

## Carceral Biocitizenship

### *The Rhetorics of Sovereignty in Incarceration*

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#### Introduction

On October 19, 2007, nineteen-year-old Ashley Smith died of self-inflicted strangulation while on suicide watch at the Grand Valley Institution for Women in Kitchener, Ontario, Canada. As she tied a ligature around her neck, correctional officers, who had been instructed not to enter into her cell if she was still breathing, watched—and in compliance with Canadian regulations, videorecorded—her death. As the video footage attests, they entered her cell only when she was nonresponsive and could not be resuscitated. Six days later, the three correctional officers who stood by and watched Smith's suicide were charged, along with one of their supervisors, with criminal negligence causing death, while the warden and deputy warden were fired. Criminal charges were later dropped. The case gained some attention following the June 2008 publication of a report by the Office of the Correctional Investigator of Canada titled *A Preventable Death*; and public outcry grew considerably when Canada's national CBC News Network's *The Fifth Estate* broadcast two special investigative reports in January and November 2010, titled "Out of Control" and "Behind the Wall," respectively. The latter broadcast included the video footage of Smith's death, and the Correctional Service of Canada (CSC) came under intense scrutiny for its treatment of prisoners with mental health problems.

What emerged over the course of the Coroner's Inquests (there were two, in 2011 and 2012) were the systemic yet oftentimes highly coordinated, seemingly intentional failures and abuses on the part of the CSC.

The 2008 Correctional Investigator's thirty-three-page report had already cataloged countless instances of "inhumane" treatment and intolerable living conditions: Smith was reportedly assaulted by correctional staff, subjected to excessive "use of force" (both physical and chemical), denied her right to physical exercise, and not permitted sufficient toilet paper or soap; according to the report, "while menstruating, she was not permitted underwear or sufficient sanitary products to meet her hygiene needs."<sup>2</sup> Initially arrested for assault, trespassing, and causing a disturbance at a mall, Smith entered the New Brunswick Youth Centre, where, because of behavioral problems, she was often held for twenty-three hours a day in the "Therapeutic Quiet Unit"—a 9-by-six-foot segregation cell that was only 7.5 feet high. She was allowed out for one hour a day to exercise, shower, and interact with staff. After being released from the youth center, she was again arrested on October 21, 2003, for throwing crab apples at a postal worker. Returned to the New Brunswick Youth Centre for a time, she was transferred to an adult facility after her eighteenth birthday, whereupon her violations as a juvenile while in custody were commuted to adult violations. During her final year of custody, spent almost entirely in solitary confinement, Smith was transferred seventeen times between nine different institutions across five provinces. Each transfer effectively reset the clock on her solitary confinement, circumventing legal limits on the length of time it can be used without a detailed psychiatric assessment and treatment plan. Indeed, it was in part because of these transfers that Smith never received a psychiatric assessment, nor was a comprehensive treatment plan put into place. Extended periods of seclusion and extralegal transfers without doubt were detrimental to Smith's mental and physical health.

The first Coroner's Inquest effectively ended in a mistrial, with legal challenges from the Smith family and controversy over the exclusion of video evidence, including footage of Smith's forced sedation at one institution, as well as the sudden replacement of the presiding coroner (ostensibly due to her impending retirement). At the close of the second Coroner's Inquest, the official report of the specially convened coroner's jury displayed the full extent of the miscarriage of justice in the life and death of Ashley Smith. Issued on December 19, 2013, this report, officially titled the "Coroner's Inquest Touching the Death of Ashley Smith," delivered a stunning verdict: "Cause of death: ligature strangulation and

positional asphyxia. By what means: homicide.”<sup>3</sup> As an act of administrative law lacking the full force of a criminal verdict, the finding of homicide symbolically recognized the ways that the carceral system was responsible for Smith’s death, even if she died by her own hand. The report confirmed what many had suspected: Smith’s rights guaranteed to her as a citizen—and as a human being—had been violated by the very system charged with protecting rights for all.

