

Mauro Balestrieri
Alice Cauduro *Editors*

The Legal Anatomy of the Body

Health, Rights, and Politics in Times
of Emergency

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Mauro Balestrieri · Alice Cauduro
Editors

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Preface

Over the past few decades, the relationship between law and medicine has become increasingly close, interconnected, and, at the same time, ever more complex. On one hand, medical science has deepened its understanding of health and the human body through undeniable techno-scientific advances; on the other, legal science has elaborated the basic principles for managing health, constructing concepts designed to guide society toward the pursuit of collective well-being. Underlying both of these dimensions lies one element that is fundamental and inescapable: the *body*. Health, well-being, illness, and care: each of these concepts, in the broad range of meanings that distinguish them, shares indeed a common thread, namely, the differentiation between the ‘healthy’ and the ‘ill’, between ‘normality’ and ‘emergency’. There is nothing more pressing than a sick body in need of care: the urgency of illness has no true equivalent in other domains, and it is precisely this urgency that grounds the epistemological and scientific regime of medicine.

In recent years, legal scholarship has carefully documented the profound transformations that have reshaped both the right to health and public health. The rapid diffusion of technological development, which has enabled and continues to enable increasingly personalized, precise, and intelligent medicine; the massive use of big data, algorithms, and quantification practices, whose primary effect is a new reconfiguration of the relationship between health and illness; as well as the changes in health policies on both national and global scales, raise pressing questions about the boundaries between individual and collective interests. All of this is profoundly reshaping the balance of power between medicine and law. What seems increasingly evident at the global level is indeed a radical reconfiguration of the health paradigm within a securitarian and emergency-based logic which, for multiple reasons, now stands out as a rule rather than an exception in the international scenario. Yet at the core of this evolution remains the materiality of the body, its corporeality, its inherent vulnerability, and its precarious condition. The legal challenge posed by a sick body is precisely that of reconciling its fragility with the normative frameworks that seek to protect it, while at the same time ensuring that care, dignity, and rights remain inseparable from the condition of illness itself. From this perspective, the study of the body is intrinsically connected to the examination of social systems that safeguard

individual well-being, conceived in a far broader sense than the mere restoration of normality, and attentive to real needs at both local and global level.

Building on these elements, and in particular by underscoring the preeminent role that emergencies have come to play in the regulation of both national and international health policies, the contributions gathered in this volume aim to develop a legal, historical, and critical reflection on the body in different theoretical and practical articulations. Specifically, this book brings together the work developed through lectures, workshops, seminars, and an international conference held between 2023 and 2025 at the University of Turin within the European project *Human Well-Being in Times of Tech Management of Emergency* (GA n. P20225FPNT – CUP: D53D23022210001). The contributions collected represent the culmination of a multidisciplinary and multifaceted research effort, as well as the outcome of national and international collaborations, aimed at exploring the evolving boundaries of the right to health at a time when emergencies have increasingly become the norm.

The sections of this book are designed to constitute a genealogical pathway, tracing the most significant epistemological, philosophical, political, and legal transformations in the configuration of the body and of the right to health. In this sense, the volume constitutes an ‘intellectual journey’ through the evolution of the relationship between law and medicine, highlighting the profound nexus between health and the state of emergency that has unfolded throughout the modern and contemporary ages.

Many friends and colleagues contributed to the realization of this project. First and foremost, we are grateful to the distinguished national and international colleagues who participated in this collaborative initiative and supported us, at every stage, in defining the themes and issues explored in the book. We also wish to thank the Department of Law at the University of Turin and those who endorsed and supported our idea, in particular our Director, Valeria Marcenò, and the Deputy Directors, Enrico Sciandrello and Fabio Longo, who strongly promoted this volume with enthusiasm and commitment. A special acknowledgment goes to Raffaella Galasso and Simona Guida, whose patience and assistance were indispensable in bringing this project to completion. Finally, our thanks extend to all the guests who took part in our events and in the discussions that surrounded them, sharing our project with genuine engagement and support.

Torino, Italy
January 2026

Mauro Balestrieri
Alice Cauduro

Contents

| | |
|--|-----|
| Introduction: Law, Body, and Health in a Post-Pandemic World | 1 |
| Mauro Balestrieri and Alice Cauduro | |
| Law, Medicine, and the Early Modern Epistemology of the Body | |
| <i>Pestis Ius</i> in Early Modern Pandemics: A Genealogy of Health Law in the Holy Roman Empire | 43 |
| Antonio Gerace | |
| Moving on the Latitude of Health and Disease. Some Remarks on the Galenic Concept of <i>Neutrum</i> from the 16th to the 18th Centuries | 63 |
| Simone Guidi and Luca Tonetti | |
| Governing the Experimental Body: Codification, Delegation, and the Economy of Practice in the Early Modern Period | 89 |
| Marco Storni | |
| Philosophies of the Body and Legal Responses to Health Emergencies | |
| Why the Body Matters. Sovereignty, Control, and Individual Freedom | 115 |
| Giovanni Leghissa | |
| What Is a Body? Law, Health, and Well-being in Times of Emergency | 133 |
| Mauro Balestrieri | |
| Bodies of Risk. Medicine, Law, and the Paradox of Decision-Making in Health Crises Analysed Through Social Systems Theory | 157 |
| Alberto Giustiniano | |

The Body and the Punishment: The Ideology of Cure Between Past and Present 179
 Dario Ippolito and Matija Žgur

Global Health Governance Between Access, Innovation, and Regulatory Challenges

Strengthening Legal Preparedness in the European Union After the Pandemic: Law, Policy, and Parliamentary Accountability 209
 Mirko Djukovic and Tamara Hervey

Pharmaceutical Citizenship in the Pandemic: What Does the English Experience with ‘COVID Passports’ Reveal? 237
 Keith Syrett

The Fundamental Right to Health and Its Universal Guarantees 249
 Luigi Ferrajoli

Crisis as Usual: Antimicrobial Resistance and the Temporal Politics of Global Health 263
 Isaac Weldon

Access to Medicines as a Proxy for Universal Healthcare 289
 Alice Cauduro

Gender, Intersectionality, and Reproductive Rights in Health Crises

The Invisible Women: Gender in Global Legal Regimes of Health Emergencies 315
 Mélanie Samson

Women’s Bodies, Abortion Law in the UK and the Right to Abortion in Emergencies 339
 Stephanie Palmer

The Legal Anatomy of Women’s Bodies Beyond Emergency Times 361
 Laurie Marguet

Governing AI in Public Health: Advancing the Right to Health Through an Intersectional Lens 379
 Hannah van Kolfschooten

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The Body and the Punishment: The Ideology of Cure Between Past and Present



Dario Ippolito and Matija Žgur

Abstract This chapter explores the return of the punished body to the public stage, situating the imaginaries produced by contemporary populism against the backdrop of a deep and ramified cultural genealogy. The study of (self-legitimising) representations of the power to punish leads us to focus on the ideology of punishment as a therapy to combat the disease of crime. In detail, sections 2–5 outline the archetypes, topoi, and trajectories of this protean ideology, while sections 6–9 show how these archaic imaginaries re-emerge in contemporary populist and securitarian politics, where processes of othering converge in the spectacle of punished bodies, revealing the persistence of the ideology of cure within modern practices of exclusion.

1 Introduction

Alex's body is forced into immobility. Weakened by a subcutaneous injection, he is tied to an armchair (whose shape resembles that of a dentist's). His arms and legs are restrained by straps. His head is secured to a helmet connected to an electrical device. Two clamps applied to his forehead lift his eyelids, preventing both spontaneous blinking and voluntary closure. This is how, in *A Clockwork Orange* (1962), British writer Anthony Burgess describes the setting of the 'Reclamation Treatment',¹ designed to effectively replace prison: a medical-scientific technique

¹ Burgess (1968), p. 96.

