

# The Right to Hunger Strike

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**H**unger strikes are commonly repressed in prison and seen as disruptive, coercive, and violent. Hunger strikers and their advocates insist that incarcerated persons have a right to hunger strike, which protects them against repression and force-feeding. Physicians and medical ethicists generally ground this right in the right to refuse medical treatment; lawyers and legal scholars derive it from incarcerated persons' free speech rights. Neither account adequately grounds the right to hunger strike because both misrepresent the hunger strike as noncoercive and nonviolent. I articulate an alternative, dual account of the right to hunger strike. On the remedial argument, the right to hunger strike should be legally protected as a right to petition for redress, in light of incarcerated people's structural vulnerability to abuse and given inadequate grievance mechanisms. The constructive argument derives the right to hunger strike from the right to resist oppression and stresses the normative permissibility of the use of coercive tactics to defend one's liberty interests in the face of carceral oppression.

**“HELP US!!”** read the message, scrawled in soap on a window of the United States (US) Immigration and Customs Enforcement (ICE) detention center in Bristol County, Massachusetts. The authors of that simple statement were migrants on hunger strike, protesting unsanitary conditions in the face of the COVID-19 pandemic and demanding their release while their asylum cases were adjudicated. ICE facility administrators pepper-sprayed the hunger strikers, beat them, and placed them in solitary confinement. Nearly 2,500 migrants went on hunger strikes like this one from March to July 2020 (DWN 2020). In Texas, Louisiana, New Jersey, and New Mexico, ICE personnel force-fed and force-hydrated dozens of hunger strikers (ACLU and PHR 2021).

In most of the world's prisons—including penitentiaries, jails, immigration detention centers, refugee processing centers, and military prison camps—authorities repress hunger strikes. They condemn hunger strikes as coercive, highly disruptive of prison order, and violent, and appeal to their duties to protect prisoners' life and health, to uphold prison order, and to guarantee staff and public safety to justify repression. Hunger strikers and their advocates (prison rights and pro-migrant activists, human rights lawyers, and physicians), meanwhile, defend incarcerated persons' right to hunger strike and argue that the mistreatment of hunger strikers compounds the human rights abuses which incarcerated persons seek to peacefully protest.

Advocates resort to two main argumentative lines in this ongoing debate about the right to hunger strike: a

*medical account*, found in the medical ethics literature, which condemns force-feeding and other involuntary medical interventions on hunger strikers as a violation of the patient's right to refuse medical treatment; and a *constitutional account*, defended by lawyers and legal scholars, which views the repression of hunger strikers as a violation of their freedom of speech. In this article, I argue that both these argumentative strategies are inadequate and insufficient in defending the right to hunger strike. For both misrepresent the hunger strike as nonviolent and noncoercive. On the medical account, it is a mere exercise of bodily autonomy. On the constitutional account, it is symbolic speech. Both leave agents vulnerable to authorities' charge that hunger strikes, being disruptive, coercive, and violent, must be interfered with.

Given these shortcomings, my aim is to develop a new defense of the right to hunger strike, based on two distinct grounds: the right to redress (the *remedial account*) and the right to resist oppression (the *constructive account*). In contrast with the medical and constitutional arguments, my account does not assume the hunger strike's nonviolence and noncoerciveness. It depicts instead the hunger strike as a *bodily weapon* characterized by self-destructive violence (following Feldman 1991) and intended to *coerce* authorities (a dimension neglected by most scholars). The dual account sheds light on hunger strike's dual functionality as an instrument to seek redress for mistreatment and to defend oneself from oppression. The remedial account advances a prison reform proposal tailored to liberal constitutional states, whereas the constructive account defends incarcerated people's resort to hunger strikes to defend their basic interests wherever these are threatened.

This article applies political philosophy to real institutions and practices across different political contexts. It draws from incarcerated persons' experiences, as described in first-person testimonies and historical and ethnographic case studies, and

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attends to prison authorities' policies and practices, as detailed in rulebooks, codified in case law, and documented by investigative journalists and human rights organizations. While the argumentation often centers on the U.S. context, it applies to other liberal constitutional states, including members of the European Union (EU), Australia, and Israel, whose prison policies and practices are also referenced throughout. Much applied political philosophy, as Shelby (2016) notes, involves diagnosing the defects of real-world institutions and practices and outlining the structural change needed to correct those. The remedial account contributes to this kind of "corrective justice" effort by deriving the right to hunger strike from the moral right to redress, given incarcerated persons' vulnerability to abuse, and then defending the legal recognition of the right to hunger strike, given inadequate grievance systems in prison, and based on the constitutionally protected right to petition for redress. The constructive account, meanwhile, investigates "political ethics"—the area of applied political philosophy that raises the question, what are agents morally permitted to do under unjust conditions, until justice is achieved? (Shelby 2016, 12). The constructive right to hunger strike is conceived as a right to use coercive tactics to resist *carceral oppression*, which I understand as the structural violation of incarcerated persons' rights and unjust inhibition of their capacities.

The dual account has important implications for how we should understand hunger strikes in prison and how authorities in constitutional liberal regimes should respond to hunger strikers. It engages with the research on hunger strike in medical ethics, legal theory, and social sciences, and advances the public debate about incarcerated persons' rights. The article proceeds in five sections. The first sets the stage by supporting the need to defend the right to hunger strike from both liberal and critical perspectives and by countering the hunger strike's common categorization as a nonviolent tactic. The second and third critically examine the medical and constitutional accounts, respectively. The fourth presents the remedial account and the fifth defends the constructive account.

A word of terminology before I begin: I occasionally use the term "prisoners" in this article, but, following prison rights activists, I prefer the *people-first* term "incarcerated persons" and abstain from using stigmatizing terms such as "inmates," "detainees," and "felons" (Brownlee 2020, chap. 8; Nguyen et al. 2018).

## WHY THE RIGHT TO HUNGER STRIKE?

The importance of recognizing and defending incarcerated persons' right to hunger strike is not immediately apparent, either from a liberal or critical perspective. From a liberal standpoint, a hunger strike, as a prolonged food (and sometimes fluid) refusal, is presumptively permissible: individuals have dominion over their own body and so they may fast for whatever reason and without coercive interference unless they are deemed mentally incompetent. Liberal societies further protect

citizens' right to dissent, making hunger striking—qua protest fast—doubly unproblematic. But precisely, there is no need for a right to hunger strike outside prison. Hunger strikers who are persecuted in public spaces do not need a right to hunger strike; they need a right to protest.

But the right to hunger strike is necessary in prison, where hunger strikers are often retaliated against, placed in solitary confinement, and force-fed.<sup>1</sup> In its 1975 Declaration of Tokyo and 1991 Declaration of Malta, the World Medical Association (WMA 2006) condemned force-feeding as "a form of inhumane and degrading treatment" tantamount to torture, yet the practice is common in the US and Israel (Shahshahani and Patel 2018) and permitted in the EU, Australia, and Canada. Retaliation and forceful repression are also common, even in liberal democratic states. In 2015, the Papua New Guinean authorities in charge of Australia's offshore refugee processing center on Manus Island quashed a mass hunger strike and placed its leaders in solitary confinement (Boochani 2023).

Prisons repress hunger strikes as a matter of course, sometimes also as a matter of policy. The Commonwealth of Pennsylvania's Department of Corrections (DOC) prescribes issuing court injunctions against hunger strikers (13.1.1, §8). At Pelican Bay State Prison in 2013, authorities charged hunger strikers with "willfully delaying peace officer by participating in a mass hunger strike," in violation of the California Code of Regulations (15 §3005(a)): "Inmates and parolees shall obey all laws, regulations, and local procedures, and refrain from behavior which might lead to violence or disorder, or otherwise endangers facility, outside community or another person."

Practices and regulations like these rest on the notion that hunger strikes (i) disrupt the prison's normal operation; (ii) have the potential to lead to violence, given their common occurrence alongside or prior to other disruptive protests, such as work stoppages and riots; and (iii) might threaten staff and public safety, as in Israeli-occupied territories, where hunger strikes are often accompanied by political violence on the outside (Filc et al. 2014). Authorities view hunger strikes as essentially coercive and akin to blackmail. Israel's Minister of Public Security described a hunger strike by 1,200 Palestinian prisoners as "political jockeying" and "extortion" (Erdan 2017). Australia's Immigration Minister said this to justify force-feeding a hunger-striking asylum-seeker: "The difficulty for me is that if you give yourself in to what is essentially emotional blackmail... the clear advice from my department is that I would have hundreds or thousands of people go on hunger strikes tomorrow" (AAP 2015). Condemning hunger strikes as disruptive, coercive, and likely to

<sup>1</sup> The threshold for when to record an individual's deliberate food refusal as a hunger strike varies across jurisdictions: for instance, the marker is generally 3 days in the US (just 1 day if the hunger striker also refuses to drink) and 7 days in France (2 days for dry hunger strikes).

lead to violence is essential to justify their repression and deny incarcerated people a right to hunger strike even in constitutional liberal states.