What does it mean to say that the carceral system, as an arm of law, is *in fact* responsible for Smith’s death? And, what does such a pronouncement presume about the power of carceral institutions over life and death? In this essay, we explore these questions as a way to understand how various institutions constituted Smith as a *carceral biocitizen*—a subject caught between biopolitical practices and scenes of legal sovereignty. We argue, more specifically, that Smith’s death was produced by a diffuse agency that cannot be definitively located or prosecuted—a neoliberal administration of law that presumed that Smith was already “socially dead” and was, thus, no citizen at all. Carceral institutions, however, steadfastly repudiate the *biopolitical* operations of law and corrections. They work to reinscribe a logic of *sovereignty*, and their sovereign repudiation shores up their own power as they affirm the citizenship rights of those incarcerated, claiming to safeguard the conditions under which life can continue. In this cover-up, incarcerated subjects, like Smith, have no place from which to make a claim to the very rights law claims to guarantee. This form of biocitizenship, we suggest, radically diverges from accounts that find in biocitizenship a form of agency through which one might lay claim to life in an affirmative biopolitics.

Our argument in this chapter develops through three sections. In the first, we draw on Michel Foucault’s distinction between sovereign and biopolitical power to demonstrate how the carceral archipelago constitutes Smith as a socially dead subject, one who is stripped of her rights through the day-to-day administration of law’s judgment. In the second section, we read the published response by the CSC to the Coroner’s Inquest. That response, we demonstrate, tries to reinstate sovereignty, as law’s prerogative, and yet the CSC finds itself in a difficult position, effectively outsourcing responsibility for Smith’s death onto other agencies that should, in its opinion, be the rightful locus of mental health care. By crafting her mental illness as the agent or cause of her death and denying its own role

in creating and addressing her illness, the CSC preserves not only its right to punish but also its sovereign jurisdiction over life. The concluding section outlines how this ruse, this cover-up, reveals a form of biocitizenship that is not capable of producing the potential forms of agency imagined by theorists of biocitizenship, such as Petryna, Rose, and Novas.

### Biocitizenship and Somatic Subjectivity

The verdict of the coroner's jury, which included 104 recommendations, suggests that the tragedy of Ashley Smith's case might be located in the scene of her death: "This case study can demonstrate how the correctional system and federal/provincial health care can collectively fail to provide an identified mentally ill, high risk, high needs inmate with the appropriate care, treatment and support."<sup>4</sup> There, with the guards watching as she takes her own life, is framed a perfect snapshot of the failures of correctional institutions to care for the subjects over whom they rule. We are told that, in this scene, carceral institutions—acting in the name of and as law—failed to protect life and to discipline appropriately. We claim here that this failure is a product of the ways Smith's life is constituted through the deployment of biopolitical logics that render her a nonsubject. Smith, we argue specifically, becomes a somatic subject, the body-subject of a biopolitical order. During her short life she was as faceless and as anonymous as the vast and coordinated system over which she was powerless in all but her final act of suicide. It is in this sense that we speak of her carceral biocitizenship: the biopolitical power wielded by the state and its institutions, a power to capture and to regulate, if not to "correct" and to care for, those it counts as members of a particular population to be managed. We are drawing here specifically on Foucault's understanding of biopolitics, a form of governance, he argues, that emerges at the beginning of the nineteenth century and comes to permeate, and in some sense to supplant, the classical right of the sovereign. Here, the sovereign's prerogative "to take life or let live" gradually yields to the state's power "to make live and let die."<sup>5</sup> In the shift from sovereign to biopolitical power, power is decentralized: it becomes diffuse, anonymous, no longer localized (even figuratively) in the body of the king. Instead, much like the vast and coordinated correctional system in which Smith found herself, it is driven by securitization,

forecasts, statistics, overall measures, and a regime of “evidence” and “best practices” that address a population (or “mass”) in aggregate form. Indeed, this efficiency matrix is one strategy of a neoliberalized penal system, which uses solitary confinement as one “management” strategy to control patient-inmates.<sup>6</sup> While both sovereign and biopolitical state power have as their point of application the body of the subject, the form of somatic subjectivity of each differs significantly. The mechanism of sovereign power is aligned with discipline and the spectacle of the scaffold: “Discipline tries to rule a multiplicity of men to the extent that their multiplicity can and must be dissolved into individual bodies that can be kept under surveillance, trained, used, and, if need be, punished.”<sup>7</sup> In other words, discipline *individualizes*. Biopolitical power, on the other hand, *massifies*: it is power “addressed to a multiplicity of men, not to the extent that they are nothing more than their individual bodies, but to the extent that they form, on the contrary, a global mass that is affected by overall processes characteristic of birth, death, production, illness, and so on.”<sup>8</sup> Biopolitics intervenes on the species-body, while the individual all but disappears.