These pages are the result of a collaborative process between the two authors. Nevertheless, we specify that Dario Ippolito wrote Sections 2–5, while Matija Žgur wrote Sections 6–9. Matija Žgur wishes to thank Federica Borlizzi for her attentive reading of his parts and her help with the more technical aspects of the treated subject matter.

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aimed at rehabilitating criminals. The men in white coats begin the therapy session. The patient's hearing is assaulted by the extremely loud volume of dissonant music. His gaze is directed at a screen projecting images of brutal violence. Alex begins to suffer from induced discomfort that pervades his entire body, from his stomach to his head. He needs to vomit, to free himself from his restraints, to stop watching. He begs the doctors to stop the projection. In vain. Later, Dr. Branom explains to him: 'We have to be hard on you, you have to be cured. [...] Violence is a very horrible thing. [...] Your body is learning it.'²

A year after the publication of Burgess' dystopic novel, Spanish director Luis García Berlanga brings to the screen another story that prompts reflection on the relationship between the state, society, and the individual, looking at the body as an object of domination and penal reaction. A black comedy set in Franco's Spain, *El Verdugo* (1963) is one of the most incisive cinematic denunciations of the death penalty. The moment of execution is narrated from the perspective of the one who is required to kill in order to punish: a naive and disoriented executioner, completely unprepared to end the life of the condemned man. The emotional turmoil of this reluctant executor of public will echoes the psychological suffering of the man who awaits death at his hands (by means of *garrote vil*). In the symbolic mirroring of the final scene, we recognize the identity of the inhuman condition in which both are thrown. The executioner and the condemned man—reduced to bodies expropriated of two souls in torment—are dragged by force of arms toward the inevitable appointment to which criminal justice has destined them. 'It is society that demands this trial,' resonates the exhortation that precludes the conclusion.

In different ways, Burgess and Berlanga contribute to activating the power of empathy among readers and viewers: a cultural factor that has been historically significant in the transformation of the penal system.³ Through artistic invention (of characters, situations, interactions), the director and the writer share a feeling of revulsion for the despotic excesses of punitive power and produce an effect of identification with the suffering of those who endure its violence. Obviously, along with the narrative forms, the strategies and targets of delegitimization change. While Berlanga challenges the criminal barbarism of a real dictatorial regime, Burgess condemns the correctionist ideology of clinical treatment, proposing a paroxysmal representation of it (depicted by Kubrick in a film sequence of rare power). Both, however, lead us to a critique of punitive reason, showing us the human faces of the dominated subjects and the physical dimension of the power exercised over bodies.

Empathy, therefore, passes through knowledge, recognition and understanding of others. In this sense, Vittorio Foa offers a penetrating reflection on the invisibility of modern punishment and its socio-political implications:

When I was young, I used to believe that the walls of a prison existed to shield civilized life from the impure, physical contact of criminals. [...] I later realized that [...] the architecture of prisons is not only meant to keep offenders apart from the outside world, but is designed to stifle any moral concern the public might feel for what goes on within – built to lull, in

² Burgess (1968), pp. 109–110.

³ See Hunt (2007).

total indifference, the consciences that might otherwise be disturbed [...] The prison repels free men.⁴

However, by going beyond the prison walls, by shining a light on the cells and by making the conditions of the inmates visible—through the testimonies of those who, like Foa, have experienced imprisonment—it is possible to transform indifference into indignation, ignorance into awareness, and apathy into empathy. If punitive power is exercised invisibly, exposing its violence becomes an act of protest.

From this perspective, it might seem paradoxical that today it is the power itself that vindicates its punitive ferocity by exhibiting and asserting it. Videos and photos, accompanied by propaganda messages, thrust images of punished bodies before our eyes. Bodies bent over, bodies piled up, bodies caged, bodies kneeling, stripped naked, shaved, depersonalized, degraded. It is a political phenomenon that shakes and undermines the legal foundations of civil coexistence. A worrying phenomenon that brings to mind images from the past and raises questions about the future of constitutional democracy. To what end does this penal spectacle serve? Whence the ‘ostentatious inhumanity at the top of the state’?⁵ How should we interpret the rhetoric of dehumanization that accompanies securitization policies?

In the following pages, we reflected on the return of the body at the center of the criminal scene, placing the semantics and pragmatics of the punitive discourse that characterizes contemporary populism against the backdrop of a deep and ramified cultural genealogy. The study of (self-legitimizing) representations of the power to punish has led us to focus our attention on the ideology of punishment as a therapy to combat the disease of crime. In the first part of the essay (§§ 2–5), we outlined the archetypes, topoi and itineraries of this protean ideology. In the second (§§ 6–9) we explored how these archaic imaginaries re-emerge in contemporary populist and securitarian politics, where processes of othering converge in the spectacle of punished bodies—revealing the persistence of the ideology of cure within modern practices of exclusion.

2 The Body of the Patient

The current use of the noun ‘patient’ obscures its origins and enduring polysemy (which the adjective still carries). According to the established meaning in contemporary English, a ‘patient’ is a person who receives medical cure (for example, during a hospital stay) or who is regularly treated by a trusted doctor (who might say, for example, ‘Jannik Sinner is my patient’, even if the Wimbledon winner is in perfect

⁴ Foa (1949), p. 302 (translation is ours). It should not be lost on us that Foa’s text is part of a monographic issue of the magazine *Il Ponte* (The Bridge), dedicated to the prison problem, and whose introductory text, written by the editor Piero Calamandrei is entitled *Bisogna aver visto* (Eng. ‘You have to have seen it’).

⁵ Ferrajoli (2025), p. 47.

health).⁶ Those who provide cure are the active participants in the clinical relationship (the agents), while those who are cured undergo the therapeutic action: they are the patients ('I was a patient of Dr. Freud,' Ida Bauer might have said).

The etymology is well known but evoking it helps us to grasp ambiguities and semantic shifts. The term 'patient' (noun and adjective) derives from the present participle *patiens* of the Latin verb *patior*, whose meaning—active, despite the passive grammatical form—can be translated into the Italian verb *patire*, the Spanish *padecer*, and the French *pâtir*: to suffer, to endure, to bear. Before being the one who undergoes the doctor's cures, the patient is the one who suffers from the illness. The doctor intervenes because there is a *patiens*. One is not a patient because one is being cured, one is being cured because one is a patient (i.e., suffering, as one is ill).

'Who is affected by an illness': this is the primary meaning of the noun *paziente* recorded in the most authoritative dictionary of the Italian language (which obviously does not neglect to refer the term 'also' to 'those that are being cured by a doctor').⁷ Similarly, the dimension of suffering is highlighted in the connotative definition of *paciente* proposed by the *Diccionario de la lengua española* of the *Real Academia*: 'A person who suffers physically and bodily [*física y corporalmente*], and especially one who is under medical care'.⁸ The *Trésor de la langue française*, on the other hand, uses a synonymous definition: *patient* means, before being a medically assisted subject, *malade*.

The semantic equivalence between 'patient' and 'person diseased' is also registered by the English dictionaries from past centuries.⁹ A disease, however, is only one specific form of the vast and diverse range of ills that humans can suffer (*patire*, *padecer*, *pâtir*). It belongs to the class of natural ills: those not inflicted on humans by humans. However dissimilar social and institutional ills may be, the vocabulary of suffering often unites them. It is not surprising, therefore, that in languages derived from (or permeated by) Latin, the word 'patient' has also been widely used in the field of criminal justice: where suffering, produced by the force of the Leviathan, is willed, justified, and organized.

In the middle centuries of the modern age, jurists, theologians, chroniclers, memoirists, etc. describe (when they do not prescribe) practices of torture and punitive treatments (*supplices*, executions) using the word 'patient' (*paziente*, *paciente*, *patient*) in reference to the subjects on whose bodies the agents of power wreak havoc. The patient is the defendant induced to confess through traction, suspension, tearing, pressure, burns, and suffocation. The patient is the condemned person receiving his punishment. The patient is the executed person: the hanged, the beheaded, the quartered, etc. If in the operating room the patient's life is in the saving hands of the doctor, on the scaffold the 'patient' is the one who suffers, in the flesh, the bloody operations of the executioner.

