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# Space-making 'after rights': carcerality, rights-claims, and the practice of freedom

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## ABSTRACT

The paper examines the capacity to act in counter-hegemonic human rights approaches. It concerns non-liberal subjectivities like the incarcerated person that are inconceivable in their action and are assumed to be lacking in autonomy. Counter-hegemonic human rights scholars have addressed the contributions of excluded subjectivities and decolonial struggles in shaping the emancipatory function of human rights. Their scholarship also alludes to the limitations in the conceptualisation of liberal autonomy that overlooks conditions of debilitation in the carceral state. Addressing such limitations, the paper suggests turning to 'after rights' as a reorientation in liberal human rights critique. 'After rights' concerns the proximity between rights-claims and the propagation of carcerality that tether the capacity to act. The paper situates its analysis in the anti-carceral tactics within the Boycott, Divestment, Sanctions (BDS) movement that channel international solidarity and revive a Palestinian peoplehood across borders. It assesses the potential and limitations of utilising human rights as a legal discourse and a language of freedom in the movement. The paper, finally, proposes deploying anti-carceral praxis in order to foreground anti-colonial action, like that of the BDS movement, in their space-making potential as practices of freedom that surpass the liberal conceptualisation of autonomy and freedom.

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## Introduction

The meek shall inherit the earth, it is said. This presents a very bleak image to those who live in occupied territory. – James Baldwin, 'A Report from Occupied Territory'

The paper examines the capacity to act in counterhegemonic human rights practices. Counter-hegemonic approaches, that is, alternative narrations of the origins to human rights through institutional and noninstitutional third world actors, have reimagined the function of human rights for excluded subjects.<sup>1</sup> Such approaches highlight anti-colonial and excluded subjectivities, as actors and active producers of human rights.<sup>2</sup> They allow for the remaking of human rights in order to disrupt the centrality of

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liberal and euro-centric human rights practises. The disruption is possible through contextualising the arena of struggle of unfreedom as one of recognition for excluded localities that are perceived as lacking sovereign agencies yet are still offering an 'active site'<sup>3</sup> – as Sumi Madhok puts it – for the reproduction of human rights.<sup>4</sup> While counter-hegemonic approaches have been instrumental to the revival of human rights as a freedom discourse, they have not addressed the constitutive role of human rights practices in the production of spaces of unfreedom in the carceral state.

The paper implicates the function of human rights as a legal discourse and a universal language of freedom. It analyses and illuminates the proximity between rights-claims and the production of carcerality, including colonial forms of carcerality, in order to access the basis of action in a settler-colonial setting. The proximity manifests in, first, the reproduction of the excluded subjectivity as unfree, inconceivable in action, and second, the transfiguration of anti-colonial action to upholding settler-colonial sovereign claims.

The paper situates its critique of the liberal conceptualisation of agency and freedom 'after rights'. In urging us to think of 'after rights' as a space of questioning the function of critique, the first section addresses the closures in liberalism in conceptualising the agencies of the excluded subjects. I treat 'after rights' as the reorientation of counter-hegemonic critiques to liberal human rights practices towards a generative approach to alternative practices on freedom. 'After rights' as a space of critique lets go of the commitment to reproducing human rights as a freedom discourse and surpasses the imaginative restrictions of liberal agency. Thinking 'after rights', I trace the capacity to act of the excluded subjects, while addressing debilitating conditions that hamper such capacity. The first section problematises processes of rights-claims that transfigure revolutionary action to autonomous recognition.

The paper moves away from the predisposition found in critiques of liberal human rights to contextualise the impact of human rights work in acquiring sovereign autonomy. To do so, the second section illuminates the ways in which the conception of liberal agency in human rights (and its critiques) fails to explicate the tethering affinities between rights and carcerality. It offers the framework of debilitation to illustrate the exclusionary conditions that channel anti-colonial action into paths incited by claims to sovereignty.

The third section unpacks the turn to the carceral state as a shift from juridical sovereign power to the governance of living. Here, carcerality refers to a constellation of knowledge, structures and systems of control that unearth debilitation.<sup>5</sup> The section unpacks the contradictions in the mobilisation of progressive rights-claims through the propagation of carceral relations.<sup>6</sup> Progressive rights-claims highlight the ways in which human rights law can be mobilised for social change, like in strategic litigation that aim for accountability through punishment and redress. The section showcases the role of progressive rights-claims in the global circulation of carcerality.