Our understanding of biocitizenship, in the context of Ashley Smith’s life and death, suggests a form of citizenship that is foremost biopolitical. And the distinction from citizenship under the sovereign must be emphasized. As a sovereign citizen, one is subject to the sovereign prerogative “to take life or let live”—in other words, to be killed or to be left to live. Here, one’s livingness is presumed, as it were, and the sovereign enjoys the power to intervene in that life, either to take that life or not to take it. Sovereign killing is the limit of an individual’s citizenship: as a citizen one is subject to being killed, and to be killed terminates one’s citizenship. Biopolitical power, by contrast, is in Foucault’s terms the power “to make live and let die.” Here, one’s livingness is *not* presumed, one must be *made* to live: power perpetually intervenes on the level of life itself, on a deindividuated and massified body—subjects who are said to demonstrate statistical risks, endemic deviance, and so forth. Significantly, unlike sovereign power, it is not an either/or proposition: being “made to live” is concomitant with “letting die.” With biopolitical state power, then, it is death that is presumed, rather than life—death that is contained, social death, which is the covert condition, the cost and the consequence, of biopolitical life and the state itself.

We might, then, characterize Ashley Smith's life as a social death,<sup>9</sup> a form of necro-citizenship, properly speaking, neither quite living nor dead, but stripped of her right, a body that belongs to the state and as part of that state's aggregating technologies, administrative mechanisms, and institutions. Smith is part of the nonnormative population that we "let die" because she cannot be "made to live" in the terms that the state proffers; it is as if she constitutively refused to live by these terms, and her suicide retroactively "proves" this constitutive failure; finally, we might say, she is "allowed to die" in order to shore up—to protect—the normative biocitizenship of the rest of us, whose existence is threatened, as it were, by the continued existence of her nonnormative livingness. By focusing on Smith's death, we distinguish ourselves from the ways that the term "biocitizenship" has typically been deployed, and we seek to complicate the relationship between life and death that biocitizenship might otherwise suggest. Indeed, "biocitizenship" has been used in affirmative discourses on life—injured or damaged biological life, to be sure, but life nonetheless, life worthy of protection. One of the first uses of the term "biological citizenship" appears in Adriana Petryna's book *Life Exposed: Biological Citizens after Chernobyl*. In a fascinating anthropological study that addresses the aftermath of the Chernobyl nuclear disaster, Petryna characterizes biocitizenship as "a massive demand for but selective access to a form of social welfare based on medical, scientific, and legal criteria that both acknowledge biological injury and compensate for it."<sup>10</sup> Even though the "selective access" to social services operationalizes the biopolitics of making live and letting die, the "demand" of biocitizenship is nevertheless made by the living, for and on behalf of life. Likewise with Nikolas Rose and Carlos Novas's seminal text on biocitizenship appearing a few years later, which focuses on the democratic potential of biotechnologies, "biovalue," and the molecularization of life.<sup>11</sup>

By contrast, we are interested less in the strictly biological understanding of somatic subjects and their biological claims to citizenship, and turn instead to a wider moral understanding of the human *bios*—the somewhat abstract concept of a life worth living, abstract but nonetheless concrete in the ways that this concept organizes the body biopolitic through the "soft" power coordinated in and through state technologies, mechanisms, and institutions. This is what we might call "delinquent

life”: when the “offender” is not just subject to a legal judgment corresponding to individual criminal acts, but a delinquent subject in which it is “not so much his act as his life that is relevant in characterizing him.”<sup>12</sup> More precisely, then, we are interested in the ways that such lives are already forfeited, endemically disqualified as lives worth living—or, said otherwise, the ways in which delinquent lives are already morally dead and socially dead. So while we undoubtedly see in the case of Ashley Smith the application of biopower on a biological body—assaults, physical and chemical “use of force,” control over bodily movement and exercise, and the punitive regulation of defecation and menstruation—this application of biopower, on the biological body, is underwritten by *moral* terms in which the biological life of a somatic subject is already a life not worth living, a life already consigned to death, a dead life. And it is this death that has a strange afterlife in the case of Ashley Smith. It was, then, only in her ghostly apparition, across highly mediatized depictions of her life and death, that Smith became a “person” in the eyes of the law. The \$5 million Coroner’s Inquest into her death included eyewitness testimonies, thousands of pages of evidence, and many videos of her life—and death—that circulated widely. Through these, Smith was socially reembodyed in the public imaginary. Several depict her extralegal transfers, hooded and being duct-taped into the seat of an airplane, surrounded by guards in full riot gear. The scene is reminiscent of Hollywood depictions of CIA counterinsurgency tactics. It became clear that to protect the content of normative citizenship, delinquent life needed to be contained and mortified. The CSC fought by legal injunction and other means—ultimately unsuccessfully—to ban the publication of the videos and to refuse them as evidence. The inquest also revealed that staff were instructed to lie and falsify reports about Smith, to lend the illusion of law and order.

