# The Zombification of Formerly Incarcerated and Convicted People: Radical Democracy, Insurgent Citizenship, and Reclaiming Humanity
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## INTRODUCTION

"Sometimes human places create inhuman monsters".

– Stephen King,
*The Shining.*

This article examines the relationship between zombies and formerly incarcerated/convicted people (FICP),[1] while at the same time exploring what it means to be human. I argue that the major characteristics of zombies are similar to those attributed to formerly incarcerated and convicted people. Although zombies are, of course, fantastical creatures, we understand a great deal about their ontology. Contemporary popular culture provides information about zombies that has constructed our consumption of them. Zombies serve as an endless source of material for entertainment. The "beingness" of zombies is revealed through novels, comic books, films and television shows. From these sources we know, for example, that zombies have an insatiable drive to consume flesh. They are also presumed to lack true consciousness and be incapable of reason, empathy or emotion. Zombies signify the shedding of what was once human — former human beings that have been reanimated into a world that no longer wants them. Because they are portrayed as predators, the living body politic has come to believe zombies are to be feared, avoided and despised. Their Otherness, and soullessness, make it possible to kill them with impunity.

With the popularity of television series such as AMC's *The Walking Dead* (2010-present)*,* zombies have become monsters we are all familiar with. In a similar way, with its endless options of crime-related drama and reality TV to choose from, popular culture has educated the American public about the nature of FICP. The news media is remarkably similar in terms of its function. By sensationalizing stories and offering flat, one-dimensional villains these sources offer the public characters that are other than human, neither living nor dead. Thus, it becomes possible for the public to similarly dismiss their humanity. Moreover, laws and policies

remain among the most powerful regulatory tools outside of the media. One of the most common descriptive features of zombies is that they are creatures that occupy a position closer to death than life. Likewise, formerly incarcerated and convicted people, because they are dead in the law, reside at the edge of humanity.

Orlando Patterson's work *Slavery and Social Death* (1982), argued that slavery in America was tantamount to 'social death' because, in part, those it held in captivity were torn apart from connectivity with the social world. Recalling this argument, Loïc Wacquant (2005, p. 130) argues that, "mass incarceration also induces the civic death of those it ensnares by extruding them from the social compact, thereby making them *civiliter mortui*". Wacquant continues by saying that this population is outcast from society, first, by the state and, second, by a fearful citizenry. In the remainder of this article, I argue that these tactics of exclusion work together to render FICP illegible as fellow human beings. Wacquant (2005, pp. 130-132) writes that prisoners [which can be extended to FICP] in many cases, are denied access to higher education, social welfare (including Medicaid), public housing and Section 8, and are banned from political participation.

The marker of criminality/deviance attached to these populations serves to purposefully construct FICP as socially and politically disposable. Using the Formerly Incarcerated & Convicted People's Movement (FICPM) as a lens, I explore how FICP, through employing strategies from below, practice a form of insurgent citizenship, reclaiming and rearticulating their own political agency and human dignity. The present piece considers what it means when a population that is written outside of the law organizes and demands rights and inclusion in a polity that they have been outcast from. In other words, if the law can make and unmake people as Colin Dayan (2011) argues in *The Law is a White Dog*, is the reverse also possible? Can people "unmake" the law?

Before entering into this discussion, I will present a brief survey of the literature on prison and welfare reform, demonstrating that welfare reform acts in symbiotic relationship to mass incarceration to criminalize and disappear, at a disproportionate rate, those who have historically been deemed illegitimate by the state, specifically black and brown people. Indeed, one of the primary arguments of this article, that law wields the power to zombify people, is embedded in issues of racial (in)justice.

## BRIEF HISTORICAL BACKGROUND OF THE MODERN PRISON SYSTEM

> "You hear these white people talk about they've pulled themselves up by their own bootstraps. Well they took our boots, no less our straps, and then after they made us a citizen, honey what did they turn around and do? They passed black codes in order to take from us all the benefits of citizenship".
> – "Queen Mother" Audley Moore (1978) in *Freedom Dreams*.

According to Fields (1982), race in America is a by-product of the interface between slavery and democracy. Race became the primary marker of control after slavery was abolished. The historical connections between racism, criminalization, and our modern penal system are important components of the trajectory of the making and maintenance of the Prison Industrial Complex (PIC). The 13th Amendment of the United States Constitution reads, "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction". The caveat, "except as punishment for crime whereof the party shall have been duly convicted", opened the door to create laws of which only black people could be found guilty.

As Dayan (2012) notes, the 13th Amendment provides us with the link between slavery and prisons and its racialized order. Angela Davis (2003, p. 28) explains this connection in *Are Prisons Obsolete?* Davis writes:

> After the abolition of slavery, former slave states passed new legislation revising Slave Codes in order to regulate the behavior of free blacks in ways similar to those that had existed during slavery. The new Black Codes proscribed a range of actions, such as vagrancy, absence of work[…]insulting gestures or acts [as criminal] only when the person charged was black.

The result was that a newly freed black person could be legally re-enslaved and sold under the new convict leasing program.

The convict leasing program began in 1866, and the last state to terminate the program was Alabama in 1928 (Mancini, 1996). As part of the program, convicts were sold to private parties, such as railroad companies, coalmines and former plantation owners to work under inhospitable conditions, violence, and extreme brutality (Mancini, 1996). According to Mancini (1978, p. 339) in *Race, Economics and the Abandonment of Convict Leasing*:

> Convict leasing[…]is best understood[…]as part of the elaborate social
> system of racial subordination which had previously been assured by the
> practice of slavery[…]the lease system was a component of that larger
> web of law and custom which[…]insured the[…]racial hierarchy[…]the
> brutality of convict leasing fits clearly into a more comprehensive pattern
> of intimidation and violence, and it can be seen as an intrinsic part of that
> system rather than an aberration.