Against the global propagation of carceral violence, the fourth section situates the analysis in the Palestinian struggle through the Boycott, Divestment, Sanctions (BDS) movement. BDS tactics have been instrumental in operating in an anti-carceral, transnational space. At the same time, the movement negates the exceptionality of the Palestinian question in international legal work through forging connections between various anti-colonial and anti-imperialist struggles. I examine the effects of BDS beyond the prevalent NGO-isation of Palestinian struggles and trace its potential in adding to the 'after rights' project, as advancing a global space for anti-carceral practices.

The last section grounds the BDS movement in abolitionist praxis. It analyses the utilisation of human rights in the BDS movement, while attending to the inherent anti-carceral space that the call for BDS occupies.<sup>7</sup> The paper suggests the BDS movement offers a method of tracing the proximity between rights-claims and carceral spaces, while emphasising anti-carceral geographies that offer practices of freedom, like that of BDS. So even when BDS tactics adopt the language of rights and human rights advocacy that inherently tethers the capacity to act in a settler-colonial setting, their usage of rights exceeds the carceral grip and moves us to think ‘after rights’. Abolitionist praxis arises as a ‘conviction of liberation ... against an apparently inescapable incarceration’.<sup>8</sup>

### **‘After rights’, after critique**

This section maps ‘after rights’ as a reorientation of critique. First, the section takes ‘after rights’ as an invitation, post-critique, to advance counter-hegemonic critiques in order to understand the function of human rights in the reproduction of carcerality. ‘After rights’ offers a space of mobilising human rights beyond a state-centred approach, while letting go of the commitment to human rights as a political and legal project and decentring liberal human rights ideals. Second, this section examines the capacity to act in counter-hegemonic literature that recognise the contributions of anti-colonial movements to the reproduction of human rights. It engages with anti-imperial processes of rights-claims, like that of indigenous land claims. Third, the section questions the forms of visibility human rights offer the excluded, as the non-liberal subject through recognition. It suggests that the liberal agentic framework does not address the actuality of debilitation that appears as structurally irresolvable in rights-claims and within a settler-colonial setting, hence reproducing excluded subjectivities in the space of unfreedom.

The paper treats ‘after rights’ as a space of critique that allows us to let go of the commitment to advancing human rights, as a freedom discourse. Various critical human rights scholars have dealt with the question of what comes after critiquing the shortcomings of liberal human rights practices, reckoning the epistemological shifts that happen when the excluded subject interacts with human rights.<sup>9</sup> As Sokhi-Bulley suggests, ‘critique re-reads and re-considers the claims of a discourse, searching for what is authentic in it. Before uncovering the power relations within the discourses that regulate and govern us, critique re-asserts the importance of the said discourses. Critique is, therefore, far from negating’.<sup>10</sup> Critique is reorienting while contesting through offering modalities of thinking of what is left out. As a space of critique, ‘after rights’ moves beyond questioning the potential of rights-claims as an advocacy tool for recognition. It uncovers the failures of liberal agency in addressing debilitating conditions in the settler-colonial setting that restricts the capacity of its subject and impede the actualisation of their desires, relationships and sense of community.

The starting point of this article is the shortcomings of counter-hegemonic critiques of human rights practices in the settler-colonial setting. It analyses the modalities of recognition offered to the excluded subjectivities in human rights as a legal discourse and a language of freedom that can be strategically mobilised for emancipatory aims. Counter-hegemonic human rights scholarship concerns centring the agencies of the excluded in the reproduction of human rights and moving away from the centrality of euro-centric international institutions and elitist actors.<sup>11</sup> Thus, counter-hegemonic

practices reflect a multiplicity of actors in the use of human rights to challenge various forms of oppression, like social mobilisations in struggles for self-determination.<sup>12</sup> They offer visibility to marginalised voices that rewrite the history of human rights by way of affirming third world and decolonial contributions to the institutional and non-institutional reproduction of human rights. For that, counter-hegemonic scholarship is reluctant to jettison the idea of human rights as political tool and a universal language.<sup>13</sup> At the same time, such scholarship offers a suspicion to the extent in which human rights can tackle structural forms of marginalisation and oppression, specifically addressing how liberal human rights construct the agencies of the excluded.<sup>14</sup>