Some hunger strikers and many of their advocates dismiss authorities' portrayals of hunger strikes as disruptive, coercive, and violent or likely to lead to violence, associating the tactic with Gandhian nonviolence and civil disobedience. But this common association ignores Mohandas Gandhi's contrast between hunger strikes, such as the English suffragettes and Irish republicans waged in prison and which he viewed as coercive, violent, and tantamount to blackmail, and his own *satyāgrahi* fasts, which he conceived as nonviolent and noncoercive persuasive pleas to fellow Indians (Gandhi 1973, 103–5, 120–5; Sharp 2012). Of course, hunger strikers in prison often also address themselves to peers and allies, as we will see in the constructive account, but they have a *target*—namely, authorities—whom they seek to pressure.

Thus, the right to hunger strike should not be premised on the tactic's peaceful (noncoercive and nonviolent) nature. Indeed, to refuse to eat is not violent, but to willfully starve oneself is violent, although the violence is self-directed.<sup>2</sup> And, to threaten to starve oneself for the purpose of constraining and exerting pressure on a target is coercive (whether it is blackmail or not), though it should not be seen as thereby necessarily wrongful.<sup>3</sup> Most studies of hunger strike outside of medical ethics and law do not consider the hunger strike as peaceful and nonviolent: in political science (Bargu 2014; Machin 2022), anthropology (Aretxaga 1997; Feldman 1991), history (Grant 2019; Passmore 2009), international relations (Edkins and Pin-Fat 2005; Fierke 2014; Purnell 2015; Wilcox 2015), sociology (Biggs 2003; Yuill 2007), communication and performance studies (Anderson 2010; Velasquez-Potts 2019), and peace and security studies (Dingley and Mollica 2007; O'Malley 1991), the hunger strike is conceived as a “bodily weapon” and classified among the tactics of violent, self-destructive resistance.

Critical theorists might find the debate about the right to hunger strike misguided, given their suspicion of the language of rights. They, and prison abolitionists, might further find the debate pointless, given the massive abuses incarcerated persons already suffer. Many scholars (Purnell 2015; Vicaro 2015; Ziarek 2008) conceptualize migrant detention centers, refugee camps, military prisons, and correctional facilities, especially in the US, as “states of exception” marked by “bare life” (drawing on Agamben 1998) and/or as loci of “necropower” (following Mbembe 2003), where subjects' rights are suspended and their personhood is denied. Some scholars even posit the *impossibility* of

resistance in these spaces (Edkins and Pin-Fat 2005, 10). From this perspective, the most pressing issue is the abuse and dehumanization of incarcerated people, and it requires abolishing these prisons, not protecting the right to hunger strike. The latter endeavor amounts to arranging deck chairs on a sinking ship.

In response, I shall first insist, with Critical Race and anticolonial theorists (Matsuda et al. 1993; Shivji 1989), that the language of rights can and does provide a crucial emancipatory resource for oppressed groups. By eschewing this language, scholars deprive hunger strikers and their advocates of an essential and widely used tool in the struggle for emancipation, one that constitutional states, including the US, are receptive to (though too often reluctantly and under pressure). Second, when critical theorists reduce incarcerated people to the status of “living dead” (Agamben 1998, 130), they undermine their agency, which manifests itself, inter alia, in practices of resistance, as Bargu (2014, 70–7) argues. A defense of the right to hunger strike can thus both support the struggle for human rights in constitutional states and underwrite a proper understanding of incarcerated people's agency. As I will show in the constructive account, the hunger strike provides a most powerful tactic of resistance against oppression.

The prison abolitionist challenge nonetheless remains. If incarcerated persons need to have their human rights respected, in some cases by being freed from prison, then a focus on the right to hunger strike seems both pointless and counterproductive. I agree with the antecedent but deny the consequent. Incarcerated people do not only demand to be treated with respect and dignity (and sometimes freed), but they also insist they have a right to hunger strike because the hunger strike constitutes a crucial means to seek redress when their (other) basic rights are violated. The abuse of hunger strikers, in this sense, is not simply one rights violation among many. It must be seen as a particularly insidious harm since it denies incarcerated people's access to the legal system to address their grievances. Or so I shall argue in the remedial account. The stakes are high, then, for hunger strikers.

Although the debate between prison reformers and prison abolitionists looms large in my arguments, I abstain from taking sides, in order to appeal to both. Thus, although I assume for the sake of argument that incarceration can be justified, the remedial account puts forth what Davis (2003, 103) calls “non-reformist reform,” insofar as it purports to “create more humane, habitable environments for people in prison without bolstering the permanence of the prison system.” Meanwhile, the constructive argument contributes to prison abolitionist thinking by theorizing carceral oppression and defending incarcerated persons' right to resist it. Let us now turn to the main contenders in the debate on the right to hunger strike.

## THE MEDICAL ACCOUNT

The dominant account, which emerges from medical ethics (e.g., Annas, Crosby, and Glantz 2013; Crosby,

<sup>2</sup> The World Health Organization's World Report on Violence and Health is explicit that violence can be self- as well as other-directed (Krug et al. 2002).

<sup>3</sup> Pallikkathayil (2011) elucidates the two main, common uses of the word “coercion” as either a general way of constraining another or a more specific way of wrongfully constraining another. I use “coercion” in the former sense.

Apovian, and Grodin 2007; WMA 2006), derives the right to hunger strike from the right to refuse medical treatment. The latter protects against forced interferences with bodily integrity, even when these would be in the patient's interest. On this account, force-feeding hunger strikers is wrong because it constitutes a non-consensual invasion of agents' bodily autonomy, just as forcing someone to undergo a blood transfusion or surgery constitutes assault.

The right to refuse medical treatment is a bedrock of medical ethics and a human right. It is protected by the European Convention of Human Rights (ECHR) under the "right to respect for private and family life" (Art. 8). Courts and legal scholars have argued that the right to refuse medical interventions falls under the constitutionally protected privacy rights recognized in the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution (Ohm 2007; Silver 2010). Some courts have extended patients' right to refuse medical treatment to incarcerated persons on hunger strike and upheld their right "in the exercise of self-determination and control of bodily integrity... to direct the withholding or withdrawal of life-sustaining medical treatment, even at the risk of death" (*Thor v. Superior Court* 1993).

The medical account of the right to hunger strike grounds a robust claim right against coercive interference by authorities, especially against force-feeding, which has a dangerous long-term health impact and even caused some hunger strikers' deaths (Miller 2009). Healthcare professional associations (WMA 2006) and human rights organizations (ACLU and PHR 2021; CICR 2013), along with many scholars and practitioners (Barilan 2017; Crosby, Apovian, and Grodin 2007; Filc et al. 2014; Irmak 2015), call on doctors to conscientiously refuse to force-feed or force-hydrate hunger strikers when ordered to do so, and thus to prioritize the patient's interest in self-determination over their institutional loyalty.

Medical ethicists have articulated a set of professional guidelines to *manage*—as opposed to prevent, halt, or repress—hunger strikes in prison. For instance, they recommend bringing in outside independent physicians, whom hunger strikers can trust, seeking a second opinion to ascertain the individual's true intention and mental competence, providing appropriate information about the risks of starvation, closely monitoring hunger strikers' weight loss and oxygen blood level, offering them vitamin therapy and intravenous hydration to prevent organ damage, and recording advance directives (Annas, Crosby, and Glantz 2013; Appel 2012; Brockman 1999; Crosby, Apovian, and Grodin 2007).

Historically, physicians prioritized their duties as state officials and provided the stamp of scientific authority to the repression of hunger strikes, all the while claiming to be acting in the patient's own best interest (Miller 2009; Siméant 2009). They often circumvented patients' right to refuse medical treatment by denying the mental competence of hunger strikers and portraying them as merely suicidal rather than engaged in protest (Brockman 1999). Although the

paradigm is now reversed (Miller 2009), the professional guidelines to manage hunger strikes are scarcely implemented and followed.

A study of prison hunger strikes in France showed that 15% of strikes were not monitored at all; only 28% of doctors respected the patient's wishes; and most hunger strikers (90.7%) received no help with refeeding at the end of their strike, despite the high risk of medical complications (Fayeulle et al. 2010). The European Court of Human Rights affirms states' right to force-hydrate and force-feed hunger strikers in case of therapeutic necessity, unless hunger strikers signed a "statement of nonintervention," as they may do in the Netherlands and some Swiss cantons. In the US, force-feeding is allowed not only for therapeutic necessity, but also for penological interests (the needs of the prison administration). Israel's 2015 Law to Prevent Harm Caused by Hunger Strikers authorizes prisons to force-feed hunger-striking prisoners for the sake of national security.

Although governments treat the right to refuse medical treatment as defeasible, most champions of the medical account consider it fundamental. Even so, this account does not serve incarcerated persons well because it focuses on involuntary medical interventions and neglects nontherapeutic interferences such as authorities deem necessary to uphold prison order (e.g., placement in solitary confinement). The medical right to hunger strike also stands in tension with other involuntary interferences with bodily autonomy such as cavity searches and "suicide watch" protocols, which are routine in prison and commonly accepted (Barilan 2017, 351–5).