Convict leasing is an example of how racial subordination is part of the
fabric of U.S. notions of citizenship and democracy. Additionally, convict
leasing is a part of the history of the penal system, just as racial subordination
is part of that same history. In the convict leasing system, we have proof that
racism was part of the foundation that prison systems were built upon, the
vestiges of which are still seen and felt today.[2] Convict leasing proved to be
lucrative in rebuilding after the Civil War; there was an obvious benefit in
criminalizing the movements of black people who comprised the majority
of those affected by the program.

Prior to emancipation, black people were not sentenced to hard labour or
imprisonment because this would not alter the circumstances in which they
lived (Davis, 2003). Because of this, the majority of people incarcerated
were white before emancipation. For example, Mary Ellen Curtin (2000,
p. 33) writes, "the fast-rising number of Black prisoners in the 1870s and
1880s and the near absence of incarcerated whites illustrate the racial
impact of an increasingly repressive legal system". Furthermore, according
to a study cited by Angela Davis (2003, p. 29):

> Before the four hundred thousand black slaves in that state [of Alabama]
> were set free, ninety-nine percent of prisoners in Alabama's penitentiaries
> were white [as a result of] the shifts provoked by the institution of the
> Black Codes, within a short period of time, the overwhelming majority of
> Alabama's convicts were black.

This racial disparity remains true as black men and women comprise a significant
percentage of those incarcerated in U.S. prisons (Prison Activist Resource Center:
Fact Sheets).[3] Although convict leasing was eventually terminated, it conditioned
the possibility of Jim Crow laws, which served to further disenfranchise and
legally unmake black and other communities of colour.

Jim Crow laws began in 1875 during the Reconstruction era to prevent
racial integration and participation in public spheres (Sandoval-Strausz,

2005). One of the purposes of Jim Crow laws was to dissuade black people and other people of colour from participating in the polity as rights-bearing citizens of the United States. The other function of the Jim Crow regime was to rework and re-entrench racial distinctions between slaves and free folk, as well as to enforce "a rigid caste separation" (Wacquant, 2005, p. 127). Jim Crow laws overlapped with the convict leasing program, but continued beyond the duration of convict leasing. They remained in place until 1965. These laws took the form of "poll taxes, literacy tests, and other discriminatory regulations to keep African Americans away from voting booths. They [the people enforcing Jim Crow laws] also relied on terrorism and fraud to frighten black citizens who tried to exercise their rights" (Tenney, 2008, p. 1).

This system segregated black people from white people in most public settings. Jim Crow laws forced people of colour to use separate drinking fountains, eat in separate restaurants, live in separate neighbourhoods, and attend separate schools. Laws prohibited intermarrying as well. The reality was that the aforementioned spaces were not only separate but unequal as well (Tenney, 2008; Perman, 2001; Feldman, 2004; Kousser, 1974). According to Michelle Alexander (2010, p. 34) in *The New Jim Crow: Mass Incarceration in the Era of Colorblindness*, "Segregation laws were proposed as a part of a deliberate effort to drive a wedge between poor whites and African Americans". This racial division was meant to inculcate a sense of superiority over black folks for whites, which would prevent alliances aimed at dismantling the power structure (Alexander, 2010). The effect of Jim Crow laws on black – and other communities of colour that they impacted – was reduced, or negligible, access to life-giving human rights such as employment opportunities, quality education, health care, and housing. Furthermore as Cacho (2012, p. 40) writes, "[Jim Crow] criminalized and reified marginalized identities and statuses. Being 'coloured' was a status that formed the basis for exclusionary, discriminatory, and regulatory laws".

The Jim Crow Era ended with the passage of the Civil Rights Act of 1964 and the Voting Rights Act of 1965 (Alexander, 2010). With the close of the Jim Crow era, a familiar rhetoric entered into national discourse once again. It was the same rhetoric deployed after emancipation that made the convict leasing program possible, as well as Jim Crow: a rhetoric of discipline, security and order, which once again targeted black people, other people of colour, and poor people for state surveillance and control.

From the literature cited above we can deduce that slavery, Black Codes, convict leasing, and Jim Crow were state-sanctioned interventions whose

intention and result was to exert legal and extra-legal control over a group of people for capital gain. The above-cited literature also charts the history of negative personhood and demonstrates a continuum along which slavery, confinement, and other forms of state surveillance are plotted, as well as a site where whiteness, as Cacho (2012) argues, is decriminalized. The legal mechanisms noted in this section also illustrate that notions of personhood are bound up in how people are understood under the rubric of the 'the right to have rights'. As organizing logics, the three pillars of white supremacy, defined by Smith (2006) as slavery/capitalism, genocide/colonialism, and orientalism/war, along with heteropatriarchy, informed notions of who was considered fully human in the United States.

This section frames the remainder of the literature review as it connects these historical antecedents to modern institutional and ideological structures of the U.S. justice system, which continues to (re)produce systematized inequality and rationalize state-facilitated violence (Rodrìguez, 2006; Escobar, 2010; James, 2007; Sexton, 2010). The scholarship that follows demonstrates how the justice system, and its arm, social welfare, operate as a racialized apparatus of social control to manage marginal populations (Wacquant, 2001; Wacquant 2009; Davis, 2003; Davis 2005; Rodrìguez, 2006; Escobar, 2009; Camp, 2009; Alexander, 2010).

## MANAGING SOCIAL MARGINALITY: EXAMINING THE RELATIONSHIP BETWEEN INCARCERATION AND SOCIAL WELFARE REFORM

> "In the animal kingdom, the rule is, eat or be eaten; in the human kingdom, define or be defined".
>
> – Thomas Szasz,
> *The Second Sin*.

