, of toddlers “representing themselves” in deportation hearings, of children in carceral facilities, and of government spokespeople bloviating that migrants are “gaming the system” (Nakamura 2018) – has reiterated a crisis optic that regularly appears in US political speech over migration. On the one hand, that optic tends to minimize the historical continuities: under the Obama administration, some asylum-seekers were prosecuted, children “represented themselves” in immigration court, and families were placed in carceral facilities (although they were not forcibly separated). The political description of these policies, that of “zero tolerance,” even recycles an earlier catchphrase (cf. Provine and Doty 2011). On the other hand, the prevalence of those practices has increased dramatically, and regardless of any state of continuity or rupture, they are moral travesties. One of the major distinctions of the current moment is the clear use of legal violence, both violence explicitly allowed by the legal system but also an extralegal violence through a deliberate infliction of trauma enabled by a judicial apparatus that recognizes but does not penalize deliberately harmful interventions that stand outside the state’s and state agents’ legal authorization.

In this moment, US government actions inflict trauma on migrants. This is especially so for family separations, where children are being subject to psychic trauma without any attempt to make them morally nor legally responsible: it is enough that their parents are responsible (which, again, violates US legal principles) and that they are themselves devalued subjects and perhaps “ungrievable” (Butler 2009). The choices made by bureaucrats, by middle managers, and by agents and fieldworkers cannot be explained by legal obligation. Nor can they be explained by a mistaken belief in their effectiveness. Instead we should see these actions as

punishment, as an expressive act whose only end is its own expression. If racial animus might motivate these actions, or if institutional racism suffices as systemic description, then nevertheless the form of power is punitive. Migrants' actual experiences, and not their behaviors, comprise the precise target of state power.

I close with a different vignette from fieldwork, which concerns a migrant who became one of my "favorites" – someone who, in a different set of circumstances, in a different world, might have ended up a friend. Erik was a Salvadoran who I had met at the shelter in Irapuato, and who then arrived later in Guadalajara while I was working. He was a petite man, generally soft-spoken but with broad shoulders, and was traveling with one pair of black pants and two black shirts – of his favorite metal bands, *Massacre* and *Napalm Death*. He had a wife and two daughters, and he adored them with the kind of adoration that leaves a warm dusting over everything – plastic chairs, card tables, disposable plates, people. He told me that he was leaving because staying in El Salvador, and letting his daughters grow up there, was impossible.

Erik spoke with a faint and irregular lisp, turning the "s" sounds of just a few words into "th" sounds. In Usulután he had worked as a PE teacher, and his traveling companions gave him a good-natured ribbing for his tree-trunk legs that he hid with his baggy pants. In Irapuato we had chatted a great deal, just hanging out. I had not asked him to sit down for an interview because it felt – to me – as if chatting had given him a relief at being a person again, relaxing, that it would have been a minor cruelty to deprive him of it by formalizing things. By the time we were both in Guadalajara, though, the journey made him clam up, even when we saw each other once more. He wanted to help my project, so I invited him to do an interview. But the

interview was stunted; he had already told me so much earlier. What was there to say that he hadn't already said? What was there to say when the conversation had been its own diversion? Still, we went through it, pro forma, until we came to the end:

Erik: My dream, it's just to arrive, to arrive, to arrive. If they catch me, if they deport me, send me back to Usulután, I have to come back - through Mexico and maybe along some other route. They deport me again, I'll make another attempt. I'll get caught/kidnapped [*me sequestran*], I'll get imprisoned, I'll be in jail, I'll be deported. So? You know? So I'll go to [inaudible].

Mario: Where is that?

Erik: It's in Canada. [Begins speaking rapidly.] Mmhmm. I'll go to Canada. I don't give a rat's ass [mildly vulgar: *me vale madre*]. They deport me from Canada, then I'll go to Europe, Spain, Italy, Balearic Islands.³⁷ To me, getting out is all that matters - it's all there is. [Begins speaking very rapidly.] What I'm going to do is this: I'm going to get my family out of El Salvador - my young daughter, then my other daughter and my wife. I have to - I'll work. If I have to work 28 hours a day in Canada, I'm going to work.

Mario: [confused] How many?

³⁷ Erik's sister lives on the island of Mallorca.

Erik: I'm going to work. The only way I won't work is if they kill me.

In the current political moment - of family detention, government officials' demonization of migrants, and state-enforced suffering - I think of Erik most days that I work on this project.

Appendix A: Statement on co-authorship

Chapter 2, titled “A Relational Approach to Unaccompanied Minor Migration, State Detention, and Legal Protection in Mexico and the US,” is coauthored by Mario Bruzzone and Luis Enrique González Araiza. This chapter was jointly conceived, outlined, and edited. Mario wrote the introductory, US-focused, and concluding sections. Enrique wrote the section on Mexican law. After drafting, the sections were jointly revised. Mario also translated Enrique’s contribution from Spanish to English, and acted as corresponding author with the editors of the volume where it is forthcoming, *Unaccompanied Young Migrants: Identity, Care and Justice*.

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