⁶ See Merriam-Webster (2025), Cambridge Dictionary (2025) and Oxford Learner's Dictionaries (2025).

⁷ Battaglia (1984) (translation is ours).

⁸ Translation is ours.

⁹ For instance, 'a person diseased' is the *definiens* of the noun 'patient' in Scheridan (1780).

In English, occurrences of the term in the criminal context are rare (so much so that they are generally overlooked by lexicographers). In Romance languages, however, they abound. Although it seems completely foreign to the contemporary ear, this obsolete meaning is not at all archaic. It touches on the semantic fields of the twentieth century, deposited in the viscous customs of technical language and transported by the vivid pages of nineteenth-century novels. When Victor Hugo, in *The Hunchback of Notre Dame*, shows us Quasimodo being dragged and hoisted onto the wheel of the sedan chair—chained, stripped naked, mocked, flogged—he accompanies him to the Place de Greve, describing him as *le patient*.¹⁰ For much less, in *The Betrothed*, Manzoni uses the word *paziente*, describing Renzo's arrest and the 'instruments' ('*ruffles*') used to bind his wrists.¹¹

The semantic history of the term, therefore, seems to evoke the association between punishment and illness. However, it is possible to adopt a different perspective: *ex parte agentis*, rather than *ex parte patientis*. In the medical field, the patient is the one who—because they are sick—is cured. In the legal field, the patient is the one who—guilty (or presumed so)—undergoes criminal intervention. In the first case, the agent is the one who treats; in the second case, the agent is the one who punishes. This gives rise to a connection opposite to the previous one: between punishment and cure; a parallelism that can be pushed to the point of assimilation and valorization of punishment as cure.

3 Punishments and Healings

What can punishment heal? How can punishment heal? Who can be healed by punishment? In the ancient and evergreen tradition of doctrines that represent and justify punishment as a cure, the answers to these questions are many and varied: sometimes they recur, sometimes they are renewed; some combine, others diverge. The fundamental alternative would seem to concern the determination of 'who' (i.e., the subject benefiting from the penal cure). Is punishment administered to heal the guilty party, whose conduct is a diagnostic symptom of a pathology, or to defend the health of the social body in response to criminal infection? When the question mark is missing, the query becomes an inclusive disjunction.¹²

The repertoire of metaphors and analogies on which the discourse of therapeutic punishment is structured and developed originated, already robust, in the cradle of Western philosophy: Greece.¹³ The most profound footprint is that of Plato,¹⁴ who spread the idea that punishment should not look to the past but to the future, aiming to

¹⁰ Hugo (2008), VI, IV, p. 131.

¹¹ Manzoni (1900), XV, p. 227.

¹² See Ferrajoli (1989), pp. 251–262.

¹³ See Cohen (2005).

¹⁴ See Saunders (1991), Mackenzie (1981).

prevent the repetition of evil through moral correction.¹⁵ Since virtue can be taught, those who punish according to reason act so that the punished, and others, may act according to justice.¹⁶

Those who commit injustices are afflicted by an immaterial but very serious evil: injustice (or wickedness). Worse than poverty (which is the evil in terms of possessions), worse even than illness (which is the evil in terms of the body), injustice is an evil that disfigures the soul, produces unhappiness and, therefore, requires a remedy. If the remedy for poverty is the art of business and the remedy for illness is medicine, the remedy for injustice is a just punishment. Like the sick person, the unjust person can only return to happiness by overcoming the evil that afflicts them. Therefore, like the sick person, who accepts treatment even if it is painful, the unjust person—in order to heal—must accept the pain of punishment. They must become the patient, we might say (playing on the ambiguities we have noted).¹⁷

Thus, the metaphor of punishment as cure leads to the analogy between the doctor and the judge. The morally ill must turn to the latter ‘of his own free will’ to prevent ‘the ailment which is immorality does not become entrenched, rot his mind, and make it incurable’:¹⁸

We should require ourselves and everyone else not to flinch, but to put a brave face on it and submit courageously and fearlessly to the cautery and surgery of the doctor ... [taking] no account of the pain. We should submit to the lash, if that’s what the crime warrants, or to imprisonment, if that’s what we deserve. If we’re fined, we should pay up; if we’ve earned exile, we must go; if the penalty is death, we should let ourselves be executed.¹⁹

In this passage from *Gorgias*, which is openly paradoxical and deliberately provocative, the healing of the unjust person’s sick soul comes through the violence of the punishments inflicted on the body. The foundation of the paradigm of penal medicine, therefore, does not correspond to the renewal of pharmacopoeia: the punitive methods evoked and legitimized are the usual ones. In Plato’s dialogue on the *Laws*, however, the answer to the question ‘how to punish in order to heal?’ begins to change: moral therapy is not limited to physical punishment.²⁰

The analogy with medicine now extends to legislation. Rules and sanctions cannot be imposed on citizens like the prescriptions of a hasty and uneducated doctor who does not bother to give explanations to his patients. The legislator, in his nomothetic activity, must follow the example of those attentive and knowledgeable doctors who prescribe treatment while explaining the reasons for it. Rationality and authority; persuasion and force: imperative norms must rest on this double pedestal. In the perspective of this pedagogy of law, Plato entrusts the justification of laws to the preludes and the correction of non-compliers to penalties.²¹

¹⁵ See Stalley (1995).

¹⁶ See Plato (2005), 324a–b.

¹⁷ See Plato (2008), 472e–479c.

¹⁸ Plato (2008), 480b.

¹⁹ Plato (2008), 480c–d.

²⁰ See Stalley (1995a), Jinek (2021) and Adams (2019).

²¹ Plato (1980), IV, 718a–724b.

The scope of the discourse is framed by the axiomatic thesis that punishment ‘that takes places according to law [...] makes the one who receives the judicial punishment either better or less wicked’.²² In the catalogue of penalties associated with different classes of offences, we still find flogging, humiliation, expulsion and capital punishment. However, Plato’s political imagination devises two new penal institutions to save the city from the dangerous contagion of impiety. The wicked and harmful impious—‘like beasts’²³—are destined for perpetual imprisonment in a prison inaccessible to free men, located ‘in some spot that is deserted and as wild as possible’.²⁴ The impious who are not evil—that is, those who do not believe in the gods due to a lack of intellect—are instead imprisoned for at least 5 years in a different type of prison, created not to guard or afflict, but to reform.²⁵ The name chosen by Plato makes clear the pedagogical-correctional function of the new place of detention: *sofronisterion* (from the verb *sophronizo*: to restore to one’s senses, to moderate, to discipline).²⁶

The valorization of punishment as a means of rehabilitation is therefore deeply rooted, not only in philosophy, but also in religion.²⁷ In the branches of a cultural genealogy that spans our entire history, one can discern the Christian doctrines of *poena medicinalis*, the disciplinary models characteristic of utopian thought (beginning with Thomas More’s eponymous work²⁸), the modern ideologies of the penitentiary,²⁹ as well as the multiple variants (moralistic, authoritarian, therapeutic, charitable or orthopedic) of contemporary correctionalism.³⁰ Alex’s body is tied to a history.

In the evolution of this kind of doctrine, the relationship between medical science and criminal justice moves from theory to practice, from analogy to synergy, from rhetorical figures to professional figures. Those who do not go as far as anatomical observation of patients’ bodies bet on the scientific possibility of classifying their personalities. From this perspective, the objectivity of the actions performed matters less than the subjectivity of the guilty actors. The differentiation of penalties depends not so much on the type of crime as on the type of offender. The fundamental distinction is binary (since Platonic doctrine): correctable and incorrigible. The criminal treatment of the former serves to readjust them to society. The criminal treatment of the latter serves to defend society. The health of the body politic also depends on the death of human beings.