The criminal justice system has demonstrated itself time and again to be anti-black and anti-poor, but more importantly, as the racial impact of policies such as "Stop and Frisk" have come under public scrutiny, it has become apparent that it is levied as a weapon of social control for specific demographics. However, the work of Ruth Wilson Gilmore (1999, p. 174), suggests the above analysis falls short in fully accounting for "how prison achieved such a central place in structuring the state and shaping the landscape" (also see Camp, 2013).

In order to tease out this relationship, Gilmore (1999; 2002; 2007) focuses on the period of the late 1960s and early 1970s. During this time period, the U.S. was experiencing major shifts both socially and economically. This was a time of a number of radical, multi-racial movements for social justice and civil unrest in the country. Social crisis intensified in the early 1970s, and was accompanied by an "economic panic" over the falling rate of profit and the expansion of the social wage to previously excluded groups (Prashad, 2005; Camp, 2013). This led to a reconceptualization of the labour market, which "expelled from the workforce modestly educated people in the prime of their life who once might have gained their wages making and moving things" (Gilmore, 1999, p. 182). This added to the social emergency.

The task of state actors was to find a way out of both crises. By building prisons they were able to put back to work surpluses of finance capital, land, labour, and warehouse people that were economically marginalized and/or politically dangerous (Gilmore, 2007). In this way, the "prison fix" emerged as a "geographic solution to socio-economic problems organized by the state, which is also in the process of restructuring" (Gilmore, 1999, p. 174). Importantly, what Gilmore (1999; 2002; 2007) and others observed was that the state remade itself by building prisons (also see Garland, 2001; Wacquant, 2009; Camp, 2013). In other words, "The United States: Prison Nation" did not evolve as such because of "a mechanical response to economic changes so much as an *exercise in state crafting* aimed at producing – and then adapting to – these very changes[…It was] a *specifically political project* aimed at remaking not only the market but also and above all, the state itself" (Wacquant, 2009, p. 103, original emphasis).

This explanation helps make sense of the contradictions found in mainstream accounts of why we have so many people in prison. Namely, that crime and, in particular, the economy of illicit drugs, has steadily increased over time. However, crime and drug use has in fact gone down steadily since the U.S. began building prisons in earnest in the 1980s (Gilmore, 2007). Despite this reality the economy of investing in, building and maintaining prisons is a booming industry. The reality does not match up with justice related responses. We find then that mass incarceration is not related to crime, but rather, fueled by political manoeuvrings to respond to state crises. As demonstrated in the previous section, the new state that evolved was "not unexpected nor without roots" (in genocide, slavery, colonialism, and movement suppression) as Gilmore (1999, p. 178) reminds us. Rather, the United States' "modus operandi for solving crises has been

the relentless identification, coercive control and violent elimination of foreign and domestic enemies" (ibid).

We see then that legislation based on racialized security ideologies garnered support for policy that manages social marginality through criminalization. This project was made possible by increasing the amount of money funneled into the criminal justice system that included passing sentencing reforms such as mandatory minimums and three strikes legislation, as well as militarizing law enforcement operations (Gilmore, 2007; Waquant, 2009; Meiners, 2011). This was accompanied by a retreat from social welfare programs, which had a profound effect on women and in particular women of colour.

Frances Fox Piven and Richard Cloward argue in *Regulating the Poor* (1993, p. xvii), "relief programs are initiated to deal with dislocations in the work system that lead to mass disorder and are then retained (in an altered form) to enforce work". The dynamic described is one of expansion and contraction of public aid in order to regulate and pacify the poor. This relationship evolved into a criminalization of the poor, beginning most dramatically in the mid-1990s when the net of punishment expanded. With the passage of the 1996 Personal Responsibility and Work Opportunities Reconciliation Act (PRWORA), social welfare underwent dramatic cut-backs and the language surrounding the right to public aid transformed into pathologizing the poor as deviant. According to Linda Burnham (2001, p. 39), "The stated intent of welfare reform was at least twofold: to reduce the welfare rolls and to move women toward economic self-sufficiency". The state has been successful on the first objective but has failed on the second. Burnham writes that women have in fact fared poorly in becoming financially established; many are able to secure only low-paying jobs that do not offer long-term stability or "lift their families above the poverty line…they work hard and remain poor" (ibid).

Indeed the feminization of poverty has been well documented as well as the ways in which poverty constructs the lives of children that it affects. In *Lives on the Edge: Single Mothers and their Children in the 'Other' America,* Valerie Polakow (1993) offers harrowing narratives of mothers and their children who occupy 'otherized' spaces, who they themselves become 'other', precisely because of their poverty. Polakow adds to the argument that poverty is socially produced, reproduced and contributes to the discussion of the racialization of welfare, which has morphed into a criminalization of the poor.

While *most* laws and policies appear to be race neutral in the way they are written, their impact is not. Welfare reform has had its greatest impact on families of colour because like most social ills, poverty is racialized and gendered. This is evidenced in the U.S. Department of Health and Human Services report (2010) The data shows that 31.8 percent of Temporary Assistance Needy Families (TANF) recipients were white, while 61.9 percent were black and Latino.[4] This statistic demonstrates that the burden of reform is being shouldered by families of colour; indeed, the racialization of welfare has made the very word 'welfare' synonymous with 'urban' black and Latina single mothers. This connection has lead to welfare recipients being held in contempt and disregard by the American public. In *Welfare Racism*, Neubeck and Cazenave (2001, p. 4) write that surveys reveal that "[w]hen welfare recipients are seen as being mostly white they are likely to be thought of with compassion; when they are seen as being mostly black they are viewed with contempt". This racialization of welfare has turned into a criminalization of the poor.