In tandem with the aim of counter-hegemonic practices in highlighting the experiences of the excluded, numerous scholars working on various settler-colonial settings have demonstrated the role of race and gender in informing the ways in which human rights law demarcates the everyday agencies of its subjects through global vectors of racial capitalism.<sup>15</sup> Racial capitalism addresses the logic of capital, risk and accumulation through forms of colonial and racial subjugation. Global vectors of racial capitalism – including that of material insecurity, surveillance, disposition and debt –<sup>16</sup> monetise the reproduction of exclusions, while the exercise of rights becomes a question of identity recognition in localised settings. The assumption is that recognition through rights is transformative as it legitimises the marginalised, non-liberal identity. For example, in analysing the reorientation of indigenous struggles from that of self-determination to land-claims in Canada, Coulthard argues that identity-claims concede actual self-determining powers as relationship to land is fixed to the settler-colonial identity.<sup>17</sup> The legal process in land-claims – like that of negotiations, agreements on reciprocal duties/obligations – integrates indigenous struggles in capitalist accumulation system that treat land as property.<sup>18</sup> During the legal process, land is understood as a material resource for exploitation, while indigenous territories are treated as uncultivated sites. While the role of the settler-colonial state is dispossessive materially, the process of rights-claims in this instance debilitates valuable relationships that constitute indigeneity beyond the liberal imaginary of landowners. Coulthard understands settler coloniality as a structure of captivity that negates the realisation of self-determination.<sup>19</sup> Settler coloniality arises as an ongoing negation of indigenous livelihood, irreducible to a historical event on land dispossession.

In its actuality, land dispossession in a settler-colony exceeds the problem of recognition/nonrecognition in rights-claims, as in a problem of legal status in which ‘identity and property relations become fused in the concept of status’.<sup>20</sup> Land dispossession affirms the identity of settler coloniality as ‘territorially acquisitive in perpetuity’.<sup>21</sup> Settler colonialism understood in perpetuity affirms the constitution of life through the naturalisation of racial and gender hierarchies and identification through such hierarchies.<sup>22</sup> The role of rights-claims is presumed to acknowledge and redress such hierarchies.

Yet, throughout the process of rights-claims, the excluded appears as an improper economic/social/legal subject in the exploitative labour order. The excluded lacks a global referent that offers a value of exchange; at the same time, exclusions become the defining conditions of their existence, like when their sovereign rights are purged through techniques of incarceration and expulsion. For that, US-based abolitionist thinkers have analysed the role of courts in the ‘prison-industrial complex’, which refers to

how various state and corporate infrastructures and capitalist relations drive mass incarceration.<sup>23</sup> In their examination, courts arise as main legitimators of practices of carcerality and reproduction of legal fictions, and at the same time, courts offer a 'potential for justice' through criminal prosecution, rights-claims and civil remedies.<sup>24</sup> While turning to courts and rights-claims in some instances arises as inevitable when tools for justice are limited, the act is not power shifting. While rights-claims are instrumental for acquiring recognition of injustice, rights-claims remain a political and economic commitment to the very foundations of injustice, as 'the methods of decolonization prefigure its aims'.<sup>25</sup> My utilisation of the term commitment aims to sign-post that there is a possibility of strategic use of rights-claims by marginalised groups without a commitment to human rights, as a freedom project. By commitment, I refer to a form of normative legibility that gives meaning to claiming rights through settler-colonial infrastructures. Rights-claims, as such, do not address the commitment to settler-coloniality but make it bearable, and hence entrench it further. Here, the function of right-claims is to deem the status-quo of exclusions unresolvable but bearable through iterations of identity-claims.

For that, in the settler-colonial setting, the liberal agentic framework – as a reflection of the capacity to claim rights – does not offer a diagnosis that addresses the realities of debilitation. For instance, the recent cases of expulsion in Sheikh Jarrah demonstrate how Palestinian population growth appears as a problem that is deferred to endless legal technicalities. Sheikh Jarrah is located in the northeast of Jerusalem's Old City with Palestinian residents who were displaced refugees from West Jerusalem, Jaffa and Haifa during the 1948 Israeli-Arab war.<sup>26</sup> After the ceasefire agreement in 1949 that demarcated a partition line Jordan and Israeli, Jordan took control of East Jerusalem till in 1967 when Israel annexed East Jerusalem. As Abu Hussein demonstrates through legal archives and interviews with residents, 28 Palestinian residents received housing under an agreement between Jordan and United Nations Relief and Works Agency in 1956 for an Urban Housing Project in Sheikh Jarrah.<sup>27</sup> Those houses were inherited through the families, who in order to acquire housing had to give up their refugee ration card and receiving relief from the Jordanian government and the UN.<sup>28</sup> But land titles were not legally given to those families even though under the agreement, full land and house ownership should be transferred.<sup>29</sup>