In the jury’s verdict of homicide, then, we have the specter of a murder with no clear murderer. Smith was not killed as the sovereign’s prerogative to “take life”; she did not die at the hands of a particular person or persons; rather, the verdict clearly points to the subtle ways that a biopolitical system “lets die,” and the jury did not hesitate to call this a homicide—killing. The verdict of homicide suggests that, somehow, an impersonal moral agency was at work in Smith’s death, and suggests that the CSC—a vast and diffuse system—is “guilty” of homicide. Of course,

this was not a criminal trial, but its symbolic force cannot be denied: the jury saw Smith, posthumously, not as someone who was disposable life, socially dead, but as a person whose right to life was systemically and systematically abrogated. The verdict exposes a system that kills, however obliquely or covertly—through neglect, exposure, indignity, and torture—and it exposes the necrotizing conditions of a biopolitics that ostensibly “makes live,” but which “lets die” as the condition and consequence of this life. It exposes the terms of biocitizenship, today, as producing in order to contain, control, and regulate social death: those who are “made” to live will be protected, whereas those the system “lets die” are destined to perish. It regulates the threshold of life and death not from the perspective of life, as it was under sovereign power, but instead through the specter of mortification and death.

### Scenes of Legal Sovereignty and the Lively Politics of Law

In December 2014, the Correctional Service of Canada issued its formal response to the verdict and recommendations offered by the coroner’s jury. The document details the changes made within women’s (and sometimes men’s) correctional facilities since the death of Ashley Smith and charts the ways that the CSC plans to incorporate the recommendations in the oversight and delivery of mental health services in the future. While the aim of this document might be to legitimize the work of the CSC in light of the Smith “tragedy” by demonstrating how it protects and even advances the rights of those who are incarcerated, the document’s language reveals how Ashley Smith and others like her are positioned (in time and place) between a scene of legal sovereignty—anxiously reconstituted by the report itself—and the biopolitics of carceral citizenship in the quotidian. Here, we show how the CSC refuses to recognize and in fact repudiates the social deaths of persons such as Smith, biopolitically produced on the stage of an immense legal drama, and thus fails to account for the way the administration of law empties their ability to embody, enact, and express the rights and responsibilities of citizenship. Instead, the CSC claims that law authorizes and secures the rights of incarcerated subjects by securing life perpetually and in advance, as it were. It is here, we argue, that we begin to see that what is at stake in Smith’s physical (biological) death is not only who is responsible for this

“preventable death” but also how law performatively constitutes itself as sovereign through the scenes in which it operates, rather than only through the bodies over which it rules.

At the very beginning of the report, the CSC attempts to define and frame what the homicide ruling means for correctional services. The authors begin their “Response” by noting that “the jury classified Ashley Smith’s death as a homicide. They identified ligature strangulation and positional asphyxiation as the cause of her death. This determination does not imply criminal responsibility. Rather, it means that through acts or omissions, a person or persons has or have contributed to an individual’s death.”<sup>13</sup> At first blush we might read this text as a confirmation of Giorgio Agamben’s thesis in *Homo Sacer: Sovereign Power and Bare Life*.<sup>14</sup> In this sense, we have a homicide that does not imply criminal responsibility—a crime that is no crime, because it enacts the sovereign prerogative to take life and, in so doing, to revoke a subject’s citizenship—the grounds for any criminal charge in the first place. But for the CSC, the homicide “classification” (as the report calls it) can be absorbed and reconciled in part by drawing a distinction between causation and contribution. The agents of the state—the employees—who watched (and videorecorded) as Smith took her own life, the multiple transfers between institutions, the time spent in administrative segregation all provide the background against which Smith’s death must be understood. In the report’s terms, these are the “acts or omissions” of “a person or persons,” rather than anything that warrants a slightly more systemic or sociological investigation into correctional cultures; in other words, law reinstates its sovereignty by insisting on the “subjectivity” of personal agents, including Smith herself, “an individual,” whose suicide is only “classified” a homicide because a person or persons “contributed” to it. The report deflects any claim that a diffuse and biopolitical moral agency was—and is still—at work in and through the carceral system itself, operating in and through the countless employees responsible for Smith’s care and custody. According to the report, this set of ostensibly “individual” acts and the people responsible (by act or omission) constitute an environment that “contributes” to her death but that nevertheless remains sufficiently diffuse and abstract in such a way that no one or no thing can be pinpointed as the *causal* factor in her death, and as such cannot become the object of law’s punitive force. The cause, it is implied, rests with Smith herself.