The expansion of the regulation and punishing of the poor as seen in the disaster of the welfare apparatus interfaces with the carceral network. In *Punishing the Poor,* Loïc Wacquant (2009, p. xvi) outlines three factions that intersect with what he argues is a new class structure that itself is structured by neoliberal deregulation. He describes the relationship thusly:

> [First] incarceration serves to physically neutralize and warehouse the supernumerary fractions of the working class and in particular the dispossessed members of stigmatized groups … [next] the rolling out of police, judicial, and correctional net of the state fulfills the function… of imposing the discipline of desocialized wage work among the established fractions of the proletariat and the declining and insecure strata of the middle class... Lastly…the penal institution serves the symbolic mission of reaffirming the authority of the state and … political elites to emphasize and enforce the sacred border between commendable citizens and deviant categories, the 'deserving' and 'underserving' poor.

In other words, incarceration is the net that captures those populations that are irrelevant to, have failed at, or who have been rejected from the capitalist order. These dispossessed groups, who are unable to contribute to the accumulation of capital, are deemed not just *financially* unproductive members of society, but *morally* undeserving as well. These are the people who Wacquant argues

populate North America's prison system. They are also the same populations who have historically been set up for disparate surveillance and control.

Wacquant asserts that the economy of punishment is structured by both material and symbolic power axes. Analyzing punishment from these two perspectives broadens and complicates our understanding of the penal machine as each communicates certain norms. The materialist perspective traces the relationship between "the penal system and the system of production, while the symbolic outlook is attentive to the capacity that the state has to trace salient social demarcations and produce social reality[…]" (ibid). Though these power structures have typically been studied separately, Wacquant goes on to say that the system of corrections and related policies operates materially and symbolically and in a simultaneous fashion. As such, they should be considered jointly.

In other words, penal institutions and policies communicate standards, while shaping subjectivities (ibid). The workfare and prisonfare systems, as Wacquant calls them, operate on similar logics and have coevolved. Therefore, by looking at the welfare system and its relationship to the prison system, we gain new insight into some of the reasons driving North American prison growth. The management of social marginality through welfare or prison craft is neither a project of the left nor the right; rather, it is a neoliberal endeavour (ibid). Neoliberalism emphasizes deregulation and a severe reduction of state social responsibility, both of which are seen in the evolution of the welfare system.

The *caricature* of the despised welfare queen remains embedded in the American psyche, influencing policy decisions and swaying voters. Although it was a Republican president who sparked welfare benefit cutbacks, it was Democrat Bill Clinton who campaigned on a promise "to end welfare as we know it" (Zucchino, 1997, p. 14). Polakow (1997, p. 247) argues that this promotion of poverty as a personal behavioral condition diverts public attention from what the roots of poverty are – a "diminishing public economy…[and] the histories of class, race and gender discrimination[…]". The discourse and framing of poverty, single mothers and welfare produced a bipartisan policy decision that would have far reaching consequences.

In 1996, President Clinton signed into law the welfare reform act, officially named the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA). PRWORA indeed ended welfare as it had been known, welfare transferred from a federally managed, to a state managed obligation: it ended the "sixty year old federal cash assistance

program, Aid to Families with Dependent Children (AFDC) [and replaced it] with Temporary Assistance to Needy Families (TANF) [which are] block grants to states governed under a new set of time-limits and restrictions" (Marchevsky and Theoharis, 2000, p. 235). The new act set restrictions on who was eligible to receive aid; it banned teenage mothers, newborn babies, people convicted of certain felonies, and *legal* immigrants (Marchevsky and Theoharis, 2000, my emphasis).

The new welfare program became a temporary assistance plan for those deemed deserving, and as its name suggests, focused on getting recipients to take personal responsibility for their poverty – moving them off the rolls and into the workforce. It is within these dynamics that Waquant (2009) argues neoliberalism is the driving force behind the shift from social welfare to penal management of poverty. Although the United States witnessed a rise in the prison population under the Reagan administration (320,000 prisoners to 608,000) the largest increase was seen in the Clinton presidency (851,000 to 1,316,000) (Wacquant, 2009, p. 302). Again because this is a neoliberal project, politicians Right and Left find value/profit in it though the conditions described in the state management of social marginality are not free of historical implications as the working poor and prison population are institutionally and racially stratified (Peck and Theodore, 2000; 2001; 2008).

## On Being Human:
## The Zombification of FICP

> "Fear of being devoured by the walking dead is one thing; fear of being contaminated is another entirely".
> – In *Zombies are Us: Essays on the Humanity of the Walking Dead*

The technologies of power and oppression described in this and the previous section worked to structure social relations along racial axes. Relatedly, the spaces inhabited by people of colour became equally written as being outside of the law and communities of colour became spaces of state violence and oppression. Criminality and social deviance became, and have remained, unarticulated racial signifiers, and prisons/prisoners are constitutive parts of this new social order. Criminality, or rather the production of it, is not unique. Rather, we see from tracing the historical arc that it is a method that has been employed, again, over time, in the (re) making of the United States.

This relationship echoes Michel Foucault's (2003) notion of racism. Foucault suggests that the law functions to reinstate the state and racism functions as a mode of regulatory control. Briefly, he elaborates two logics of biopower: making live and letting die. In reference to the first part of biopower, knowledge and power around institutions (medical, welfare) are gathered to optimize life, thus making segments of the population flourish. Alternately, racism intervenes as a mechanism of the state that creates conditions to "let die" a particular segment of the population, to render them disposable; racialized policing functions as a technology that reinscribes the state (Foucault, 2003). The marker of criminality/deviance previously discussed purposefully constructs incarcerated/formerly incarcerated and convicted people as socially and politically disposable.