²² Plato (1980), IX, 854e.

²³ Plato (1980), X, 909b.

²⁴ Plato (1980), X, 908a.

²⁵ Plato (1980), X, 909a.

²⁶ Plato (1980), X, 908a.

²⁷ See Ricœur (1960), (1995), (2012).

²⁸ Besides More (2012), see also, for example, Campanella (1981), Mercier (1772).

²⁹ See Beaumont and Tocqueville (2018), Foucault (1995), Ignatieff (1978).

³⁰ See Garland (1985), Garland (1990), Pifferi (2016).

4 Human Beings and the Political Body

‘Remedy for a sick society’:³¹ this is how Montesquieu represents capital punishment in *The Spirit of Laws* (1748).³² In the rhetoric of punishment as cure, the metaphor is ancient and long-standing. If moral therapy heals the soul of the offender, social prophylaxis reacts to the criminal virus. The perpetrator of the crime is the pathogen; the sick patient is the body politic.³³

*Salus rei publicae suprema lex esto*³⁴: evoking the specter of Catiline’s conspiracy, Cicero urges Roman senators to purge the state of the vectors of disease: ‘if this man alone is executed, I know that this disease in the state can be checked for a little time, but it cannot be completely crushed.’³⁵ The vocabulary of anatomy (*viscera, venae*) accompanies that of pathology (*pestis, morbum, febris*). The prescription for therapeutic intervention is based on the similarity with the human body, in which extreme punishment is confused with war: ‘so this disease in the state, though relieved by the punishment of this man, will grow much worse so long as the rest remain alive.’³⁶

The medical-penal topic also owes to Cicero’s flowery oratory the most vivid and crude analogy: that of the surgical solution to social pathology.³⁷ Here it is in the formulation of the eighth Philippic: ‘If something in the body is causing harm to the rest, we allow it to be cauterized and cut so that this or that member may perish rather than the whole body. Likewise in the body politic: let whatever is noxious be amputated so that the whole may be saved.’³⁸ Even those who are not familiar with Latin literature will probably find the image behind this warning familiar. It is a recurring theme that is widely used in the apologetics of the death penalty.

A paradigmatic confirmation of the dual nature of discourses that accredit punishment as a cure can be found in Thomas Aquinas’ *Summa Theologiae*.³⁹ The most influential theologian of medieval Europe discusses the relationship between punishment and correction.⁴⁰ In assimilating punishments (including corporal punishment) to *medicinae* (or *rimedia*), he considers their function in relation to the soul and its healing (*sanatio, salus*).⁴¹ But the benefit of penal treatment also extends to the ills of the body politic. Thus, the *Doctor Angelicus* authorizes and recommends surgical intervention:

³¹ Montesquieu (1989), XII, IV, p. 191.

³² See Ippolito (2019).

³³ See Helmers (2016).

³⁴ See Mebane (2024).

³⁵ Cicero (1964), I, XII, 30.

³⁶ Cicero (1964), I, XIII, 31. In this rhetorical perspective, the legitimisation of capital punishment reappears in the fourth Catiline Oration, on which see Cape Jr (1995) and Woodman (2021).

³⁷ See Walters (2020).

³⁸ Cicero (2007), 8, 15.

³⁹ See Koritansky (2012).

⁴⁰ See Gardner (2023).

⁴¹ See Aquinas (1947), I–II, q. 87, a. 6–a. 8.

[...] if the health of the whole body demands the excision of a member, through its being decayed or infectious to the other members, it will be both praiseworthy and advantageous to have it cut away. Now every individual person is compared to the whole community, as part to whole. Therefore if a man be dangerous and infectious to the community ... it is praiseworthy and advantageous that he be killed in order to safeguard the common good.⁴²

Taken as *argumentum ex autoritate* in the treatises of modern criminal law scholars (Carpzov, Farinaccio, etc.), this passage is quoted *in extenso* in the report to the King of Italy in which the fascist minister Rocco—‘grand Solon of the regime’⁴³—presents the penal code (1930) and defends the decision to reinstate capital punishment. The data is significant. The convergence, in the affirmation of the *ius necandi*, between the traditional doctrine of the Catholic Church⁴⁴ (only archived by Pope Francis⁴⁵) and the totalitarian doctrine of fascism is part of the organicist conception of society, according to which the whole is superior to the parts.

In the metaphor of the body politic, society is to individuals as the physical body is to its limbs. Just as the body is more important than the individual limbs that compose it, society is more important than individuals. The relevance of the parts of the body depends on the function they perform in its overall physiology. Similarly, individuals are subordinate to the functions of the social organism.⁴⁶ As an ‘organism that is at once economic and social, political and legal, ethical and religious,’⁴⁷ the fascist state celebrates and imposes its axiological primacy over the individual, who, as an ‘infinitesimal and transitory element’ of the ‘indefinite series of generations,’ is degraded to a ‘means to social ends that far exceed his life.’⁴⁸ Thus, death as punishment regains its millennial legitimacy.

Emancipation from the political imagery of organicism is one of the cultural prerequisites for the rejection of capital punishment.⁴⁹ Only by escaping the normative logic of the corporatist metaphor—thus denying the superiority of the whole over the parts—is it possible to affirm the intangibility of life as an individual good.⁵⁰ But there is more. Overcoming organicist axioms leads to the valorization of the person as an end in itself; to the recognition of their ethical priority in social and institutional

⁴² Aquinas (1947), II–II, q. 64, a. 2

⁴³ This is how he is described—with polemical sarcasm—by the antifascist lawyer Trentin (1983), p. 332 (translation is ours).

⁴⁴ See Brugger (2003).

⁴⁵ See the new revision of number 2267 of the Catechism of the Catholic Church on the death penalty—Rescriptum ‘ex Audentia SS.mi’, 02.08.2018 (where we read that the Church teaches, in the light of the Gospel, that ‘the death penalty is inadmissible because it is an attack on the inviolability and dignity of the person’, and she works with determination for its abolition worldwide).

⁴⁶ See Briguglia (2006).

⁴⁷ Rocco (1930), p. 11 (translation is ours).

⁴⁸ Rocco (1930), p. 16 (translation is ours).

⁴⁹ See Bobbio (1990), Audegean and Ippolito (2023).

⁵⁰ See Costa (2005).

life; to the affirmation of their centrality in the legal construction of the political universe.⁵¹

This ‘Copernican revolution’⁵² in the configuration of relations between authority and the individual gives rise to the humanistic conception of punishment, which takes root in constitutional law and is nourished by the awareness that there are no good powers (let alone salvific ones).⁵³ However necessary, the power to punish represents a constant and terrible threat: a danger to be contained. Punishment is not a cure: it is an evil, justifiable only as a means of preventing greater evils. It serves civil coexistence, not moral correction. It aims to reduce social violence, but is always exposed to the risk of degenerating into institutional violence. For this reason, the exercise of punitive power must be regulated and limited by the legal system in accordance with and in respect of subjective rights.⁵⁴

By shaping criminal law as a system of guarantees, constitutionalism tends to remove the human body from public claims of criminal affliction. The rights of immunity and the principle of dignity raise a barrier to protect the individual.⁵⁵ Today—but not only today—the Europe of law prohibits the tampering with the body by those in power. Human life is placed above and outside the domain of criminal law.⁵⁶ The intentional infliction of physical pain as a form of punishment is condemned as a violation of the prohibition of inhuman or degrading treatment or punishment, established by Article 3 of the ECHR (which allows no exceptions or balancing).⁵⁷

At the level of the legal ‘ought’, the power to inflict pain is banished even from the institutional space in which the time of the punishment unfolds. Penal humanism demands a prison system that is worthy of the rule of law: a prison of law (which is no longer—as it has always been—a repository of arbitrary and violent punishment).⁵⁸ A person sentenced to prison remains a person. Their human dignity is not diminished by the conduct of which they are guilty.⁵⁹ Their punishment consists of and is limited

⁵¹ See Tuck (1979); Bobbio (1999).