This distinction at first glance recalls Hannah Arendt's differentiation between guilt and responsibility. In her essay "Collective Responsibility," Arendt argues that guilt, a judgment produced in law and in moral systems, concerns what a person has done—what she has done, the extent of her involvement, and the degree of her participation.<sup>15</sup> Guilt takes the person—a figure who always already has a kind of intelligibility and agency through law—as the object of judgment. Collective responsibility, however, means for Arendt that a subject must take responsibility for that which she did not do and that her responsibility for what has happened is assigned to her by virtue of belonging to a group. One might certainly translate the jury's ruling of homicide into these terms. Smith's death is not an issue of guilt, where we hold the individual guards or prison administrators criminally liable for Smith's suicide. Instead, the ruling of homicide becomes an ethical demand—a demand that asks the CSC to account for the scene in which Smith took her own life or, in other words, to assume a collective responsibility. The CSC, however, refuses to see itself as the object of this ethical demand. In describing the purpose of the CSC, it figures itself self-reflexively—indeed, almost paranoically—as a passive actor within a larger scene managed by law: "The mandate of the federal correctional system, as defined in law, is to contribute to the maintenance of a just, peaceful and safe society by carrying out sentences imposed by courts through the safe and humane custody and supervision of offenders, and by assisting the rehabilitation of offenders and their reintegration into the community as law-abiding citizens through the provision of programs in penitentiaries and in the community."<sup>16</sup> By these lights, the correctional system, authorized and constituted by law, functions as a contributor and an assistant—a worker—in the project of rehabilitation that is determined and set out by law's judgment. Correctional institutions are thus figured both as the effect of law's ability to institute and institutionalize and as the mechanism through which law applies and inflicts its punitive (or corrective) power.

To put it simply, the CSC cannot be responsible for Smith's death because it consists simply of institutional actors who find themselves in a scene not of their own making. They—the person or persons involved—are victims of circumstance, as it were. Consider the way the CSC positions itself, in its introduction, as the *response* not to Smith's death in

particular but to a national mental health crisis for which it cannot be responsible:

The issue of mental illness in Canada is significant and has become a major societal issue affecting all Canadians. It is estimated that 20% of Canadians will experience difficulties with their own mental health at some point in life. More than 70% of adults living with mental illness have reported that the onset of their difficulties occurred before they were 18 years of age.

Self-injury and suicide are among the most serious consequences of mental illness. In Canada, suicide is the leading cause of death for people between the ages of 10 and 24 years.

[ . . . ]

Across Canada, provincial and territorial health care systems are burdened by an increasing demand for mental health care. As a result, agencies like CSC have slowly emerged as a last resort for people with active mental health issues who have come into conflict with the law and received a term of imprisonment.<sup>17</sup>

This passage works rhetorically to figure correctional facilities as an almost accidental locus of mental health treatment and response. We are meant to believe that the CSC has “inherited” the problem of mental illness over time and as a result of the failures of other systems—systems, it is implied, that are rightfully responsible for the care of those with mental health issues. The CSC positions itself throughout its document as an institution that has been placed into a context of mental health involuntarily. Because it never asked for it, it can only be understood as a “last resort”—literally, a place to rest for those with mental illness; here the CSC rhetorically absolves itself of responsibility for a history of incarceration that exacerbates if it does not produce mental illness through its techniques.