Most importantly, the medical account seems to imply a conception of the right to hunger strike as a right to be left alone to go on starving oneself. But hunger strikers do not wish to starve themselves (Brockman 1999; Irmak 2015). Their goal is typically to obtain concessions from prison authorities—a key feature of hunger strikes which the medical account ignores. In treating the hunger strike as a passive refusal or a patient's private, voluntary decision regarding their body, the medical account ignores its nature as an attempt to seek redress, better prison conditions, and resist the carceral regime. Its conceptualization leaves hunger strikers vulnerable to authorities' charges that they are not merely exercising bodily autonomy, but are also engaged in disruptive and coercive conduct that threatens state and prison interests.

## THE CONSTITUTIONAL ACCOUNT

Sympathetic observers and human rights advocates often paint the hunger strike as a desperate cry from voiceless people. Understanding the hunger strike as symbolic speech, legal scholars (Sneed and Stonecipher 1989; Kanaboshi 2014; Silver 2010) have appealed to the constitutional right to free speech—a widely accepted, fundamental right of liberal societies—to ground the right to hunger strike. In this view, coercive

interferences with hunger strikes are wrong because they silence the hunger striker.

American federal courts have held since the 1930s that the First Amendment protects symbolic speech—that is, an activity that is essentially communicative in character. The Supreme Court established in *Spence v. Washington* (1974) a two-part test to determine when conduct becomes symbolic speech and thus falls under the First Amendment protection: (1) “[a]n intent to convey a particularized message must be present” and (2) “in the surrounding circumstances the likelihood must be great that the message would be understood by those who viewed it.” Hunger strikes undoubtedly satisfy this test, although courts have not weighed in on the question.

On Sneed and Stonecipher’s (1989) account, the hunger strike is a kind of “speech-plus” conduct consisting of both expression and action, like sit-ins and flag desecration. Kanaboshi (2014) also derives the right to hunger strike from First Amendment rights. This approach is promising, both in the domestic and international contexts. The American Bar Association (ABA) states as a general principle that correctional authorities should provide incarcerated individuals with “substantial freedom of expression” (ABA 2011, 23–7.5). The 1966 International Covenant on Civil and Political Rights protects *everyone’s* “right to hold opinions without interference” (Art. 19).

Advocates of hunger strikers often deploy the constitutional and medical accounts in tandem. In their joint research report, for instance, the ACLU and PHR (2021, 24) argue that ICE’s mistreatment of hunger strikers both contravenes medical professionals’ responsibilities toward their patients and violates migrants’ right to free speech, which the U.S. Constitution and international law protect. But the constitutional account tends to ultimately rely on privacy rights (including the right to refuse medical treatment) to protect hunger strikers from coercive interference. An account of the right to hunger strike based on incarcerated persons’ free speech rights is indeed bound to be insufficient, given the restrictions that apply, on the one hand, to symbolic speech, and, on the other hand, to prisoners’ rights.

In *Pell v. Procunier* (1974), the U.S. Supreme Court held that a “prison inmate retains all those First Amendment rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system.” The *Pell* Court further found that if hunger strikers can express their protest in other ways—namely, letter writing—then they are not protected from force-feeding or state-sanctioned violations of their privacy to keep them alive. While restrictions on First Amendment rights are normally reviewed through strict scrutiny, the Supreme Court ruled in the 1987 case of *Turner v. Safley* that a rational basis standard of review was sufficient with respect to incarcerated persons’ constitutional rights and that judges should show deference to prison officials in the management of their institutions. Kanaboshi (2014, 128) argues instead that a heightened scrutiny test should apply to restrictions on incarcerated persons’ free speech. Prisons’ bans on hunger

strikes would then not pass constitutional muster, as they are not “neutral” but purport to “suppress the message itself”: they function to censor dissent.

Prison authorities and courts, not champions of the constitutional account, stack the deck against hunger strikers by substantially limiting free speech rights in prison. But there are two central issues with the constitutional argument. First, it is best suited to the American context, where free speech protections are ordinarily uniquely expansive; yet even there it falls short. Second, it conceives of the hunger strike as merely symbolic speech. Kanaboshi (2014, 128) contends that “hunger strikes are passive, peaceful acts, which are unlikely to provoke violence or some other security breach” and that the burden to prove that hunger strikes pose a threat should fall on authorities. Vicaro’s (2015) conception of hunger strike as a type of “embodied argumentation,” “a means of persuasion,” and “a human cry and a plea” fits well with the constitutional argument.

Yet hunger strikers do not merely speak up, cry out, or plead. They also disrupt and destabilize prison order by failing to follow the mandatory schedule of activities and imposing more workload on staff. Crucially, they communicate a coercive proposal through the use and threat of self-violence—“give us what we ask or we will continue starving ourselves.” To put it simply, in denying the disruptive and coercive function of the hunger strike, the constitutional argument leaves hunger strikers vulnerable to authorities’ interferences with the disruptive and coercive part of their conduct. The dual account of the right to hunger strike I put forth overcomes the medical and constitutional accounts’ shortcomings.

## THE REMEDIAL ACCOUNT

The remedial argument conceives of the right to hunger strike as a moral right to seek redress when one’s rights are violated. It further defends the legal protection of this right, considering incarcerated persons’ vulnerability to mistreatment and abuse and the inadequacy of grievance systems in prison, and argues that the right to petition the government for redress of grievances, which is constitutionally entrenched in many legal regimes, constitutes a solid ground in corrective justice efforts. It is not premised on the hunger strike’s nonviolence and noncoerciveness.

### The Moral Right to Seek Redress

Incarceration entails the involuntary confinement of and custody over persons (Shelby 2022, 45–51). Incarcerated people thus depend on prison officers for their basic needs, safety, and welfare. Officers control incarcerated people’s daily routines. They hold the coercive power to force incarcerated persons to submit to their commands and have considerable professional discretion. They decide how best to render professional services, what the rules require in the circumstances, and how much force to use to exact compliance. They

make daily judgments about incarcerated people's conduct and needs, including whether or not to take seriously and respond to a person's cry for help (medical or otherwise) and whether or not to relay up the chain of command particular requests and grievances. Carceral custody thus breeds vulnerability to abuse and mistreatment.

Although officers are legally and ethically bound to respect individuals' basic rights, the physically closed nature of prisons fosters a culture marked by an "us versus them" mentality which facilitates rights violations and, often, a code of silence (Nantel and Dennehy 2006). Abuse and mistreatment are common in prison. The torture of individuals at Guantánamo Bay is a case study in a corrupt culture where officials routinely flouted their responsibilities to care for those in their custody (CCR 2006; Slahi 2021). Davis (2003, 77) described sexual abuse of incarcerated women as "an institutionalized component of punishment behind prison walls." It still is, despite the passage of the 2003 Prison Rape Elimination Act (Kiebalá 2022). Prisons, as the incarceration law and policy expert Armstrong (2014, 440) argue, are "rife with violence (by both inmates and correctional staff), inhumane and unconstitutional conditions, and failures to provide adequate medical and mental health services." Refugees suffered deadly medical neglect in Australia's offshore processing system (Boochani 2023). French prisons fail to provide for the mental healthcare of incarcerated people, who suffer among the highest rate of suicide in Europe (Fazel, Ramesh, and Hawton 2017).

Incarcerated persons' interest in not being subjected to abuse and mistreatment—in having their rights respected and being properly taken care of in carceral custody—is fundamental. It supports a moral right to redress in cases of violations. It is essential that incarcerated people who suffer abuse must have recourse—that is, the means to alert authorities about their mistreatment and to petition for redress. Existing grievance systems, however, in the US and many other countries, are deficient. For the most part, they are internal, relying on prison staff's goodwill to take in and respond to incarcerated people's requests in a "reasonable" time frame, even though personnel are often the subject of grievance. Most types of complaints are dealt with over months, sometimes years, even when they concern such intolerable conditions as solitary confinement or sexual assault.

Outside mechanisms do not guarantee redress either because they are generally highly constrained or lack enforcement powers and involve parties, such as courts, that are predisposed to defer to prison officials' prior judgments. Prison inspection and monitoring bodies in Canada and the EU are seen as weak and insufficient to safeguard against breaches of human rights (Patrick 2006; Rogan 2021). The U.S. 1996 Prison Litigation Reform Act, which was designed to decrease the incidence of litigation within the court system, has served to further "limit prisoners' access to the legal system to address their grievance" (Deitch 2020, 228). Grievance systems are complicated, limited, and opaque to, or perceived as inaccessible by, those who would use them.