⁵² This is the expression used by Bobbio (1990a), p. 56.

⁵³ See Ippolito (2025).

⁵⁴ See Ferrajoli (2014), Audegean (2023), Ippolito (2025a).

⁵⁵ See Ferrajoli (1989).

⁵⁶ See Bessler (2022).

⁵⁷ See *Ireland v UK* (1979–80) 2 EHRR 25, par. 163, where the Court first established that ‘[t]he Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the victim’s conduct. Unlike most of the substantive clauses of the Convention [...] Article 3 (art. 3) makes no provision for exceptions and, under Article 15 para. 2 (art. 15-2), there can be no derogation therefrom even in the event of a public emergency threatening the life of the nation.’ On the absolute nature of the rights enshrined in Art. 3 ECHR, see, above all, Mavranicola (2021).

⁵⁸ In this regard, it is worth noting, for their importance and rigour, the reports to the Italian Parliament, drafted between 2017 and 2023, by the National Guarantor for the Rights of Persons Detained or Deprived of Liberty (an Authority chaired at the time by Mauro Palma).

⁵⁹ See Gonnella (2014), Ruotolo (2014) and Anastasia (2022).

to the deprivation of personal liberty.⁶⁰ The integrity of their body is protected by law against the agents of power.⁶¹ Actions that were once accepted as punishment are now called crimes.

5 Cared-for Bodies and Punished Bodies

In the constitutional paradigm, therefore, the terms of the relationship between the human body and political authority change. The body of the legal subject is not an object of domination. It participates fully in the value of the person. It contributes to defining the normative implications of the principle of dignity.⁶² It is an individual body, not part of a body that reduces it to a member. The legal system correlates negative and positive expectations in the form of fundamental rights with this body, which is valued as a very personal asset. These rights correspond to prohibitions on injury and obligations to provide services. On the one hand, the body-person is, in principle, immunized from the evil of painful punishment⁶³; on the other hand, its needs form the basis of the legal claim to care in terms of the right to health. Therefore, the state—stripped of the ideological trappings of the surgeon of society and/or the penal therapist of the soul—is charged with the duty of creating the public structures necessary to ensure the care of persons in the flesh.⁶⁴

The universality of fundamental rights and the personalist principle also lead to the deconstruction of the relationship of special supremacy between the prison administration and prisoners.⁶⁵ Even in the context of criminal enforcement, care is distinct from punishment. Persons deprived of their liberty retain the right to health.⁶⁶ Just as the integrity of their bodies constitutes a limit to disciplinary sanctions, their

⁶⁰ See *Hirst v UK (No 2)* (ECtHR, 6 October 2005) App No 74025/01, par. 69 and 70 ('There is no question, therefore, that a prisoner forfeits his Convention rights merely because of his status as a person detained following conviction.') and *Khodorkovskiy and Lebedev v Russia* (ECtHR, 31 May 2013) Apps Nos 11,082/06 and 13,772/05, par. 836.

⁶¹ See, in particular, *Bouyid v Belgium* (ECtHR, 28 September 2015) App No 23380/09, par. 90. For a comprehensive presentation of the relevant case-law on the rights of prisoners, see European Court of Human Rights (2025).

⁶² See Kateb (2011), Rosen (2012) and Dupré (2015); Daly (2021).

⁶³ See United Nations, *Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, UN Doc A/RES/70/175 (17 December 2015), Rules 1, 43 (prohibition of corporal punishment and prolonged or indefinite solitary confinement). For the ECtHR case-law on the subject, see European Court of Human Rights (2025), IV.

⁶⁴ See Ferrajoli (2007), (2021).

⁶⁵ See Buffa (2015).

⁶⁶ United Nations, *Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, UN Doc A/RES/70/175 (17 December 2015), Rules 1, 24–35 (equivalence of care; professional independence of health-care staff; continuity of treatment), 43 (prohibition of corporal punishment and of prolonged or indefinite solitary confinement); Council of Europe, *European Prison Rules* (Rec(2006)2-rev, consolidated text 2020), Rules 39–48 (prison health services: equivalence of care; clinical independence; consent and confidentiality).

physical and mental well-being imposes obligations on the public administration to take responsibility for them and provide them with healthcare.⁶⁷ Ultimately, the legitimacy of the prison institution is measured against constitutional principles.⁶⁸ It fails when the prison system does not respect or ensure the guarantees of fundamental rights: of all rights whose restriction is not part of the punishment.

Obviously, there are no 'deontically perfect worlds'.⁶⁹ The effectiveness of legal norms depends on a variety of factors (social, political, economic, and cultural). The nature of power is never reflected in the mirror of the law. The gap between the levels of 'ought' and of the actual reality can be reduced, but not eliminated. Generally, it is greater where power escapes control (as is the case in the opacity of the prison system). And it tends to widen when the law imposes costly decisions (as is the case in relation to the satisfaction of rights to benefits). Thus, in a context of crisis (axiological and institutional) of constitutional democracy, the welfare state retreats and the space of the criminal system expands.⁷⁰

The ideological union between neoliberalism and populism, reshaping the political imagination, produces a hegemonic discourse that changes the semantics of security, conditions the social demand for state intervention, and renews the techniques of producing democratic consensus.⁷¹ While public health care wastes away in a vicious circle of 'discredit-disinvest-discredit' (which is, in fact, very virtuous for the profits of insurance companies and businesses), the propaganda effectiveness of securitarianism grows. In the privatization of care, the patient's body is identified with the figure of the customer. In the political use of punishment,⁷² the body of the offender is torn from the personal sphere of dignity/immunity and thrown back into the public arena.

When not blatantly displayed, the punished body is evoked, imagined, visualized. In November 2024, during the presentation of a new armored vehicle for transporting prisoners in maximum security, Italian Undersecretary of Justice Andrea Delmastro stated: 'It gives me great joy to let citizens know how we are pressing forward and not letting those behind that tinted glass breathe'.⁷³ In August 2019, in Brazil, Jair Bolsonaro (then President of the Republic), promoting a legislative reform aimed at empowering the lethal use of force by agents and private individuals against criminals, declared: 'They will die on the streets just like cockroaches. And it must be that way'.⁷⁴ In 2017, in Brentwood (Long Island), US President Donald Trump, speaking in front of hundreds of police officers, mocked the caution with which arrestees are

⁶⁷ The reality of prison life in this regard is examined in an exemplary manner by Gonin (1991).

⁶⁸ See Ruotolo (2002).

⁶⁹ Ferrajoli (2011), p. 289.

⁷⁰ See Actes de la recherche en sciences sociales (1998); see also Wacquant (1999), Wacquant (2004), Anastasia (2012), Fassin (2017) and Ferrajoli (2024).

⁷¹ See Garland (2001), Ferrajoli (2025).

⁷² See Pratt (2007), Anastasia et al. (2015).

⁷³ Il fatto quotidiano (2024).

⁷⁴ Ying (2019).

treated: 'Please, don't be too nice,' he said while recommending rougher methods.⁷⁵ These are just a few very telling examples of how the discourse on security breaks down the barriers of legal civilization, overwhelming personal dignity. The body subjected to criminal law is assumed to be the visible seat of power that generates order: the harshness of treatment becomes a political message.