In *The Law is a White Dog*, Colin Dayan (2011) argues that people convicted of felonies are regarded as irrelevant to the social order and therefore disposable. As a result of their extraneous position, they live on the fringes of civil society and are forced to take on new ways of being. Dayan argues that their altered state forces the public to consider what it means to exist within the law. She writes that "it is through law that persons[…]gain or lose definition, become victims of prejudice or inheritors of privilege" and once one is written outside of the law their claims for inclusion in the polity become inconsequential to the rest of society (ibid, p. xi). The book seeks to examine how the law upholds philosophies of personhood by examining historical "sites of incapacitation" such as slavery, torture, solitary confinement and preventative detention. Dayan demonstrates that as a society, to reference Avery Gordon (2008), we are haunted by our collective past. Our dependence on the corrections system (i.e. incarceration, community supervision, etc.) means a reliance on a structure that is predicated upon on social/civil disappearance, as well as a history of enslavement to, of all ironies, ensure justice is served. These technologies of domination are, as stated in the introduction of this article, rooted in our laws and policies.

Dayan (2011) traces the rituals of alienation that result from inhabiting the zombie state of being a convicted felon. She writes that this population is "banished from the community, shorn of personality, condemned to degradation[…]The person convicted of felony is alive in fact but dead in law" (ibid, p. 4). Dayan charts this practice of dehumanization back to 1799, when the civil death statute was changed from "shall be deemed dead to all intents and purposes in the law" to read, "thereafter be deemed civilly dead" (ibid, p. 5). This meant that a person convicted of a felony was

"[d]ispossessed of all of the benefits of the law, the convict was doomed *in his person* to perpetual incapacitation" (ibid). Living in a state of civil death is in fact what defines the zombie status of FICP. It is a life of disenfranchisement, instability, and precarity, and it is upheld by the law so that punishment extends beyond any sentence of imprisonment or community corrections — it is in reality everlasting.

In a similar way, Cacho (2012, p. 60) writes that the "'value of life' is measured by and made intelligible through the criminal justice system [whereby victims and offenders] are assigned value and valueless-ness not only in relation to one another, but also in relation to already not-valued others". One of the basic arguments of the book is that we are defined by the constitutive "other", where status is reinforced only by what is excluded. Thus, Cacho asserts that when we begin by focusing on social death, from the perspective of those whose voices and experiences are most frequently dismissed and held in contempt, we are better able to analyze whom social rejection actually benefits and harms. Taking up the perspective and struggle of those living in a zombified state — alive, yet civilly dead — may seem like a hopeless cause. However, Cacho rightly argues that "empowerment is not contingent on taking power or securing small victories. Empowerment comes from deciding that the outcome of the struggle doesn't matter as much as the decision to struggle" (ibid, p. 32). She terms this "unthinkable politics", which is a politics that acknowledges the battle may not elicit change. She argues that it is not the same as hopelessness, but rather opening the door to dream different dreams of what makes living life valuable (ibid, pp. 32-33).

The question that remains is how is this leap from death to life made? Dayan (2011) introduces a theoretical remedy for state sanctioned dispossession, a repossession if you will. She relies on the story of Apollonius of Tyana to describe what the crossing over from death to life might entail. The story tells of a young boy bitten by a rabid dog. To heal the boy, Apollonius seeks out the dog responsible and, instead of casting the dog out or killing it, he heals the dog and has "the dog lick the bite, so that the boy's wounder should also be his healer" (ibid, p. 38). The dog, not just the boy, is redeemed. This, then, brings us back to the central question of this article. Using the metaphor of Apollonius, the dog is the law and the question is this: Can the bite that once transformed the living into the dead be used as a remedy? Can the law be manipulated and rearticulated in order to reverse a zombie state? Further, can the mere practicing of "unthinkable politics", making the decision to struggle not, based on whether you will win or not but because you see your worth, be enough to reignite one's humanity?

The FICPM complicates the analysis of those who are selected for life or vulnerability to death and offers an example of what reclaiming humanity, according to Dayan (2011) and Cacho (2012), might look like. The following section of this paper constructs the FICPM as a struggle from below and beyond state power and discusses it as a practice of radical democracy and citizenship, as well as a way to reverse a zombified state.

## The Formerly Incarcerated & Convicted People's Movement

"[S]tateless people could see…that the abstract nakedness of being nothing but human was their greatest danger…it seems that a man who is nothing but a man has lost the very qualities which make it possible for other people to treat him as a fellow-man. The loss of…political status became identical with expulsion from humanity altogether."

– Hannah Arendt

"These people don't take nothing from you, as a formerly convicted person, unless it's important…if voting is not important why did they take it?"

– Wayne Jacobs,
*X-Offenders for Community*.

### Empowerment

On March 7, 2011, fifty formerly incarcerated and convicted activists from across the United States gathered in Alabama to engage in conversations about the need to organize collectively and collaboratively for civil, social, and human rights for incarcerated, formerly incarcerated, and convicted people (Reilly, 2011; Law, 2011). The result of that meeting was the creation of the FICPM, the vision of which was "The fight for the full restoration of our civil and human rights" (Reilly, 2011). The second convening of the FICPM was held on November 2, 2011, in South Central Los Angeles at the Watts Labor Action Center. Over three hundred people attended, and sessions covered topics including Juvenile Justice, Voting Rights, Impact of Mass Incarceration on Families & Communities, and Employment Rights.