The remedial account grounds the right to hunger strike on the right to redress because many incarcerated persons, in fact, go on hunger strike to petition authorities when their rights are violated. In his memoir, Woodfox (2019), who spent more than four decades in solitary confinement at the Louisiana State Penitentiary (aka Angola), describes in detail the rule-bound avenues that he and his fellow prisoners always pursued, and which systematically failed. Most of their demands were to be treated according to prison rules, which guards routinely violated, or just to be treated with a modicum of respect. Based on his experience, Woodfox argues that "[t]he most effective way of protesting was the hunger strike," adding that even "just the threat of hunger strike" could sometimes be effective (117). Social scientific data support his experience. A transnational empirical analysis of thousands of hunger strikes undertaken between 1906 and 2004 (31.9% of which occurred in prison) found that 75.5% achieved positive outcomes (Scanlan, Stoll, and Lumm 2008). The success rate for prison hunger strikes is lower, at 48.6%, but still very high considering the baseline of powerlessness that characterizes incarcerated people's situation.<sup>4</sup> The remedial account thus rests on the potential instrumental value of the hunger strike as a last resort to seek redress.

### The Legal Right to Hunger Strike

The right to petition the government for redress of grievances—that is, to make complaints or seek assistance from the government without fear of reprisals or punishment—offers a promising ground in the proposal to institutionalize the right to hunger strike in liberal constitutional states. The right can be traced back to the Magna Carta of 1215 and is already entrenched in many constitutions, including in the US (First Amendment), Germany (Art. 19), and Italy (Art. 24). Article 13 of the ECHR and Article 47 of the Charter of Fundamental Rights of the EU (CFR) protect a "right to an effective remedy" and a right to access justice for violations of the rights and freedoms guaranteed by the law of the Union. The CFR also recognizes a "right to petition" for every citizen and resident of the EU (Art. 44).

Freedom of assembly and freedom of speech are conceived as instrumental to the right of petition. But while prisons substantially limit freedom of speech and assembly, they cannot ever suspend incarcerated individuals' right to seek redress for rights violations. Thus, champions of the constitutional account should find the remedial account particularly attractive. After "suspected unlawful enemy combatants" at Guantánamo Bay, to whom the White House would not extend the Geneva protections, went on mass hunger strikes to protest their indefinite detention and torture, the

<sup>4</sup> I am grateful to Stephen Scanlan for generously sharing with me the data and results relating to prison hunger strikes specifically (private email, April 6, 2023).

Supreme Court ruled in *Rasul v. Bush* (2004) that individuals were entitled to petition for habeas corpus writs, and further affirmed in *Boumediene v. Bush* (2008) that they had such right regardless of their citizenship status.

On the remedial account, prison authorities respect the right of petition for redress by providing adequate grievance systems and by institutionalizing—that is, recognizing and codifying—incarcerated persons’ right to hunger strike as a kind of last bulwark to protect human rights. The remedial right to hunger strike should be conceived as a bundle of rights, which entail certain duties on the part of authorities to care for and communicate with hunger strikers (without necessarily granting agents’ demands). Space does not allow me to elaborate on these in detail, but I have in mind authorities’ responsibilities:

- not to coercively and forcefully interfere with hunger strikers (through repression, punishment, or force-feeding);
- to record hunger strikers’ complaints and demands;
- to provide independent, high-quality medical supervision to hunger strikers (including supplying vitamins and electrolyte drinks, providing medical counseling, registering advanced medical directives, and helping with re-feeding at the end);
- to notify and keep informed hunger strikers’ families or other contact persons;
- to allow hunger strikers to contact journalists;
- to provide hunger strikers with access to legal counsel;
- to trigger an inquiry into hunger strikers’ grievances by an independent community-led commission.

While prison authorities recognize some of these general responsibilities, such as the recording and medical monitoring of the hunger strike, they do not typically respect incarcerated persons’ right to hunger strike. As noted above, French prison authorities fail to systematically provide medical supervision for hunger strikes (Fayeulle et al. 2010). Pennsylvania’s DOC mandates daily medical staff visits but charges hunger strikers a \$25 co-pay for each (DC-ADM 820)—a forbidding deterrent given that most work assignments pay between \$0.19 and \$0.51 per hour (ACLU and GHRC 2023). Hunger strikers everywhere commonly face repression, retaliation, and force-feeding. Under current conditions, incarcerated persons have neither adequate means to communicate grievances and seek redress nor the right to wage hunger strikes. They need the latter to secure the former. The violation of (or failure to recognize) the right to hunger strike undermines incarcerated people’s access to the legal system to address their grievances when their rights are violated.

Importantly, for the remedial right to hunger strike to serve as a bulwark, it must protect *all* hunger strikers, even those whose complaints are unwarranted. To take just one example of arguably frivolous grievance, Anders Breivik, who committed a mass murder in Norway, went on a hunger strike to demand that

authorities upgrade his PlayStation and let him play “more adult games.” The right to hunger strike does not entail authorities’ duty to grant Breivik’s demands. But it protects him from repression and punishment and guarantees that authorities record his demands, provide him with independent medical supervision, notify his family, let him talk to journalists and lawyers, and review his grievance.

One might wonder why a decent or even “ideal” prison with exemplary supervision and an adequate and fair grievance system would need to recognize the right to hunger strike at all. If incarcerated persons are well treated, most hunger strikes would not be based on legitimate grievances. In response, one might apply the precautionary principle to insist on the protection of the right to hunger strike given the necessarily imperfect nature of institutions such as prisons and the irreducible possibility that a legitimate grievance might fall through the cracks. But precautions are costly and, at some point, the costs of identifying and correcting institutions’ imperfections exceed the benefits of doing so (Sunstein 2005). On this basis, I concede that an “ideal” prison could forego legal protection of the right to hunger strike if opportunity costs appear unreasonable.

However, one should not overestimate the costs of protecting the right to hunger strike, given its direct benefits to incarcerated persons and long-term role in promoting justice. More humane prison systems like New Zealand’s and Norway’s basically recognize the right to hunger strike: they provide for the medical management of hunger strikes, and treat these as triggers for accelerated mechanisms of review. Doing so is not too costly, in part because starving oneself is very costly. It is also important to note that criminal justice reforms and fair grievance mechanisms would not in fact preempt hunger strikes, for the simple reason that hunger strikers’ demands commonly extend beyond the prison to target political oppression. Yet all hunger strikers, no matter their demands, are to be afforded the respectful treatment outlined above.

But why not stop here, then, if the remedial right protects all hunger strikers? The remedial argument does not exhaust the inquiry because the hunger strike is more than—and not always—a petition, in the face of inadequate grievance mechanisms, to demand forms of treatment to which incarcerated people are (or should be) already legally entitled. The hunger strike is also a radical act of resistance that, often, challenges the constitutional order itself.

## THE CONSTRUCTIVE ACCOUNT

The constructive account makes room for hunger strikers’ demands and challenges beyond mistreatment and detention conditions, by conceptualizing carceral oppression and grounding the right to hunger strike on the right to resist oppression. The argument stresses the normative permissibility of the use of coercive tactics to defend one’s freedom and self-determination (it is

*constructive* insofar as hunger strikers aim to create a new normative order). The remedial account sketched a corrective justice proposal tailored to liberal constitutional states. The constructive defense of the right to hunger strike contributes to political ethics, and applies to any person facing carceral oppression, in any political and legal system. It is moot in an ideally just society.

## Carceral Oppression

To be incarcerated is to be deprived of liberty, to be unfree. Assuming that some restrictions on incarcerated people's freedoms are justified, some are not justified because they involve rights violations. These unjustified restrictions amount to *carceral oppression* when they result from the prison's normal workings (with its failures) and produce the subordination and unjust inhibition of incarcerated people's capacities. I follow Young's (1990, chap. 2) conceptualization of oppression in *Justice and the Politics of Difference* to flesh out carceral oppression, whose five faces I present in turn: exploitation, marginalization, powerlessness, violence, and neglect (this fifth face replaces Young's category of "cultural imperialism").

The "transfer of the results of the labor of one social group to benefit another," or *exploitation*, is one common mark of oppression (Young 1990, 48–53). While it is not a necessary feature of incarceration, economic exploitation in the form of penal labor is often present, such as in China, Russia, and the US. Of the two million people incarcerated in American prisons, nearly 800,000 work, sometimes 12 hours a day, for little or even no pay at all, and they generate more than \$2 billion a year in goods (ACLU and GHRC 2023).

*Powerlessness*—the institutionalized inhibition of the development of incarcerated persons' capacities—is another face of carceral oppression (Young 1990, 56–8). The prison often renders its occupants powerless by design, as where it disenfranchises them and fails to provide education, job training, and recreational opportunities. Many live their incarceration as a kind of "social death" (Price 2015). "Prison is designed to break one's spirit and destroy one's resolve," Mandela (1994, 230) wrote about his experience at Robben Island, adding: "To do this, the authorities attempt to exploit every weakness, demolish every initiative, negate all signs of individuality—all with the idea of stamping out that spark that makes each of us human and each of us who we are." Staff often address incarcerated people by a number rather than by their name, which is but one aspect of the process of dehumanization that contributes to robbing them of a sense of self (Boochani 2023, 5–8).