This is not, of course, a return to the punitive spectacle of the *ancien régime*. The display of force and control over the body now serve a completely different function. In the absolute monarchies of modern Europe, the penal system was based on the objectives of general prevention.⁷⁶ Punishment (threatened or imposed) was conceived as a deterrent to non-compliance with prohibitive rules. From the height of royal sovereignty, the *Ordonnance criminelle* (1670) of Louis XIV illuminates the meaning of capital punishment: 'those who do not restrain themselves out of respect for their duty' must be kept within the bounds of the law 'through fear of punishment'.⁷⁷ Behind the burnings, the wheels, the quarterings, and the hangings, there is a firm conviction: the intimidating effect of punishment depends on its severity. The fight against crime, through the spectacular affliction of bodies, also requires 'tortures capable of instilling more terror than simple death'.⁷⁸

In the punitive phenomenology of contemporary populism, the suffering body is not used to deter potential criminals, but to reassure the governed and legitimize the rulers. The agent uses the patient to build loyalty and expand his political clientele. Emblematic in this sense is the video shot and released by the Secretary of State for Homeland Security of the current US administration, Kristi Noem. The setting is the well-known Salvadoran prison CECOT. The images are taken from a cell phone camera. Noem appears in front of a cell crowded with men of Latin American appearance, standing in front of the bars or sitting on metal bunks. Her speech—posted on social network X—has two layers of meaning. On the surface, it exploits the spectacle of punished bodies to instill fear: 'President Trump and I have a clear message to criminal illegal immigrants: leave now. If you do not leave, we will hunt you down, arrest you, and you could end up in this El Salvadorian prison.'⁷⁹ The ideal viewer, however, is the American voter: images and words are chosen with the aim of satisfying their need for security. Through the display of repressive force, the government celebrates its ability to eradicate evil from society.

The punished body is the body of others.

⁷⁵ ABC News (2017).

⁷⁶ See Carbasse (2000), Sbriccoli (2002).

⁷⁷ *Ordonnance criminelle du mois d'août 1670*, in: Isambert and Decrusy (1829), p. 372 (translation is ours).

⁷⁸ Domat (1701), V, III, p. 174 (translation is ours).

⁷⁹ Arulanantham (2025).

6 Other(Ed) Bodies

The body of others is a foreign body. Its removal benefits the health of the political body. Its display is a powerful anxiolytic. The punishment becomes visible (and visibly corporeal) again, not to instil fear, but to alleviate it. The deterrent effect of the penal spectacle presupposes that the spectator imagines herself in the position of the patient. The prerequisite for the reassuring function, on the other hand, is the separation between subjects integrated into the order and subjects of disorder. When the former identify themselves as others with respect to the latter, the punitive act takes the form of a collective ritual: a ritual of cohesion that confirms the separation.

The ritual of punitive reassurance necessitates the identification of a collective self and, conversely, the designation of those who stand outside it. The cohesion of the political body requires a visible object of exclusion—a body that can be marked as foreign to the collective organism. In contemporary societies, such figures of exclusion are not given but produced through discursive and symbolic processes of ‘othering’.⁸⁰ Considering that ‘the nation’ is still today one of the most relevant forms of collective identification,⁸¹ it comes as no surprise that immigrants are a prime candidate for becoming the other in today’s societies. The construction of the other is, in fact, seen as a necessary element of national self-identification.⁸² In this sense, Triandafyllidou’s notion of the ‘significant other’ seems particularly insightful. It refers ‘to another nation or ethnic group that is territorially close to, or indeed within, the national community and threatens, or rather is perceived to threaten, its ethnic and/or cultural purity and/or its independence’.⁸³

A paradigm of such a construction of the significant other is Donald Trump’s long-standing rhetoric in relation to the Latin American immigrants, both within the country and at its borders. Ever since becoming a presidential candidate in 2015, Trump has targeted Mexicans and other Latin American immigrants in his exclusionary nation-building exercise.⁸⁴ While it is true that anti-Latin American sentiment is nothing new in the US, the exclusionary discourse that targets these immigrants has been radicalized and normalized in the Trumpian era. Notably, his early campaign statements depicted Mexicans as ‘bad hombres’ and rapists,⁸⁵ a pledge to build a wall on the Southern border,⁸⁶ and a promise to deport every one of almost

⁸⁰ Othering is defined by Brons (2015), p. 70, as ‘the simultaneous construction of the self or in-group and the other or out-group in mutual and unequal opposition through identification of some desirable characteristic that the self/in-group has and the other/out-group lacks and/or some undesirable characteristic that the other/out-group has and the self/in-group lacks’.

⁸¹ See Triandafyllidou (1998), p. 593.

⁸² See Triandafyllidou (1998), p. 599: ‘[N]ational identity implies difference. Its existence presupposes the existence of ‘others’, other nations or other individuals, who do not belong to the ingroup and from which the ingroup must be distinguished.’

⁸³ Triandafyllidou (1998), p. 600.

⁸⁴ See Ellis (2025).

⁸⁵ See Tennery (2016).

⁸⁶ See The American Presidency Project (2015).

11 million undocumented immigrants in the US.⁸⁷ In his second presidential term, we have witnessed an intensification of border enforcement and immigration restrictions,⁸⁸ the introduction of retaliatory tariffs on imports from specific Latina American countries,⁸⁹ and the massive nationwide arrests and deportations of presumed undocumented immigrants with criminal record by ICE agents.⁹⁰

Such radical policies and actions, however, could not have been implemented overnight in a community that has been built by immigrants and is generally open to welcoming those seeking a better life in their midst. The public's receptiveness to at least a passive acceptance of exclusionary policies, if not outright hostility toward immigrants, typically grows slowly and must therefore be built patiently and systematically. Hence, the othering is not a singular discursive act, but rather operates as a multi-layered constellation of rhetorical, visual, and symbolic mechanisms.

If we closely examine Trump's speeches on the topic, we realize that (at least) two different, albeit intertwined, rhetorical strategies are typically employed by the US President to achieve his goal. We shall call them the 'contamination' strategy and the 'securitization' strategy, respectively, and examine them separately.

7 The Contamination Threat

As we have seen, throughout history, the language of cure and affliction has provided the political imagination with a grammar for legitimizing exclusion. When disorder is framed as disease, the act of punishment becomes a therapeutic intervention meant to defend the collective body from infection. This same symbolic logic resurfaces in contemporary populist discourse, where metaphors of purity and pollution translate the old vocabulary of penal medicine into a rhetoric of national hygiene. The contamination strategy thus recasts the punitive treatment of deviance as a campaign against foreignness, shifting the site of correction from the criminal's body to the body politic itself.

In this sense, Mary Douglas argued that metaphors of purity and danger function as symbolic devices for boundary-making. Her evocative definition of dirt as 'matter out of place' illustrates how labelling something as dirt invokes a dualistic, exclusionary logic. 'Dirt,' she says, 'is the by-product of a systematic ordering and classification of matter, in so far as ordering involves rejecting inappropriate elements'.⁹¹ Dirt 'appears as a residual category, rejected from our normal scheme of classifications', adds the British anthropologist.⁹² Importantly, something is not dirt due to some

⁸⁷ See BBC (2015).

⁸⁸ For an analysis of the immigration policies in the first 6 months of Trump's second presidential term, see American Immigration Council (2025).

⁸⁹ See Leme (2025).

⁹⁰ See Bier (2025).

⁹¹ Douglas (1966), p. 36.