As a convicted person myself, it was moving to be in attendance at this conference, partly because it was the first time that I felt a spark

of hope and the first time that I made the connection of living a life in a wavering zone between the world of the living and the world of the dead with how rights, or the lack thereof, mediated the two worlds. At the conference, I wrote down a question that on a theoretical level addressed living on the edge of being human and its connection to losing rights.[5] It was this: What does it mean when a critical mass of formerly incarcerated and convicted people organizes to demand rights and inclusion in a polity that they have been outcast from? Does the arc of potentiality (that what can be, can also not be) also apply to the law? In other words, if law can make and unmake people, as argued by Collin Dayan (2011), is the reverse also possible? Can people "unmake" the law? Can a zombie become human again?

Incarcerated, formerly incarcerated, and convicted people are deprived a range of rights that are common in a democracy. Some of these include freedom of movement, access to social welfare, access to education, access to work or financial opportunity, and juridical rights including voting or serving as jurors. How do we conceptualize this population who exist socially but do not and cannot be related to other citizens precisely because of these fundamental markers of inaccessibility?

Margaret Somers (2010), drawing on the work of T.H. Marshall, argues that political membership in a society consists of social and juridical rights. The former includes "the right to social inclusion in civil society [meaning] the right to recognition by others as a moral equal treated by the same standards and values and due the same level of respect and dignity [and] the second, civil-juridical rights, are summed up in Marshallian terms as civil, political, and social rights", social and juridical rights also include human rights (ibid, p. 6).

These rights of membership and inclusion are components of citizenship. However, FICP are divested of political and social voice and therefore become unrecognizable as fellow humans much less as citizens. As such, they are easily subjected to oppression without objection. The following example from the FICPM conference demonstrates how the lack of rights makes inhuman conditions possible. During the session on "Impact of Incarceration on Family", James Adams (2011) from North Carolina and organizer for *All of Us or None* spoke about the issue of disenfranchisement and the impact it has had on his family. He said:

> Many of us recognize that our prison sentence never ends as long as the
> discrimination against us continues. Even our children are denied access to

services. My daughter has Down's Syndrome, when she was four we applied for a scholarship to cover medical expenses and we were denied because I have a felony conviction and spent time in prison. We're organizing because we're not taking just what you [sic] will give us. […] We have reached the point now that we demand to be treated right (FICPM, personal recording).

We see from this example that the negation of social rights makes possible a system that punishes families of FICP. Indeed, this is because the system does not recognize them, and by extension their families, as human. The trauma illustrated above is only possible when one has been denied the "right to have rights".

According to Agamben (1998) the modern nation-state is founded upon that which it excludes. However, human rights have been long conceived as inalienable rights, regardless of lack of civil-juridical rights. Agamben (2000), referencing Hannah Arendt (1968) in *Imperialism*, discusses this paradox. He writes:

The conception of human rights based on the supposed existence of a human being as such…proves untenable as soon as those who profess it find themselves confronted for the first time with people who have really lost every quality and every specific relation except for the pure fact of being human. In the system of the nation-state, so-called sacred and inalienable human rights are revealed to be without any protection precisely when it is no longer possible to conceive of them as rights of the citizens of a state. (Agamben, 2000, pp. 18-19)

Agamben argues that human rights signify naked life in the juridical order of the nation-state. Without possessing those rights conferred upon citizens, one is reduced to a state of inhuman condition or bare life. Historically, civil death led to actual death since the *homo sacer*, or cursed one, could be killed with impunity. Although FICP experience civil and social death they are not what Agamben would define as *homo sacer* – a person who is *fully* denationalized and unprotected by the law.

Fear causes us to misrecognize ourselves in those who are cast as the "other". Similarly, Stratton (2011) argues that what is most frightening about zombies is the fate of existing in an interstitial state of being between life and death. In the same way people fear the outsider status of FICP— they too are the walking dead. Anthony Downey (2009, p. 109) writes:

> Lives lived on the margins of social, political, cultural, economic and
> geographical borders are lives half lived. Denied access to legal, economic
> and political redress, these lives exist in a limbo-like state that is largely
> preoccupied with acquiring and sustaining the essentials of life…they
> have been outlawed…placed beyond recourse to law and yet still in
> precarious relationship to law itself.

FICP live at the liminal edge of bare life, excluded from rights and
characterized as threats to the living – they live a life exposed to vulnerability
and death. For FICP, this space of exception, where the exception becomes
norm, extends beyond the physical space of the camp or in this case prison.
Because it is their person that remains outside of the law, FICP inhabit a
state of indistinction. Though bodily free (not incarcerated), as previously
discussed, FICP are unable to access life-giving resources such as welfare
benefits, education, and juridical rights. As a consequence, their quality of
life is severely diminished. FICP are perpetually suspended in between the
space of existence and non-existence, disenfranchised politically, socially,
and economically, unable to access many basic human rights and most civil
rights, but still implicated in the *bios*[6] – they are zombified.

I argue, however, that FICP are not *trapped* in this zone of indistinction.
Those involved in this movement know that without using their voices
and collective power to demand rights currently denied to them, a just life
is untenable; this is something that is recognized and it is what animates
the movement. Therefore they are agents of change in their own right. By
enacting "unthinkable politics" they write themselves back into the ledger
of humanity.

## PRACTICING RADICAL DEMOCRACY

> "All of our issues are all of our issues".
>
> – Tina Reynolds,
> *WORTH.*

In *Hegemony and Socialist Strategy: Towards a Radical Democratic
Politics,* Laclau and Mouffe (1985) argue that movements agitating for
social and political change must also incorporate a strategy that confronts
neoliberal concepts of democracy. The objective is to augment the definition
of democracy to include difference, as well as the traditional notions that

many connect to democracy, such as freedom and equality. They argue that liberal democracy, instead of building consensus among a diverse populace, suppresses opinions, races, classes and genders that differ from its hegemony. Because difference is a given in society, radical democracy embraces dissent and posits that democracy is dependent upon it. Foregrounding the assumption that oppressive power relations are constantly at play in society, Laclau and Mouffe contend that these hierarchies of power and oppression should be not only be made legible and visible but also contested and altered.