Central to the experience of *marginalization*, which Young (1990, 53–5) defines as the deprivation of opportunities to exercise one's capacities in contexts of recognition and interaction, is incarcerated people's separation from loved ones, and sometimes from any human contact through solitary confinement. Brownlee (2020, 185) has conceptualized a fundamental human right against social deprivation and highlighted its numerous violations in carceral contexts: "The social

harms that we do to people in prisons... compromise their social resources, deny them social-contribution opportunities, and rob them of appropriate autonomy in their social interactions," she argues. These violations often lead to feelings of loneliness and worthlessness (Haney 2003).

Incarcerated persons' subjection to abuse and mistreatment (detailed in the remedial account) points to the fourth and fifth faces of oppression: violence and neglect. Young (1990, 61) explicates *violence* thusly: "Members of some groups live with the knowledge that they must fear random, unprovoked attacks on their person or property, which have no motive but to damage, humiliate, or destroy the person." Physical and sexual violence is rampant behind bars (sometimes inflicted by fellow incarcerated people), leading to a climate of fear and insecurity. Part of the violence incarcerated people suffer further consists of psychological abuse.

The last face of carceral oppression, *neglect*, is crucial to understand the material conditions and institutional failures in many of the world's prisons. Neglect consists of a failure to care, where one is bound to care: overcrowding, unsanitary conditions, abysmal healthcare, and medical neglect in prison signal the institution's failure to fulfill its custodial responsibilities, in a context where incarcerated people cannot care for themselves. Medical neglect has reached severe, even deadly, consequences in American migrant detention centers (DWN 2020), jails (Coll 2019), and penitentiaries (Miller 2021, chap. 6), as well as in European and Australian refugee camps (Boochani 2023; HRW 2020).

Carceral oppression characterizes many of the world's prisons. It is extreme in Russia, the Philippines, Venezuela, Thailand, Benin, Bolivia, Nigeria, and China, among other places. But its diagnosis in liberal constitutional regimes, which recognize their duties to care for incarcerated people and are committed to respecting basic rights, should be of particular concern. Carceral oppression is indeed substantial in the US and it exists, albeit to a lesser degree, in European, Canadian, and Australian prisons.

However, one may object to my reliance on the American context in the argument, on the grounds that the US is an outlier among constitutional regimes in its massive rate of incarceration and mistreatment of prisoners. Considering the human rights violations happening in American prisons and authorities' efforts to cover them up (ACLU and PHR 2021; Thompson 2016), one may even doubt the government's recognition of its responsibility to care for and respect the basic rights of incarcerated people. Carceral oppression indeed appears (i) extreme in the US, relative to other constitutional liberal states, and (ii) unique or idiosyncratic, given the pervasive socioeconomic, racial, criminal, and immigration injustices it is enmeshed with.

I reject the notion that the US does not recognize its custodial responsibilities toward incarcerated people: prison authorities affirm these responsibilities; and legal advocacy work relies on such commitment to bring about positive change, with frequent success.



The problem is rather the general indifference to the fate of incarcerated people—and America is not an outlier in this respect. In 2006, 10 individuals serving long sentences at the prison of Clairvaux petitioned the French state: “We, who have been walled up alive for the rest of our days at the most high-security prison in France (...) call for the death penalty to be reinstated in our cases.” They favored the death penalty (which France abolished in 1981) over their “slow, programmed death,” due to prison authorities’ capacity to “prolong sentences indefinitely,” in a climate of “general indifference” (Hakkar et al. 2006).

Note, too, that American prisons are not unique in being enmeshed with other unjust policies and structural injustices. In Israel, carceral oppression is part and parcel of the state’s colonial occupation of the Palestinian Territories, to the point of blurring the line between carceral and political oppression, as Gaza’s description as “the world’s largest open-air prison” suggests. In Europe and Australia, restrictive immigration policies and populations’ callous disregard for asylum-seekers (especially racialized ones) underwrite carceral oppression in detention centers and refugee camps (Boochani 2019; 2023; Parekh 2016).

The porosity between carceral oppression and other kinds of political and systemic injustice matters to understand incarcerated people’s resistance and demands. In the US, prisoners seek to end not only solitary confinement and penal servitude (inside prison), but also cash bail, the war on drugs, and racist policing (outside), which feed mass incarceration. Palestinian prisoners demand the end of the regime of administrative detention (i.e., incarceration without trial or charge, alleging that a person plans to commit a future offense) and the end of Israeli occupation. Asylum-seekers like Boochani (2023) demand “freedom, only freedom” while their cases are adjudicated, and the abolition of refugee prisons.

The dual account, therefore, clearly extends across other contexts beyond the American prison system and the argumentation can legitimately draw on and generalize from the latter.

### The Constructive Right to Hunger Strike

What may incarcerated persons do in the face of carceral oppression? The constructive argument grounds the right to hunger strike in the right to resist oppression. The account is modeled after Gourevitch’s (2018) “radical account of the right to strike,” considering the germaneness between the hunger strike and the labor strike. One involves collective labor withdrawal designed to induce the employer to improve, or refrain from worsening, the workers’ conditions; the other (typically) consists of collective food refusal designed to induce carceral authorities to improve, or refrain from worsening, incarcerated persons’ conditions. Through labor strikes, workers protest the exploitative conditions they toil under. Through hunger strikes, incarcerated persons protest the oppressive conditions they live under. Work stoppage is the ultimate weapon of collective bargaining for workers (organized in

labor unions) under capitalism, where the interests of the employer—growing capital—and those of the workers—better wages and working conditions—are in direct conflict. Similarly, hunger strike is the ultimate weapon of collective bargaining for incarcerated people (who can usually only organize informally)<sup>5</sup> under carceral oppression, where the interests of the prison—order and custodial control—and those of incarcerated people—liberty, dignity, and autonomy—are at odds. The strikers undermine their target’s capacity to pursue their interests in each case: workers on strike undermine their employer’s capacity to generate economic profit; hunger strikers undermine the prison’s capacity to maintain order and to care for them.

Gourevitch (2018, 908–9) argues that the right to strike protects workers’ liberty interest, which is under threat in liberal capitalist societies. This interest has two faces: first, it is “an interest in not being oppressed, or in not facing certain kinds of forcing, coercion, and subjection to authority that they should not have to”; second, it is “an interest in using *one’s own* individual and collective agency to resist—or even overcome—that oppression.” Gourevitch thus bases the right to strike on a liberty interest that more generally grounds the right to resist oppression.

Incarcerated people also have a liberty interest in not facing oppression and in using their own individual and collective agency to resist—and try to overcome—that oppression. This dual-faced interest, which carceral oppression threatens, grounds their right to resist oppression by means of hunger strikes, thereby supporting a right to the latter. The hunger strike entertains the same instrumental and intrinsic relation to the protection of incarcerated persons’ liberty interest as the strike does with respect to the protection of workers’ liberty interest, as I argue next.

### Instrumental Value

Gourevitch (2018, 909) writes that the right to strike “has instrumental value insofar as the strike is, on the whole, an effective means for resisting the oppressiveness of a class society.” Similarly, hunger strikes often succeed in bringing about positive changes in prison conditions. The hunger strike’s efficacy—recall that nearly one in two succeeds—demonstrates its value as an instrument to seek redress and to protect incarcerated persons’ liberty interests. Scanlan, Stoll, and Lumm (2008, 296), who conducted the empirical analysis mentioned earlier, described the hunger strike as “the most powerful tactic in a protest repertoire shaped by the absence of other options.”

Other evidence, including first-person testimonies like Woodfox’s, supports prison hunger strikes’ efficacy. Historians and political scientists have highlighted political prisoners’ successes in waging hunger strikes around the world, starting in 1878 in tsarist Russia and

<sup>5</sup> Note, however, that prison labor unions were widespread in North America until the 1970s (House and Rashid 2022).

spreading around the world in the twentieth century (Anderson 2010; Fierke 2014; Grant 2019; Machin 2022; Passmore 2009; Russell 2006; Yuill 2007). Palestinians incarcerated in Israeli prisons have carried out thousands of hunger strikes. The number of visits and phone calls allowed, the food served, the furniture in the cells, the provision of soaps and blankets, and access to medical care—“Everything inside the prison had a story of resistance [viz. hunger strikes] behind it,” argued one former Palestinian militant (Norman 2021, 54). In the twenty-first century, most hunger strikes have been launched by people who were not politically organized before their detention, including asylum-seekers and persons in jails and penitentiaries. These hunger strikes are often successful, too (Siméant 2009, chap. 1).

It is nonetheless important to interrogate what counts as success. For social scientists using statistical analyses of hunger strikes (e.g., Scanlan, Stoll, and Lumm 2008), a hunger strike is successful when the prison authorities meet the demands of the hunger strikers; it fails when it is ended without any gains. But success, in fact, comes in different forms: hunger strikers who starve to death, or who stop the hunger strike because they are force-fed, did not necessarily lose, depending on the public’s uptake. Irish lore conceives of the 1981 hunger strike by the Irish Republican Army (IRA) prisoners as a success, and of those who died—Bobby Sands chief among them—as martyrs (O’Malley 1991). The force-feeding (including rectal feeding) of hunger strikers at Guantánamo Bay turned international popular opinion against the US and destroyed its moral high ground in the “war on terror,” even though most hunger strikers remained incarcerated long after.