⁹² Douglas (1966), p. 37.

objective, inherent characteristic, but is rather socially constructed as such only in relation to a particular thing (in our case: the ingroup or the nation).⁹³ To understand the force such rhetoric carries, we need only to think how heavily twentieth century totalitarian regimes relied on the contamination discourse—portraying Jews, Roma, and other minorities as parasites or infections—to justify widespread radical exclusion and extermination.⁹⁴

Although never absent from public discourse, the contamination strategy has in recent years gained renewed prominence, largely due to the rise of right-wing illiberal politicians such as Viktor Orban in Hungary, Matteo Salvini in Italy or Marine Le-Pen in France. These leaders have developed a nuanced vocabulary that includes depicting immigrants as invaders,⁹⁵ blaming them for the spread of diseases in the country,⁹⁶ or outright calling them a poison.⁹⁷

Such communicative devices often find their way into Donald Trump's political speeches, as well. For instance, in a public appearance on 16 May 2018, the first-time President said: 'We have people coming into the country, or trying to come in, we're stopping a lot of them. And we're taking people out of the country you wouldn't believe how bad these people are. These aren't people, these are animals'.⁹⁸ An examination of his later comments reveals an escalating biologicistic rhetoric. In a radio show appearance during his third election campaign, Trump argued that his opponent Kamala Harris, at the time the Vice President of the USA, was responsible for letting masses of murderous immigrants into the country: 'Many of them murdered far more than one person, and they're now happily living in the United States. You know, now, a murderer, I believe this, it's in their genes. And we've got a lot of bad genes in our country right now'.⁹⁹ Finally, in what is arguably his most extreme declaration on the topic to date, Trump, in a campaign rally in Waterloo, Iowa, on 19 December 2023, explicitly depicted immigrants as pathogenic elements.¹⁰⁰ Criticizing the Biden administration for their 'open borders' policy, he was explicit: 'They're destroying the blood of our country. That's what they're doing. They're destroying our country'. Despite the evident similarities between this rhetoric and that of Hitler's in *Mein Kampf*, Trump appeared untroubled and fully embraced the language when he continued: 'They're coming from all over the world. They could be healthy. They could be very unhealthy. They could bring in disease that's going to catch on in our country, but they do bring in crime, but they have them coming from all over the world and they're destroying the blood of our country'.

⁹³ Douglas (1966), p. 9: 'What is clean in relation to one thing may be unclean in relation to another, and vice versa'.

⁹⁴ See, for example, Bauman (1989), p. 66 ff.; Perry (1983), Cassata (2011).

⁹⁵ See De Boni (2015).

⁹⁶ See Euronews (2018).

⁹⁷ See AFP (2016).

⁹⁸ See Abramson (2018).

⁹⁹ See Roll Call (2024).

¹⁰⁰ See Roll Call (2023).

In Trump's populist discourse, the contamination metaphor is employed strategically as a nation-building device that strengthens the in-group by excluding a designated other. By portraying migrants as pathogenic agents, Trump seeks to activate deep-seated cultural anxieties about purity, health, and collective survival. At this point, a crucial new discursive element is introduced, when Trump argues:

On my first day back in the White House, I will terminate every open border policy ... stop the invasion on our southern border and begin the largest domestic deportation operation in American history. We have no choice. No country can sustain this. We will restore law and order to our communities.¹⁰¹

Here, the language of contamination becomes inseparable from the logic of *securitization*: besides being outsiders immigrants are now also existential threats whose presence endangers the health and life of the nation itself. To protect the body politic from this threat thus becomes imperative. Extraordinary measures to achieve this goal acquire a new aura of legitimacy.

8 The Security Threat

To 'securitize' a given issue—be it terrorism, environmental change, a pandemic or organized crime—is to frame it as an emergency, a crisis or, most decisively, as *an existential threat*. The strategic function of such dramatization is to enable and justify the resort to extraordinary measures, exceeding ordinary political procedures, to promptly resolve the matter.¹⁰² Securitization operates above all as a rhetorical practice¹⁰³: an issue is not inherently a security threat but becomes one when a securitizing agent successfully persuades an audience to recognize it as such.¹⁰⁴ In the last few decades, a substantial body of scholarship has emerged demonstrating how immigration is increasingly being conceived through the lens of security as reflected in progressively othering political discourses, policies and executive action.¹⁰⁵

A paradigmatic case is provided by Donald Trump's repeated declarations on the matter. The first example comes from his first major political speech, that is, the announcement of his first presidential bid on 16 June 2015. At the very outset of

¹⁰¹ Roll Call (2023).

¹⁰² See Buzan et al. (1998), p. 23–24.

¹⁰³ A prominent current within the field of security studies, led by the Copenhagen School, perceives security (securitization) in terms of speech acts. See, for instance, Waever (1995), Balzacq (2005).

¹⁰⁴ Securitizing agents may include political leaders, executive agencies or the government as such. Their privileged status as securitizing actors is usually due to the superior knowledge of issues of public importance that government actors possess over other actors, as well as their *a priori* position of power (See Balzacq (2005), p. 191). However, as Buzan et al. (1998), p. 32, claim, '[n]o one is guaranteed the ability to make people accept a claim for necessary security action [...], nor is anyone excluded from attempts to articulate alternative interpretations of security'.

¹⁰⁵ This is evidenced in the extensive literature on the matter, particularly within security studies. See, for instance, Huysmans (2000), Bigo (2002), Green and Grewcock (2002), Huysmans (2006), in particular ch. 4; Messina (2014) and Vigneswaran and Bourbeau (2023) and others.

a speech whose leitmotif was depicting the US as being in crisis and under threat from different elements during the Democrats' reign in the White House, one of his very first concerns referred to the Southern border and the nature of the people entering the US through it. He asserted: 'When Mexico sends its people, they're not sending their best. They're not sending you. They're sending people that have lots of problems, and they're bringing those problems with [them]. They're bringing drugs. They're bringing crime. They're rapists'.¹⁰⁶ The statements seem to come directly out from a securitization playbook ('First, establish the other as a security threat for your community').

The second example is even more indicative in this sense—his 8 January 2019 public speech was entitled Oval Office Address on Immigration and Border Security.¹⁰⁷ With the very first sentence—'Tonight I am speaking to you because there is a growing humanitarian and security crisis at our southern border'—the speaker overtly and unequivocally framed immigration as a threat for national security. With the next sentence—'Patrol agents encounter thousands of illegal immigrants trying to enter our country'—he slightly yet importantly shifted the focus from the general phenomenon to the immigrants themselves. Perhaps the clearest reference to the presumed security threat posed by these individuals comes soon thereafter when Trump employs distorted criminal statistics to argue that between 2017 and 2019, 'ICE officers made 266,000 arrests of aliens with criminal records, including those charged of 100,000 assaults, 30,000 sex crimes, and 4000 violent killings.' He finally reaffirmed his fabrication with a deceitful and fearmongering claim that 'thousands of Americans have been brutally killed by those who illegally entered our country and thousands more lives will be lost if we don't act right now'.

Two crucial observations can be deduced from these two examples. First, a subtle yet significant shift in the target of securitization is performed. What is framed as a policy of 'border protection' no longer targets immigration as a process to be regulated but immigrants *as persons* to be contained. The focus moves from controlling movement to controlling bodies, from managing flows to neutralizing presences. In this sense, securitization ceases to concern a social phenomenon and becomes embodied: it is the immigrant who is securitized.

Second, there emerges a new rhetorical approach in the treatment of the issue at hand: besides being 'a potential risk', the foreigner now also becomes 'an existential threat'. The language of infection and danger is complemented with the vocabulary of warfare and defense. The immigrant is not only imagined as a contaminant to be removed for the nation's health, but also as an adversary whose very existence threatens its survival.

The latter approach appears emblematic of the transition in state governance from welfare to risk management. In what Ulrich Beck called 'risk society',¹⁰⁸ potential threats are now more often than not socially constructed and, ideally, acted upon before they even materialize. In this mind-set, a willful escalation of conflictual

¹⁰⁶ See Washington Post (2015).

¹⁰⁷ See American Rhetoric (2019).

¹⁰⁸ Beck (1992).

rhetoric increasingly transforms the immigrant other into *the enemy* of the society, its values and collective way of life.¹⁰⁹ While a total annihilation of the immigrant body is today beyond the pale of actions available to States, militarized language (‘the war on [insert the purported threat here]’) and the idea that pathogenic immigrants must somehow be physically eliminated from endangering the body politic are very much at the core of securitization practices.