As Robert Cover rightly observes, this ritualized refusal or dispersion of responsibility across institutions and actors defers and displaces the recognition that law is a system “designed to generate violence.”<sup>18</sup> The ruling of a judge, then, is not an act in and through which “we talk our prisoners into jail,”<sup>19</sup> but instead a “routinization of violent behavior”<sup>20</sup> that depends on “others, occupying pre-existing roles, [who] can be ex-

pected to act, to implement, or otherwise to respond in a specified way to the judge's interpretation."<sup>21</sup> In the case at hand, the CSC is thus most certainly not a passive actor beholden to the law and its proclamations but a critical dimension of a wider system that works to morally legitimize the scene within which law operates—for Cover, the “field of pain and death.”<sup>22</sup> Cover's point is that we must come to terms with the fact that law, whether located in the judge's interpretation of legal language or the baton of the prison guard, is an act of domination that takes place in a scene marked by violence and death. This is the scene for which the CSC must be accountable. And yet, it misses the importance of its own metaphor. Referring to Smith's death as a “tragedy,” it dissociates the tragic “act” from the scene on which it takes place. If her death is tragic, this tragedy played out on the CSC's stage, with its actors, under its lights and direction. This *mise-en-scène* is perpetuated by a sovereign repudiation of responsibility, not simply the old sovereign right to “take life,” but to refuse that life as one that is its responsibility, to refuse its claims to citizenship by figuring that life as already dead.

Refusing responsibility for this scene, we argue, creates a spectacle meant to hide the body, to strip it of its right to claim citizenship. The extra-legal transfers suffered by Smith amount to little more than the displacement of a corpse through a sovereign suspension of law. Foucault, in a short essay titled “Pompidou's Two Deaths,” explains:

Prison is not the alternative to death: it carries death along with it. The same red thread runs through the whole length of that penal institution which is supposed to apply the law but which, in reality, suspends it: once through the prison gates, one is in the realm of the arbitrary, of threats, of blackmail, of blows. Against the violence of the penitentiary personnel, the convicts no longer have anything but their bodies as a means for defending themselves and nothing but their bodies to defend. It is life or death, not “correction,” that prisons are about.<sup>23</sup>

Correctional facilities usurp the sovereign power of law to discipline bodies in a scene that speaks to the very conditions of life and death. Against this power, the convict's resistance lies in her body. In the case of Ashley Smith, might this mean we can read her suicide as a refusal of the law's power to determine life and death? Can suicide be read, as

Foucault suggests, as a way to “risk death to save one’s life, to risk one’s very life at the possible cost of death”?<sup>24</sup>

The CSC response, however, forecloses any possibility of reading Smith’s death as an act of resistance or refusal of law’s sovereign power constituted in a scene of violence, domination, and death—the scene on which she takes her own life. Her death is only ever understood as a “tragedy,” although one that is viewed as if through the disembodied lens of the camera that recorded it, obscuring or blocking from view the larger scene at play. And while this alone reveals the anxiety that marks law’s use and application of violence, the report evidences a further disavowal of its own constitutive violence. The response from the CSC performs a sleight of hand in which, it is claimed, correctional facilities work to guarantee and enforce the citizenship rights of all who reside there *irrespective of the scene in which they find themselves*. That prisoners are citizens and enjoy the rights guaranteed to them should be trusted because, as the report contends, the CSC acts “to preserve life as the paramount consideration.”<sup>25</sup> And, yet, the acts carried out in the name of and toward the ends of “preserving life” render the subject unrecognizable, in advance, as the one who might claim citizenship rights, and to have that claim heard or recognized. These persons not only are removed from the scene in which such a claim could receive an audience and garner a hearing but also are constituted as biopolitical subjects, “massified” and anonymous, predictable and symptomatic—subjects who have no place or voice to claim citizenship rights before the law. It is in this sense that the carceral biocitizen finds herself caught between a scene of legal sovereignty and a biopolitical scene in which she has already been “allowed to die,” denying her the very conditions in which she might exercise her rights as a citizen.

This ruse appears most clearly in the CSC’s quibble with some of the language employed by the coroner’s jury around the issue of “solitary confinement.” Noting that the term “is not accurate or applicable within the Canadian federal correctional system,”<sup>26</sup> the report argues that the use of “administrative segregation” is “not intended to be a form of punishment. It is an interim population management measure resulting from a carefully considered decision made by the Institutional Head to facilitate an investigation or to protect the safety and security of individuals and/or the institution.”<sup>27</sup> The difference between “solitary confine-