Prison hunger strikes often succeed because, like labor strikes, they are coercive. Although many scholars have drawn attention to hunger strikers’ “weaponization” of their own bodies against the state, they have not analyzed the coercive logic behind this weapon. Hunger strikes’ coerciveness involves manipulating prison authorities’ courses of action by undermining their capacity to fulfill their custodial responsibilities. The hunger striker gives authorities a choice between meeting her demands and letting her die of self-starvation, and wagers that authorities will see the former option as the lesser of two evils and the weightiest reason for action. To put it another way, she imposes on authorities new reasons for action which they did not have before. The imposition of new reasons to do what authorities already have reason to do (e.g., providing adequate housing and healthcare in prison) could be considered a justificatory condition of hunger strikes, whereas the imposition of new reasons to do what authorities should not have to do (e.g., upgrading videogame consoles) would make a hunger strike presumptively unjustified. Either way, hunger strikes are coercive.

It is because authorities have duties of care toward incarcerated persons that the hunger striker’s wager can succeed. There would otherwise be something puzzling about the efficacy of the hunger striker’s

coercive threat. Whereas the mugger threatens “give me your money or your life!” the hunger striker threatens “your money or *my* life!” The hunger striker’s threat is effective because authorities have an interest in discharging their custodial responsibilities. It is coercive because deliberate self-starvation undermines authorities’ capacities to fulfill these custodial responsibilities. The hunger striker makes it hard for authorities to realize their duties of care toward incarcerated persons insofar as, by starving herself, she endangers her health and bodily integrity, which authorities are charged with protecting. The hunger striker leverages that which prison authorities are supposed to care for, but which is ultimately the only thing she has control over, to wit, her own body. It is in these ways that the hunger striker’s weaponization of life must be seen as coercive and that the right to hunger strike constitutes a right to coerce others to protect one’s freedom.

Why should the right to resist oppression ground the right to hunger strike rather than to other coercive means of resistance, such as uprisings and prison breaks? The answer is that the right to resist oppression can justify specific instances of coercive resistance, such as the 1971 Attica Prison Uprising (Thompson 2016; Delmas 2018, chap. 6). But to ground a general right to break out of prison or organize an uprising would require showing that these activities are effective on the whole and that the level of coercion and violence they deploy is necessary and proportional to the threat.

### Intrinsic Value

Beyond its instrumental logic, Gourevitch (2018, 909) writes that the right to strike “has intrinsic value as an (at least implicit) demand for self-emancipation or the winning of greater liberty through one’s own efforts,” so that, even if it fails, strike action involves an autonomous assertion and exercise of one’s liberty or agency. Similarly, the right to hunger strike has intrinsic value, as a demand for freedom and an assertion of agency in an oppressive context that deprives the agent of opportunities to exercise her freedom and agency.

The hunger strike is the archetype of prison resistance, insofar as it exemplifies the ways in which powerless individuals can turn their weakness into power. Hunger striking is a form of political engagement, a “mode of doing politics” (Abrahamsson and Dányi 2019), that puts bodies on display and on the line, gleaning its power and strength, paradoxically, from actors’ self-inflicted weakness and vulnerability (Aitchison 2022; Purnell 2015). Laâbi (2016), the Moroccan poet and dissident who spent decades behind bars, wrote in his poem “Hunger Strike”:

the only weapon we’ve left  
is this irrepressible  
breath still inside us  
which we push to the furthest of limits  
risking its death  
to safeguard our dignity

Incarcerated persons' breath, and their bodies, are their only weapons left, their last recourse. The hunger strike offers a way not only to seek redress and exert coercive pressure on authorities, but also to (re)assert the individual's dignity, (re)claim her agency, and emancipate herself. The hunger striker rejects institutional attempts to annihilate her dignity, agency, and freedom and regains the latter in the same "irrepressible breath," as Laâbi puts it. The hunger strike protects incarcerated persons' freedom and capacities by resisting authority, insofar as hunger striking, regardless of its tactical efficacy, constitutes a defiant and emancipatory act under conditions of subordination and powerlessness.

Hunger strikes, like labor strikes, can further prefigure social relations of recognition and collaboration centered on norms of solidarity. Take the 2015 mass hunger strike that refugees organized at Manus Prison. Boochani (2019) presents starvation as one of the prison's instruments of torture and control, with hunger weakening and tormenting the individual and dividing people. Self-starvation is then an unfathomable, ultimate, and spectacular instrument of collective defiance to the prison-imposed starvation. Authorities saw it as such—Boochani and a dozen other leaders of the hunger strike were beaten and relocated to another prison on the island as retaliation. Boochani has written eloquently about the power of refugee resistance. In 2017, six hundred refugees organized a 22-day-long siege of Manus Prison, which was peaceful and entirely democratically organized. Boochani (2023) describes the siege in ways that evoke not only the prefiguration of a better tomorrow but also the reconfiguration of the present:

[T]he refugees were able to regain their identity, regain their rights, regain their dignity. In fact, what has occurred is essentially a new form of identification, which asserts that we are human beings. The refugees have been able to reconfigure the images of themselves as passive actors and weak subjects into active agents and fierce resisters. (119)

Refugees' reclaiming or "regaining" of their humanity should be understood neither as mere redress, nor as a return to their pre-incarceration identity, for they transformed themselves, and constituted themselves anew in the process—evoking resistance as *construction*. They may have been "active agents" before Manus Prison (migrants' journey being anything but "passive"), but they became "fierce resisters," too. Boochani writes:

The refugees have asserted their authority.  
The refugees have claimed power.  
The refugees were able to reimagine themselves in the face of the detention regime. (ibid.)

The ultimate quashing of the uprising could not thwart or undo this identity construction.

As coercion is key to the hunger strike's instrumental value, so performance is key to its intrinsic value as

a potentially transformative act of resistance and emancipation. Thus, Feldman (1991, 236) conceives of the 1981 Irish hunger strike as "an epic act of emancipation" realized through "a performance that diagrammed in a graphic reenactment the procedures of the state that drove men to abjection." Passmore (2009) shows that the Red Army Faction "carefully choreographed" its hunger strikes and represented them—to the group members and the media—as the embodiment of its anti-imperialist and anti-fascist struggle. Bargu (2014, 258) retraces "the eschatological passage from oppression to emancipation" through the corporeal, self-destructive "performance" of the 2000–07 death fast in Turkey and its retrospective integration into a "narrative of collective resistance." These authors help us understand how hunger striking produces intrinsic value through the performance of self-starvation, which is itself not only staged as a spectacle, but also constructed (narrated and read) as a politically significant intervention.

Machin (2022) brings these threads together in her comparative analysis of the prison hunger strikes by the British suffragettes, the IRA fighters, and anti-apartheid militants at Robben Island, noting that hunger strikers "experience themselves as political actors" even as they construct their body "as political object." This process of objectification and subjectivation involves three facets of the body within the hunger strike: the *spectacular* or "hungry body," centerpiece of a "highly visible performance" that "draws attention to a cause and demands an emotional response"; the *identifying/identified* body, which, through its sacrifice, "galvanizes a collective identity," a "political 'us'"; and the *dissenting* body, which "resists the dominant order and institutions by reclaiming the power of the regime and inverting it onto itself" (Machin 2022, 109). These three dimensions are constitutive of the intrinsic value of the right to hunger strike. This means that exercises of the latter are valuable in themselves, and not merely as means, insofar as, through her self-starvation, the agent can always see herself as a person who acts freely, with others, in resistance.

Finally, Machin's analysis of the *identifying/identified* body illuminates Boochani's remarks about the transformative power of organizing resistance (see also Cox and Minahan 2004; Guenther 2018; Velasquez-Potts 2019). The right to hunger strike derives its most radical constructive power from its collective exercise—as a demand for collective emancipation and as an exercise of collective agency in an oppressive context that deprives groups of opportunities to exercise their freedom and agency. Hunger striking, in this sense, may be considered an act of collective self-defense against carceral oppression.

## CONCLUSION

In conclusion, the abuse of hunger strikers is not simply one example of carceral oppression among many. It is a particularly egregious form of injustice because it

violates incarcerated people's right to petition the legal system for redress and their right to resist oppression. While the right to refuse medical treatment and the right to freedom of speech should not be left out of advocates' toolkit, the distorted and incomplete picture of hunger strikes they offer dulls their potential to serve incarcerated people. The remedial account offers a more promising defense of the right to hunger strike for legal scholars and human rights advocates. Together with the constructive account, it offers a more adequate representation of the hunger strike and of incarcerated people's rights.

What are we to make of hunger strikes that seem to address neither detention conditions nor carceral oppression? Take the coordinated hunger strike organized across seven prisons and jails in Canada in response to the recovery of over a thousand unmarked graves at residential school sites in June 2021. Hunger strikes like this one appear to only address what happens outside prison, making the dual account seemingly irrelevant or unhelpful.