Rasmussen and Brown (2002, p. 175) write that the purpose of radical democratic theory is to "generate an anti-essentialist politics that continually attempts to redefine itself in order to resist the exclusion of individuals and groups in the formation of the social order". I am using radical democratic theory as a tool to interrogate dissent as a practice of democracy and insurgent citizenship in the FICPM.

Although it is state specific, general conditions of parole/probation expressly prohibit parolees/probationers from fraternizing with anyone who has previously been convicted of a crime. Despite this, the people who are organizing and developing platforms in order to demand social and civil-juridical rights from the state are formerly incarcerated and convicted people, some of which are still currently under correctional supervision. In other words, in some instances the organizers, many of the activists, and those in attendance at the FICPM were deliberately breaking the conditions of their probation or parole. For example, a gentleman during the session on voting stood up to ask a question about the federal election system. He said, "My name is Robert, just finished doing thirty-one years in the Federal system, straight, been home five days. On paper my parole lasts until 2069, I will be 119 years old if I live that long" (FICMP, personal recording, 2011). By attending the conference, Robert was most likely in direct violation of the conditions of his release and this infraction could send him right back to prison.

We must ask ourselves why Robert felt that this conference was critical, so much so that he risked at the least a violation on his record and reduction of privileges, and at the most extreme end of the spectrum, re-incarceration. Robert was not the only one; there were over three hundred people in attendance, most of them FICP. Since FICP are in many senses already written outside of the law, it means that in certain cases they may have to break the law or be irresponsible, to challenge the – "commonsense" – of the law in order to, as Laclau and Mouffe (1985) argue, alter it. One is ineligible to vote in most states within the United States while still under

supervision of the corrections system. In the case of Robert, it means that he is permanently disenfranchised. I argue that by attending this event, Robert was acting as a political subject and enacting his citizenship (Walters, 2008). He claimed rights that he is technically denied.

The FICPM resides in opposition to the current power bloc. Power, as Rasmussen and Brown (2002) state, operates on many levels, and dictates what can be read as political versus illegal. Because of this response, activities that resist this order must be diverse. Everyday forms of resistance can be read as political acts (Laclau, 1990). For some people, voting may not be possible, at least not immediately. This was not a fact that was lost on activists present at the FICPM. Rosana Cruz of New Orleans, *Voices of the EX-Offender* (VOTE) said:

> We have to be creative about people who don't have the right to vote, people who are currently incarcerated, including undocumented folks [...] what are the other strategies? Let's think about using our economic power to vote, and using boycotts and other systems for civic engagement. Just because you don't vote doesn't mean that you can't go to a city council meeting, it doesn't mean you don't pay taxes, it doesn't mean you aren't civically engaged. So we have to expand the concept of civic engagement beyond voting (FICPM, personal recording, 2011).

Reimagining civic engagement or rethinking what constitutes an act of citizenship within this movement is part of a larger discussion on how rights speak to one's humanity. For this population, they have experienced firsthand the tenuous nature of humanity in the eyes of the state. They *feel* the connection between social and civil-juridical rights and their humanity in their very being. In a reflection on the FICPM, a formerly incarcerated woman "Pilar"[7] said:

> For a long time I have felt less than human, I have questioned whether or not the system has somehow or another rendered me "other" than human. It isn't just the tactics of dehumanization deployed by corrections officers, parole or probation officers, it is everything that comes with being an incarcerated/formerly incarcerated or convicted person – it is being exempted from civil and social life. (Tenacious, 2011, p. 33)

By fighting for the bundle of rights as outlined by T.H. Marshall and Margaret Somers (2008), people in this movement are working to rehumanize

themselves and promote democracy to humanize the millions of people in the United States impacted by the prison industrial complex.

## INSURGENT CITIZENSHIP

> It is time for us to become the people we have been waiting for. We have the right to ask and answer our own questions and today is the time and place to begin some of that asking and answering. We believe that imprisonment or conviction on a felony charge should not result in a lifelong violation of our basic rights as human beings either while we are on probation, in prison or as we make the transition from prison back into our communities.
>
> – FICPM *Vision Statement.*

In the chapter "Theorizing Acts of Citizenship", Engin Isin (2008, p. 17) evaluates the web of rights and responsibilities entangled in current debates on citizenship by centering acts of citizenship as his object of investigation. By doing so, he argues that he is making a deliberate shift away from critical studies on citizenship, which focuses on "how [citizenship] status becomes contested by investigating practices through which claims are articulated and subjectivities are formed". Though acts and practices are not mutually exclusive, Isin marks a difference between the two. He writes that enacting citizenship outside of formal status requires a break from previous modes of thought and conduct, which are largely based on order and practice. This framework provides a rupturing space to interrogate methods employed from "below" – the new subjects making themselves by challenging dominate orders and clusterings as in the FICPM.

Lacan (1991) argues that acts are imbued with meaning beyond the action itself. Similarly, Arendt (1968, p. 27) posits that acts set in motion and engage in the creation of movements that are "unexpected, unpredictable and unknown". Engaging in acts thus creates agency. As previously discussed, the FICPM was created from the ground up, built by formerly incarcerated, convicted people and allies in response to political and social disenfranchisement. The act is the movement constructed to secure human and civil rights for this population; what roots actors then is not only the content of the act, but also the embodiment of the sense of the act.