ment” and “administrative segregation” here is one of intent, object, and effect. Whereas the former means to bring the force of the law to bear on an individual as a punitive measure for some behavior or action, the latter is a management decision about *populations* meant to prevent force or violence and to enable safety. This description of administrative segregation betrays that the quotidian scene in which the CSC operates is not framed by a sovereign power of law. Instead, it acts biopolitically, focused on securitizing decisions applied at the level of the “population”—both in and out of prison—and, moreover, for *the institution itself*. The CSC’s “management decisions” are designed and carried out in an effort to ensure that the institution is safeguarded over and against the population of prisoners, so that they might serve and protect them. The noble language of the CSC report contradicts actual practice. As the Standing Committee on Public Safety and National Security reported in 2010, “While administrative segregation is seen as an essential tool for crisis management, the Committee learned that CSC uses it too often to deal with offenders with mental health issues.”<sup>28</sup> So, while administrative segregation is commonly used, and while it can serve to exacerbate mental health issues (or indeed cause them), it is well documented that those locked inside often experience it as punitive.<sup>29</sup>

According to the CSC, the focus on the security of the institution or the population as a whole does nothing to diminish the rights of the individual who is segregated. In fact, the report once again appeals to the law as that which legitimizes, authorizes, and reconciles the violence of the actions taken by correctional facilities. The report states, “Legislation and policies provide procedural safeguards to ensure that administrative segregation is a fair and humane process that follows the Canadian Charter of Rights and Freedoms, particularly Section 7 (*Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice which focuses on procedural fairness*) and the duty to act fairly.”<sup>30</sup> Administrative segregation is thus merely a “procedural” issue that does not, according to the report, infringe on the substantive rights of the prisoner—the right to life being the most important of these. If we follow this logic, administrative segregation allows prisoners to maintain their rights, or to regain the right to life and security that might otherwise have been threatened. The only difference for prisoners,

apparently, is the place in which they might be able to lay claim to these rights. “Segregated inmates,” the report emphasizes, “are entitled to all the rights and privileges of other inmates within the physical limitations of the segregation unit.”<sup>31</sup> The logic here replicates itself: the location of the prisoner, her scene—both within the segregation unit and presumably within the prison itself—does nothing to compromise her ability to lay claim to her rights as a citizen. She is presumably free to act, and her acts are her own, they are just contained or performed against the background that the CSC provides, but for which it is not (entirely or causally) responsible.

This logic has paralyzing effects on the imprisoned subject who is ostensibly given full control over her actions, her body, and her rights within a place that defines and constitutes her, yet as one who is incapable of tendering such a claim in the first place. As a way of offering background to its argument about administrative segregation, the CSC characterizes women offenders by listing their shared characteristics: “low self-esteem, dependency, low levels of education and vocational achievement, parental death at an early age, frequent foster care placements, residential placement, and living on the street, participation in the sex trade, as well as suicide attempts and self-injurious behaviours.”<sup>32</sup> Women offenders are, by this definition, constitutively unable to secure and practice their citizenship rights in appropriate ways and are thus in need of the measures provided by prisons *in order to* gain access to the places in which they might act as full citizens. Incarcerated women, on the one hand, are caught between the sovereign scene of the law in which they are individual actors who can consent (or not) to mental health treatment, determine who has access to their health records, and take their own lives, while, on the other hand, they are captive to the biopolitical logics of the prison and are part of a population to be managed by interdisciplinary teams of specialists, assessed and evaluated through mental health protocols, and made to live out a social death in service of the institution’s established goals. The dizzying speed with which the CSC moves between these two positions reveals the precarious position of women inmates. They belong to the state, but their citizenship is an empty one, a biocitizenship that not only violates and effaces the biological body but also mortifies that body, figuring it as already dead, and therefore incapable of issuing a claim to rights.