Within this symbolic framework, *deportations* and *detentions* of immigrants in offshore centers are presented as a necessary, but also the only possible solution to the problem they pose. These formally administrative measures, increasingly acquire the moral, political and even legal meaning of punishment¹¹⁰—a punishment that does not seek to respond to a particular criminal offence by the immigrant but instead pre-emptively seeks to neutralize the danger that the immigrant herself poses for the community. Reminiscent of the Italian Positivist School of Criminology’s shift from responsibility to dangerousness,¹¹¹ this erosion of fundamental legal (penal) guarantees is justified precisely by the logic of securitization, which invokes a state of emergency, a crisis, even war with the enemy.¹¹² In supposedly exceptional circumstances, such draconian actions against the immigrants are presented as extraordinary, yes, but necessary and legitimate nevertheless. The disposal of the pathogenic immigrant body for the protection of the health of the body politic is now perceived less as a matter of political opportunity than as a necessity. It is perceived as a ritual cleansing of the body politic through which the latter reaffirms its integrity.

9 Beyond the Spectacle

What are the reasons for the perceived necessity to parade the dehumanized immigrant bodies before the world? How can we make sense of the recent reappearance of the punitive spectacle and its new function?

First of all, the importance of the gradual and systematic nature of the process of othering (dehumanization) should be stressed once again.¹¹³ In fact, the ultimate success of exclusionary discourses and practices, i.e. their ability to facilitate the efficient disposal of immigrants in some extra-territorial site, depriving them of fundamental legal protections, and leaving them there indefinitely, crucially relies on the ability to gradually transform them, in the eyes of the public, from people with

¹⁰⁹ It seems that in his 1932 *The Concept of the Political*, Schmitt (2007), p. 27, anticipated contemporary securitization debates, when he argued that the enemy needn’t be considered morally evil, aesthetically ugly or an economic competitor—‘But he is, nevertheless, the other, the stranger; and it is sufficient for his nature that he is, in a specially intense way, existentially something different and alien, so that in the extreme case conflicts with him are possible’.

¹¹⁰ On the blurring between administrative and penal elements in deportations see Spalding (2024).

¹¹¹ See Ferrajoli (1989), p 497 ff.

¹¹² See Hallsworth and Lea (2011).

¹¹³ For a comprehensive socio-psychological analysis of dehumanization, see Volpato (2011); in the same vein, see also Bandura (1999) and Zimbardo (2007).

hopes, ideals and dignity into dirt, refuse, or dangerous pathogens. The necessity to proceed in a rational and methodical manner was not lost even on the Nazi regime in its genocidal project against European Jews. The awful logic of their reasoning was masterfully captured by Hannah Arendt in *The Origins of Totalitarianism*. In the second part of Chap. 9, where she discusses the perplexities related to the discovery of the inefficiency of supposedly universal human rights, once confronted with people who lost their status of members of political communities, she lucidly exposes the fundamentally procedural nature of ‘the final solution’:

The calamity of the rightless is not that they are deprived of life, liberty, and the pursuit of happiness, or of equality before the law and freedom of opinion [...] but that they no longer belong to any community whatsoever. Their plight is not that they are no longer equal before the law, but that no law exists for them [...] Only in the last stage of a rather lengthy process is their right to live threatened; only if they remain perfectly ‘superfluous,’ if nobody can be found to ‘claim’ them, may their lives be in danger. Even the Nazis started their extermination of Jews by first depriving them of all legal status (the status of second-class citizenship) and cutting them off from the world of the living by herding them into ghettos and concentration camps; and before they set the gas chambers into motion they had carefully tested the ground and found out to their satisfaction that no country would claim these people. The point is that a condition of complete rightlessness was created before the right to live was challenged.¹¹⁴

Arendt’s analysis reminds us that even one of the most heinous crimes in human history did not occur over night, but with slow, systematic erosion of legal and political belonging. In the same way, today’s deportation and detention practices rely on a progressive dehumanization of migrants that are ultimately rendered superfluous bodies that can be displaced and confined with little resistance by anyone.

The question, however, remains: why do such dehumanizing practices require public visibility?¹¹⁵ Any plausible explanation for this phenomenon seems to require of us to delve into developments—or rather, the devolutions—in the juridico-political, social and economic situation of the past decade or so.¹¹⁶ Economic stagnation, growing inequality, and the perception of globalized markets benefiting elites have fuelled widespread discontent, thus opening the doors for the rise of leaders with illiberal and populist tendencies.¹¹⁷ Socially, rapid demographic shifts, cultural anxieties, and the spread of polarized media have amplified feelings of marginalization and distrust.¹¹⁸ Legally and politically, transformations in institutional norms, e.g. the weakening of checks and balances, eroding judicial independence, and the reinterpretation of constitutional principles, have created opportunities for leaders to consolidate power disregarding established constitutional limits and procedures.¹¹⁹

¹¹⁴ Arendt (1973), p. 295–6.

¹¹⁵ This need for publicity is even more striking if we consider how just twenty years ago leaders of the same superpower sought to conceal the deportations and degrading interrogation techniques conducted on suspected terrorists in their ‘war on terror’. What has so drastically changed in the meantime?

¹¹⁶ See Garland (2001) and Lacey (2008).

¹¹⁷ See Guiso et al. (2024), Scheiring et al. (2024).

¹¹⁸ See Tucker et al. (2018).

¹¹⁹ See Blokker (2019), Pozsár-Szentmiklósy (2024).

With regard to immigration, the policies introduced by emboldened populist leaders mark a clear schism with the liberal culture of open borders and acceptance of diversity. In reference to criminal justice, these developments mark a specific revival of the therapeutic conception of punishment.

When all of these phenomena and practices converge—the pathologization and securitization of the immigrant; the rise of illiberal polities; the populist revival of the organicist conception of society; the return of the therapeutic conception of punishment—a new narrative emerges: protecting the health of the body politic requires not only the prevention of intrusion of the pathogenic other (or, if it is already inside, its excision). Instead, the vulnerable social body requires a medicine that it can see having an effect. Thus, reminiscent of the famous aphorism ‘*Not only must Justice be done; it must also be seen to be done*’, the pathology must now also be seen to be removed efficiently. As Pratt lucidly observes in his study of penal populism, the populist leader ‘seeks opportunities to turn the punishment of offenders into a symbolic spectacle of reassurance and vengeance for an onlooking public, humiliation and debasement for its criminal recipients.’¹²⁰ Thus, it is only by making a public spectacle of the entire process of othering and of disposing of the immigrant-criminal-pathogen that the body politic can be reassured that the danger has actually been dealt with.

However, as any other performance, the contemporary punitive spectacle must also come to an end: once the immigrant bodies have been shown to be disposed of far from our communities, the prison doors are closed, the camera lights are turned off and the viewing public is cathartically liberated of their anxieties and reassured of their safety. Yet, the objects of the spectacle remain. The public’s relation to their fate resembles its relation to waste disposal: the interest lies, above all, in their removal, not in their afterlife.¹²¹ What we are left with are bodies that are confined in these off-shore detention centers which function as true concentration camps. Agamben portrays them as spaces where law is suspended and individuals, deprived of any meaningful legal and political status, are reduced to *bare life*.¹²² In these camps, the paradigm of modern state sovereignty, a paradoxical situation is produced in which individuals are simultaneously included and excluded: included as living bodies under state control, yet excluded from the domain of rights and political agency.

In these circumstances, the immigrant body becomes a modern-day *homo sacer*, compelled to live yet left to die: its body is constantly monitored, regulated, and preserved at the most minimal threshold of survival, while at the same time exposed to abandonment and disposal.¹²³ Its is simultaneously kept alive and politically dead, managed as a risk rather than recognized as a person. Like the rightless pariahs of the twentieth century, today’s immigrants are rendered disposable, inhabiting zones where law has abdicated and only the management of bare life remains.

¹²⁰ Pratt (2007), p. 30.

¹²¹ On the (in)visibility of securitized migrants, see Mountz (2015).

¹²² See Agamben (1998).

¹²³ See Agamben (1999), p. 82 ff.

Their condition demonstrates the continuity between the older medical-political analogies of punishment and cure, and contemporary punitive practices of exclusion and disposal. If, as Agamben contends, the camp is the *nomos* of modernity, then the immigrant's bare life in these sites is not a peripheral tragedy but a central symptom of our political present.

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