Isin (2008, p. 38) argues that without investigating acts it is impossible to theorize citizenship as it arises through them. He offers three principles to

summarize his approach to theorizing acts of citizenship. The first principle is to interpret acts "through their grounds and consequences, which includes subjects becoming activist citizens through scenes created". Here activist citizens, such as those in the FICPM, are not defined juridically but by their creative engagement with developing the scene. The second principle in theorizing acts of citizenship is recognizing that the actors produced by the acts are oriented towards justice (ibid, p. 39). The third principle disrupts notions of legitimacy. As noted above, the acts performed by those involved in the FICPM are not necessarily founded in law and responsibility, but are still considered acts of citizenship. Isin argues that acts of citizenship often challenge commonly held beliefs about the law, therefore "acts of citizenship do not need to be founded in law or enacted in the name of the law" (ibid).

Although Peter Nyers' (2008) chapter "No One is Illegal Between City and Nation" centres non-status migrants and refugees as his objects of interrogation, I argue that FICP have been disappeared/shadowed in a similar way. Much like undocumented people's movements, FICP are leading the struggle surrounding issues of freedom and the range of social and civil rights currently denied to them. Nyers amplifies our understanding of agency and acts of citizenship by looking at how subjugated populations claim political subjectivity.

Similar to Isin (2008), Nyers (2008) disrupts common logic surrounding the question of who is eligible to make political claims and what constitutes a political act. The example he uses is people vocalizing their non-citizenship status. At the FICPM participants were asked to self-identify their status as FICP or as allies. A yellow wristband was given to allies and an orange band was given to FICP. One by one people stood up, declared their status and claimed their wristband. There are a few points that make this act significant.

First, this made people visible, which is not always safe and can be very intimidating in most settings. More pressing, however, is that by speaking one's status one asserts their agency and political subjectivity. Nyers (2008, p. 171) writes, "to self-identify as non-status [or in this case FICP] is to articulate a grievance to a community in which one has no legal or moral standing […] the use of the term [FICP] can signal the emergence of a new political subjectivity". In other words, to demand rights such as voting, access to social welfare programs or education as a FICP and outsider to the body politic can be considered a political act that makes the actor (Isin, 2008).

FICP fall into an exceptional category of citizenship. Unlike undocumented people, many do have citizenship, but through FICP, we see that citizenship is not a guarantee of rights. FICP lack the full range of rights accorded to

citizens. Additionally, they are denied the right to express themselves as political beings without fear of retribution and further marginalization.

Historically, racial difference in the United States has been managed violently. The measures of treating difference discussed in this paper were slavery, convict leasing, Jim Crow and mass incarceration. We see through these examples that a construct of citizenship that manages social difference only replicates and legitmates inequality. The FICPM is an example of an insurgent citizenship movement. The people involved in this movement are stepping out from the shadows with the express purpose of contesting their exclusions and challenging the current social order of rule and privilege. And on the theoretical terrain they are expanding current logics surrounding democratic citizenship.

In conclusion, zombiehood is a condition that no one is necessarily exempt from; it can, theoretically, happen to anyone exempted from the protection of the legal and political order. Once one inhabits this alternate form of death, it is difficult to attain reprieve – to be awakened from one's zombie condition. However, I contend that the aforementioned examples demonstrate that in the shadows, zombies have formulated an insurgent movement and are challenging, and sometimes destabilizing, long entrenched commonsense notions surrounding their nature and what they deserve. Their experience is the context and substance of a new urban citizenship. Despite the persistence of inequality, through their contestation, through their decision to engage the struggle, this mass population is writing themselves back into humanity.

## ENDNOTES

[1] Two acronyms are used throughout this paper: FICP and FICPM. The former refers to formerly incarcerated and convicted people and FICPM refers to Formerly Incarcerated & Convicted People's Movement. I define convicted people as those populations who have been convicted of charges that place them under the supervision of the corrections system. This includes probation, parole, or any other court ordered system such as counseling or rehabilitation.

[2] I am invoking Ruth Wilson Gilmore's definition of racism in this paper. In *Golden Gulag* Gilmore defines racism as the state initiated technologies that differentially impact one population over another and consign them to early death. In reading about the evolution of the United States prison system it is apparent that people of colour have been disproportionately impacted by the PIC from the onset.

3    According to the United States Sentencing Commission released 30 June 2011 Latinos have become the majority population in federal prisons. This is largely the result of prosecution of immigration offenses. To view the entire report consult: http://www.ussc.gov/Data_and_Statistics/Federal_Sentencing_Statistics/Quarterly_ Sentencing_Updates/USSC_2011_3rd_Quarter_Report.pdf

4    For further information read Chapter 10 "Characteristics and Financial Circumstances of TANF Recipients" available at: http://www.acf.hhs.gov/programs/ofa/resource/ character/fy2010/fy2010-chap10-ys-final

5    Critics of rights-based politics argue that this platform does little to challenge power structures. However, critical race theorists and feminist legal theorists such as Kimberle Crenshaw (1988) have posited that rights based claims though flawed can be reconceived to address the historical implications of denying rights to people of colour and women for instance. This argument acknowledges the shortcomings of legal rights in terms of eliminating oppressive structures and reinforcing individualism, but also recognizes the impact rights-based discourse can have on mobilizing marginalized populations to name what is killing them and begin to take active steps towards effecting change. Despite the limitations of rights-based claims I argue that dispossessed populations that articulate rights are demanding to be made legible and that these demands give them the possibility to rewrite themselves and perhaps even reimagine rights and/or the law.

6    Orlando Patterson (1982) discusses social death extensively in *Slavery and Social Death.*

7    Names of people in attendance at the conference such as the man in this example have been changed to protect their anonymity. Names of organizers and activists who are the public faces of this movement were not changed because their public stance and efforts have made them visible and searchable by name.

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