## Conclusion: The Remains of Biocitizenship

The story of biocitizenship we tell here is not the story of biocitizenship that we have inherited from Petryna or Rose and Novas. For the latter, “biological citizenship” is a descriptive term meant “to encompass all those citizenship projects that have linked their conceptions of citizens to beliefs about the biological existence of human beings, as individuals, as families and lineages, as communities, as population and races, and as a species.”<sup>33</sup> Interested in the ways that we are engaged in “making up citizens” (from above and below), they claim that contemporary forms of biological citizenship, generated from the ways we engage with biomedical technologies and come to understand the responsibilities for our own health and our own genetic makeup, enable a form of collective action—they draw on Paul Rabinow’s idea of “biosociality”—that challenges the ways citizenship has long been tied to national identity. Biocitizenship in this understanding represents the possibility of new—assuredly neoliberalized—formations or discourses through which we might renegotiate our identities and forge alliances that become the foundation for forms of engaged citizenship. As Rose’s subsequent work makes clear, this is an affirmative, if not hopeful, biopolitical project.<sup>34</sup> Our argument about biocitizenship counters this hopeful politics that finds possibilities for collective decision making and new political formations within a biopolitical regime. For us, the deployment of biopolitical logics in carceral settings works to foreclose the possibility of collective action and an exercise of citizenship. In the prison, biopolitical logics contain, manage, and assess populations in the name of preserving life. But what life is being preserved? We might argue that it is, in fact, the life of the institution itself, the life of the state, that is constituted by biocitizenship. And that those who are “allowed to die”—perversely, in the name of life itself—threaten to remain, and to expose these logics.

Ashley Smith’s death—at once social and physical—reveals the remains of biocitizenship, remains that are no longer living in any biological sense but that haunt us—and the CSC—in their strange afterlife. She remains on the record as her remains are tied to the record. On September 24, 2007, a member of the Canadian Association of Elizabeth Fry Societies visited Ashley Smith while she was incarcerated. Smith

requested that a complaint be filed on her behalf. She wished to be taken out of segregation and placed in the hospital. As well, she claimed that the staff's denials of her requests for mattresses, blankets, pens, and hygiene materials were violations of her human rights as well as her charter rights. In a timeline of events summarizing Ashley Smith's life and death, a CBC website commenting on this meeting simply notes: "The complaint is not read until after her death."<sup>35</sup>

It is only in death that Smith becomes a person in the eyes of the law, a ghostly presence demanding a response, we might say, though the CSC's "response," as its title makes clear, is not to Smith but a "Response to the Coroner's Inquest Touching the Death of Ashley Smith." The ambivalence of this language mimes the ambivalence of the CSC—and indeed, of its other inmates who, like Smith, are caught between a sovereign *mise-en-scène* and the diffuse logics of biopolitics: Does the Coroner's Inquest "touch" the death of Ashley Smith, does the CSC report "touch" her death, and what would it mean to "touch" the death of someone who, herself, was touched in many ways, violently, inhumanely, but who was ultimately deemed untouchable—seen but untouched—as she lay dying? Smith's death and her ghostly afterlife demonstrate the precarity of those who live in between the law's sovereign gaze and the machinations of biopolitical logics enacted in and by the day-to-day procedures of correctional facilities. She demonstrates how having rights by virtue of belonging to the law does not guarantee the conditions in which one might lay claim to these rights. She illustrates how the prison disavows the way it "carries death" with it even as it disavows its own violence.

#### NOTES

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- 2 Howard Sapers, *A Preventable Death*, Office of the Correctional Investigator, Government of Canada, 11, last updated June 20, 2008, accessed March 15, 2016, [www.oci-bec.gc.ca](http://www.oci-bec.gc.ca).
- 3 Correctional Service Canada, "Coroner's Inquest Touching the Death of Ashley Smith," December 19, 2013, last updated May 21, 2014, accessed July 6, 2016, [www.csc-scc.gc.ca](http://www.csc-scc.gc.ca).
- 4 *Ibid.*
- 5 Michel Foucault, "Society Must Be Defended": *Lectures at the Collège de France, 1975–1976*, trans. David Macey (New York: Picador, 2003), 241.

- 6 See Lisa Guenther, *Solitary Confinement: Social Death and Its Afterlives* (Minneapolis: University of Minnesota Press, 2013). Also see Stuart J. Murray and Dave Holmes, "Seclusive Space: Crisis Confinement and Behavior Modification in Canadian Forensic Psychiatry Settings," in *Extreme Punishment: Comparative Studies in Detention, Incarceration and Solitary Confinement*, ed. Keramet Reiter and Alexa Koenig (New York: Palgrave Macmillan, 2015), 115–34.
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- 17 "Response to the Coroner's Inquest," n.p.
- 18 Robert M. Cover, "Violence and the Word," *Yale Law Journal*, no. 95 (1986): 1613.
- 19 *Ibid.*, 1608.
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- 21 *Ibid.*, 1611.
- 22 *Ibid.*, 1601.
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- 30 “Response to the Coroner’s Inquest,” n.p.
- 31 Ibid.
- 32 Ibid.
- 33 Rose and Novas, “Biological Citizenship,” 440.
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