This is not the case. For one, the remedial right to hunger strike protects all hunger strikers, regardless of the content of their grievances. The constructive account further helps to see carceral oppression, including incarcerated people's structural vulnerability to abuse, as one thread in the interlocking web of political oppression. An Indigenous activist in Canada illuminated the strike by noting the structural similarities between residential schools and prisons, and the fact that many incarcerated people were survivors or intergenerational survivors of the residential school system (Stadnyk 2021). She added: "This is not something that's an abstract grief. It's not an abstract issue. It's not an abstract form of solidarity that's distant. It's part of people's realities on the inside." Incarcerated people make their grief concrete and visceral through hunger striking. They highlight the porous line between carceral oppression and other kinds of systemic injustices. They express grievances, demand redress and recognition, defend their liberty, reclaim their dignity, and defy carceral and political authority. Their right to do so is essential and its defense deserves a place at the forefront of the struggle to protect incarcerated people's rights.

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## ETHICAL STANDARDS

The author affirms this research did not involve human subjects.

## REFERENCES

- Abrahamsson, Sebastian, and Endre Dányi. 2019. "Becoming Stronger by Becoming Weaker: The Hunger Strike as a Mode of Doing Politics." *Journal of International Relations and Development* 22 (4): 882–98.
- Agamben, Giorgio. 1998. *Homo Sacer: Sovereign Power and Bare Life*, trans. Daniel Heller-Roazen. Stanford, CA: Stanford University Press.
- Aitchison, Guy. 2022. "Fragility as Strength: The Ethics and Politics of Hunger Strikes." *Journal of Political Philosophy* 30 (4): 535–58.
- American Bar Association (ABA). 2011. *ABA Standards for Criminal Justice: Treatment of Prisoners*, 3rd edition. Washington, DC: Library of Congress.
- American Civil Liberties Union (ACLU) and Physicians for Human Rights (PHR). 2021. "Behind Closed Doors: Abuse and Retaliation against Hunger Strikers in U.S. Immigration Detention." Research Report. [https://www.aclu.org/sites/default/files/field\\_document/aclu\\_phr\\_behind\\_closed\\_doors\\_final\\_1.pdf](https://www.aclu.org/sites/default/files/field_document/aclu_phr_behind_closed_doors_final_1.pdf).
- American Civil Liberties Union (ACLU) and the University of Chicago Law School Global Human Rights Clinic (GHRC). 2023. "Captive Labor: Exploitation of Incarcerated Workers." Report.

- <https://www.aclu.org/report/captive-labor-exploitation-incarcerated-workers>.
- Anderson, Patrick. 2010. *So Much Wasted: Hunger, Performance and the Morbidity of Resistance*. Durham, NC: Duke University Press.
- Annas, George, Sondra Crosby, and Leonard Glantz. 2013. "Guantanamo Bay: A Medical Ethics-Free Zone?" *New England Journal of Medicine* 369 (2): 101–3.
- Appel, Jacob M. 2012. "Rethinking Force-Feeding: Legal and Ethical Aspects of Physician Participation in the Termination of Hunger Strikes in American Prisons." *Public Affairs Quarterly* 26 (4): 313–35.
- Aretxaga, Begoña. 1997. *Shattering Silence: Women, Nationalism, and Political Subjectivity in Northern Ireland*. Princeton, NJ: Princeton University Press.
- Armstrong, Andrea. 2014. "No Prisoner Left Behind? Enhancing Public Transparency of Penal Institutions." *Stanford Law & Policy Review* 25 (2): 435–76.
- Australian Associated Press (AAP). 2015. "Asylum Seeker Ends 44-Day Hunger Strike." *SBS News*, July 4. [https://www.sbs.com.au/news/asylum-seeker-ends-44-day-hunger-strike\\_1](https://www.sbs.com.au/news/asylum-seeker-ends-44-day-hunger-strike_1).
- Bargu, Banu. 2014. *Starve and Immolate: The Politics of Human Weapons*. New York: Columbia University Press.
- Barilan, Yechiel M. 2017. "The Role of Doctors in Hunger Strikes." *Kennedy Institute of Ethics Journal* 27 (3): 341–69.
- Biggs, Michael. 2003. "When Costs Are Beneficial: Protest as Communicative Suffering." *Sociology Working Papers*. Oxford University.
- Boochani, Behrouz. 2019. *No Friend but the Mountains: Writing from Manus Prison*, trans. Omid Tofighian. London: Anansi International.
- Boochani, Behrouz. 2023. *Freedom, Only Freedom: The Prison Writings of Behrouz Boochani*, trans. and eds. Omid Tofighian and Moones Mansoubi. London: Bloomsbury.
- Brockman, Bea. 1999. "Food Refusal in Prisoners: A Communication or a Method of Self-Killing? The Role of the Psychiatrist and Resulting Ethical Challenges." *Journal of Medical Ethics* 25 (6): 451–6.
- Brownlee, Kimberley. 2020. *Being Sure of Each Other: An Essay on Social Rights and Freedoms*. Oxford: Oxford University Press.
- Center for Constitutional Rights (CCR). 2006. "The Guantánamo Prisoner Hunger Strikes & Protests: February 2002–August 2005." Report. <https://ccrjustice.org/home/get-involved/tools-resources/publications/report-guantanamo-prisoner-hunger-strikes-and>.
- Coll, Steve. 2019. "The Jail Health-Care Crisis." *New Yorker*, February 25. <https://www.newyorker.com/magazine/2019/03/04/the-jail-health-care-crisis>.
- Comité international de la Croix-Rouge (CICR). 2013. "Grève de la faim en prison: la position du CICR." January 31. <https://www.icrc.org/fr/document/greve-de-la-faim-en-prison-la-position-du-cicr>.
- Cox, Wolfram Julie, and Stella Minahan. 2004. "Unravelling Woamera: Lip Sewing, Morphology and Dystopia." *Journal of Organizational Change Management* 17 (3): 292–301.
- Crosby, Sondra S., Caroline M. Apovian, and Michael A. Grodin. 2007. "Hunger Strikes, Force Feeding and Physicians' Responsibilities." *Journal of the American Medical Association* 298 (5): 563–6.
- Davis, Angela. 2003. *Are Prisons Obsolete?* New York: Seven Stories Press.
- Deitch, Michele. 2020. "But Who Oversees the Overseers? The Status of Prison and Jail Oversight in the United States." *American Journal of Criminal Law* 47: 207–74.
- Delmas, Candice. 2018. *A Duty to Resist: When Disobedience Should Be Uncivil*. New York: Oxford University Press.
- Detention Watch Network (DWN). 2020. "Hotbeds of Infection: How ICE Detention Contributed to the Spread of COVID-19 in the United States." Report. [https://www.detentionwatchnetwork.org/sites/default/files/reports/DWN\\_Hotbeds%20of%20Infection\\_2020\\_FOR%20WEB.pdf](https://www.detentionwatchnetwork.org/sites/default/files/reports/DWN_Hotbeds%20of%20Infection_2020_FOR%20WEB.pdf).
- Dingley, James, and Marcello Mollica. 2007. "The Human Body as a Terrorist Weapon: Hunger Strikes and Suicide Bombers." *Studies in Conflict & Terrorism* 30 (6): 459–92.
- Edkins, Jenny, and Véronique Pin-Fat. 2005. "Through the Wire: Relations of Power and Relations of Violence." *Millennium* 34 (1): 1–24.
- Erdan, Gilad. 2017. "The Truth about the Palestinian Hunger Strike." *New York Times*, May 1. <https://www.nytimes.com/2017/05/01/opinion/the-truth-about-the-palestinian-hunger-strike.html>.
- Fayeulle, Stéphanie, Frédéric Renou, Emmanuel Protais, Valéry Hédoün, Guillaume Wartel, and Jean-Luc Yvin. 2010. "Prise en charge médicale de la grève de la faim en milieu carcéral." *La Presse Médicale* 39 (10): e217–e222.
- Fazel, Seena, Taanvi Ramesh, and Keith Hawton. 2017. "Suicide in Prisons: An International Study of Prevalence and Contributory Factors." *Lancet Psychiatry* 4 (12): 946–52.
- Feldman, Allen. 1991. *Formations of Violence: The Narrative of the Body and Political Terror in Northern Ireland*. Chicago, IL: University of Chicago Press.
- Fierke, Karin. 2014. *Political Self-Sacrifice: Agency, Body and Emotion in International Relations*. Cambridge: Cambridge University Press.
- File, Dani, Hadas Ziv, Mithal Nassar, and Nadav Davidovitch. 2014. "Palestinian Prisoners' Hunger-Strikes in Israeli Prisons: Beyond the Dual-Loyalty Dilemma in Medical Practice and Patient Care." *Public Health Ethics* 7 (3): 229–38.
- Gandhi, Mahatma. 1973. *Selected Writings of Mahatma Gandhi*, ed. Ronald Duncan. Glasgow: Fontana/Collins.
- Gourevitch, Alex. 2018. "The Right to Strike: A Radical View." *American Political Science Review* 112 (4): 905–17.
- Grant, Kevin. 2019. *Last Weapons: Hunger Strikes and Fasts in the British Empire, 1890–1948*. Berkeley: University of California Press.
- Guenther, Lisa. 2018. "Unmaking and Remaking the World in Long-Term Solitary Confinement." *Journal of Critical Phenomenology* 1 (1): 74–89.
- Hakkar, Abdelhamid, André Gennera, Bernard Lasselin, Patrick Perrochon, Milivoj Miloslavjevic, Daniel Aerts, Farid Tahir, et al. 2006. "Appel des Perpétués de Clairvaux." *Mille Bâbords*, February 15. <https://www.millebabords.org/spip.php?article3603>.
- Haney, Craig. 2003. "Psychological Impact of Incarceration: Implications for Post-Prison Adjustment." In *Prisoners Once Removed: The Impact of Incarceration and Reentry on Children, Families, and Communities*, eds. Jeremy Travis and Michelle Waul, 33–66. Washington, DC: Urban Institute Press.
- House, Jordan, and Asaf Rashid. 2022. *Solidarity Beyond Bars: Unionizing Prison Labour*. Halifax, CA: Fernwood Publishing.
- Human Rights Watch (HRW). 2020. "Greece: Island Camps Not Prepared for Covid-19." *HRW*, April 22. <https://www.hrw.org/news/2020/04/22/greece-island-camps-not-prepared-covid-19>.
- Irmak, Nurbay. 2015. "Professional Ethics in Extreme Circumstances: Responsibilities of Attending Physicians and Healthcare Providers in Hunger Strikes." *Theoretical Medicine and Bioethics* 36 (4): 249–63.
- Kanaboshi, Naoki. 2014. "Prison Inmates' Right to Hunger Strike: Its Use and Its Limits under the U.S. Constitution." *Criminal Justice Review* 39 (2): 121–39.
- Kiebal, Val. 2022. "'It's an Emergency': Tens of Thousands of Incarcerated People are Sexually Assaulted Each Year." *Appeal*, April 18. <https://theappeal.org/cynthia-alvarado-sexual-assault-in-prisons/>.
- Krug, Etienne G., James A. Mercy, Linda L. Dahlberg, and Anthony B. Zwi. 2002. "The World Report on Violence and Health." *Lancet* 360 (9339): 1083–8.
- Laâbi, Abdellatif. 2016. *Beyond the Barbed Wire: Selected Poems*, trans. André Naffis-Sahely. Manchester: Carcanet Press.
- Machin, Amanda. 2022. *Bodies of Democracy: Modes of Embodied Politics*. Bielefeld, DE: Transcript Verlag.
- Mandela, Nelson. 1994. *Long Walk to Freedom*. Boston, MA: Back Bay Books.
- Matsuda, Mari, Charles Lawrence III, Richard Delgado, and Kimberlé Crenshaw. 1993. *Words That Wound: Critical Race Theory, Assaultive Speech, and the First Amendment*. New York: Routledge.
- Mbembe, Achille. 2003. "Necropolitics." *Public Culture* 15 (1): 1–40.
- Miller, Ian. 2009. *A History of Force-Feeding: Hunger Strikes, Prisons and Medical Ethics, 1909–1974*. London: Palgrave Macmillan.
- Miller, Reuben Jonathan. 2021. *Halfway Home: Race, Punishment, and the Afterlife of Mass Incarceration*. New York: Little, Brown and Company.
- Nantel, Kelly, and Kathleen Dennehy. 2006. "Improving Prison Safety: Breaking the Code of Silence." *Journal of Law and Policy* 22 (1): 175–85.

- Nguyen, Toan Tran, Stéphanie Baggio, Angela Dawson, Éamonn O'Moore, Brie Williams, Precious Bedell, Olivier Simon, et al. 2018. "Words Matter: A Call for Humanizing and Respectful Language to Describe People Who Experience Incarceration." *BMC International Health and Human Rights* 18 (1): 41–7.
- Norman, Julie. 2021. *The Palestinian Prisoners Movement: Resistance and Disobedience*. London: Routledge.
- O'Malley, Padraig. 1991. *Biting at the Grave: The Irish Hunger Strikes and the Politics of Despair*. Boston, MA: Beacon Press.
- Ohm, Tracey M. 2007. "What They Can Do about It: Prison Administrators' Authority to Force-Feed Hunger-Striking Inmates." *Washington University Journal of Law and Policy* 23: 151–74.
- Pallikkathayil, Japa. 2011. "The Possibility of Choice: Three Accounts of the Problem with Coercion." *Philosophers' Imprint* 11 (16): 1–20.
- Parekh, Serena. 2016. *Refugees and the Ethics of Forced Displacement*. New York: Routledge.
- Passmore, Leith. 2009. "The Art of Hunger: Self-Starvation in the Red Army Faction." *German History* 27(1): 32–59.
- Patrick, Jeremy J. 2006. "Creating a Federal Inmate Grievance Tribunal." *Canadian Journal of Criminology and Criminal Justice* 48 (2): 287–305.
- Price, Joshua. 2015. *Prison and Social Death*. New Brunswick, NJ: Rutgers University Press.
- Purnell, Kandida. 2015. "Body Politics and Boundary Work: Nobodies on Hunger Strike at Guantánamo (2013–2015)." *Alternatives* 39 (4): 271–86.
- Rogan, Mary. 2021. "Prison Inspection and Monitoring: The Need to Reform European Law and Policy." *European Journal on Criminal Policy and Research* 27: 285–305.
- Russell, Sharman Apt. 2006. *Hunger: An Unnatural History*. New York: Basic Books.
- Scanlan, Stephen, Laurie Cooper Stoll, and Kimberly Lumm. 2008. "Starving for Change: The Hunger Strike and Nonviolent Action, 1906–2004." *Research in Social Movements, Conflicts and Change* 28: 275–323.
- Shahshahani, Azadeh, and Priya A. Patel. 2018. "From Pelican Bay to Palestine: The Legal Normalization of Force-Feeding Hunger-Strikers." *Michigan Journal of Race & Law* 24 (1): 1–14.
- Sharp, Gene. 2012. *Sharp's Dictionary of Power and Struggle: Language of Civil Resistance in Conflicts*. New York: Oxford University Press.
- Shelby, Tommie. 2016. *Dark Ghetto: Injustice, Dissent, and Reform*. Cambridge: Harvard University Press.
- Shelby, Tommie. 2022. *The Idea of Prison Abolition*. Princeton, NJ: Princeton University Press.
- Shivji, Issa. 1989. *The Concept of Human Rights in Africa*. London: Codesria.
- Silver, Mara. 2010. "Testing *Cruzan*: Incarcerated Persons and the Constitutional Question of Self-Starvation." *Stanford Law Review* 58 (2): 631–62.
- Siméant, Johanna. 2009. *La Grève de la Faim*. Paris: Sciences Po Press.
- Slahi, Mohamedou Ould. 2021. *The Mauritanian*. Boston, MA: Back Bay Books.
- Sneed, Don, and Harry Stonecipher, 1989. "Prisoner Fasting as Symbolic Speech: The Ultimate Speech-Action Test." *Howard Law Journal* 32 (3): 549–62.
- Stadnyk, Abby. 2021. "Coordinated Hunger Strike across Seven Canada Prisons Honours Indigenous Children." *Perilous*, July 1. <https://perilouschronicle.com/2021/07/01/coordinated-hunger-strike-across-six-canada-prisons-honours-indigenous-children/>.
- Sunstein, Cass. 2005. *Laws of Fear: Beyond the Precautionary Principle*. Cambridge: Cambridge University Press.
- Thompson, Heather Ann. 2016. *Blood in the Water: The Attica Prison Uprising of 1971 and Its Legacy*. New York: Pantheon.
- Velasquez-Potts, Michelle. 2019. "Staging Incapacitation: The Corporeal Politics of Hunger Striking." *Women & Performance* 29 (1): 25–40.
- Vicaro, Michael. 2015. "Hunger for Voice: Transformative Argumentation in the 2005 Guantánamo Bay Hunger Strike." *Argumentation and Advocacy* 51 (3): 171–84.
- Wilcox, Lauren. 2015. *Bodies of Violence: Theorizing Embodied Subjects in International Relations*. Oxford: Oxford University Press.
- Woodfox, Albert. 2019. *Solitary: Unbroken by Four Decades in Solitary Confinement. My Story of Transformation and Hope*. New York: First Grove Atlantic.
- World Medical Association (WMA). 2006. "WMA Declaration of Malta on Hunger Strikes." <https://www.wma.net/en/30publication/s/10policies/h31/>.
- Young, Iris Marion. 1990. *Justice and the Politics of Difference*. Princeton, NJ: Princeton University Press.
- Yuill, Chris. 2007. "The Body as Weapon: Bobby Sands and the Republican Hunger Strikes." *Sociological Research Online* 12 (2): 111–21.
- Ziarek, Ewa Plonowska. 2008. "Bare Life on Strike: Notes on the Biopolitics of Race and Gender." *South Atlantic Quarterly* 107 (1): 89–105.