In 1982 and after the annexing of East Jerusalem, the Sephardic Community and the General Council of the Congregation of Israel brought various eviction proceedings against Palestinian families in Sheikh Jarrah and claiming ownership on religious and historical basis.<sup>30</sup> On a procedural agreement between the legal representatives that the Palestinian families would not challenge land ownership, the court recognised the families as 'protected tenants' under the Tenant Protection Law of 1972.<sup>31</sup> The residents were protected from eviction as long as they pay rent and do not breach the contractual obligations under a long-lease.<sup>32</sup> Abu Hussein argues that the case has set precedent in dealing with land rights that did not look at the issue of land ownership and rather reduces land claims to technical matters.<sup>33</sup> The families affected were not consulted on the procedural agreement by their representatives and in later eviction cases, Israeli courts refused to look at land ownership claims until 2009 but without concrete rulings on the question of ownership.<sup>34</sup> Unable to claim ownership over land, Palestinians are left in a continuous production of debilitation.



The eviction cases of Sheikh Jarrah could be analysed as a failure of domestic courts. But such analysis does not address the restrictions on imagination of relationalities and subject-formation that are contingent on settler-coloniality in the exclusionary framework of qualifying for victimhood. Settler-coloniality places Palestinians in a bind vis-à-vis rights claims where, on the one hand, land ownership is critical to Palestinian self-determination and being but, as it is also critical to sustaining Israel as a settler-state, is taken from Palestinians. On the other hand, the pathways to resisting settler-coloniality and asserting land ownership necessitates a kind of concession to settler-colony, its authority, and legal institutions in relation to rights-claims.

‘After rights’ reorients critique to the excluded subject that is inconceivable in their action in the settler-colonial setting – and even within liberal societies when their autonomy has been restricted, for example through legal mechanisms of confinement. The paper suggests that the inconceivability in action results from limitations in the liberal imaginary that cannot conceive of non-liberal subjects beyond their continuous debilitation. The coming section highlights the shortcoming of liberal agency and its conception of the non-liberal subject. It considers debilitation as the capacity to act in relation to socio-spatial and political relations.

### **Debilitation and the capacity to act**

In this section, I am concerned with how human rights shape the capacity to act in processes of rights-claims. My utilisation of debilitation addresses the non-liberal subjects that are inconceivable in their actions, like the incarcerated subject in a settler-colonial setting and the Palestinian resistant figure. In human rights practices, these subjects are only represented through their exclusions from the liberal agentic realm in a state of unfreedom. Debilitation considers conditions that affect the capacity to act which liberal agency takes for granted, like having basic infrastructures.<sup>35</sup> I offer socio-spatial exclusions as an example of debilitating conditions and link them to the operations of carcerality, in the next section. My aim in this section is to map the debilitations that makes Palestinian resistance inconceivable and contentious, like in the case of the Boycott, Divestment and Sanctions (BDS) movement, which I address below.

Debilitation – Puar tells us – reflects our capacity to act.<sup>36</sup> The measures of such capacity are the normative foundations of sovereign autonomy in order to reflect an ableist, heterosexual individual in a capitalist ecology. It cannot be reduced to the inability to work (i.e. sickness, distractions) in everyday life. It is a process of continuous exclusion that is not remediable through inclusivity measures that only serve as temporary remedies and, as a result, do not affect the conditions of debilitation.

Debilitation addresses the inadequacies of agency as a liberal concept in human rights.<sup>37</sup> In human rights, sovereign agency underlines the basis of individual autonomy. Sovereign agency dictates the will and the moral compass that brings the rights-bearing individual to life. Berlant writes that such sovereignty concerns the everydayness of the predictable, good life, in which the individual is perceived to be in control of.<sup>38</sup> The issue with sovereign agency is that it overemphasises the capacity of the individual, like in instances of claiming rights in moments of suffering. Such overemphasis abstracts the capacity to act, detaching the suffering body from the agentic subject. The overemphasis also decontextualises our capacity to act. So even when breached, sovereign agency



appears as always salvageable in moments of distress through rights-claims. Such control over one's capacity to act – which is merely performative as it is an enacted form of control rather than an actual reality – requires an abled body that is visible in their action in order to seek their rights.<sup>39</sup>

The liberal conception of agency liquidates the capacity to act towards a premeditated good life. The good life is only possible in a liberal society that secures the civil and political rights of its subjects and their capacity to be consumers in capitalist liberal democracies. The universal connotations of a good life in liberalism impedes desiring anything else.<sup>40</sup> The very desire for such rights acts to tether, restrict, and oppress practises that do not conform to the liberal ideals on autonomy and moral good. Such a good life is contingent on either conforming to normative relations or extending the function of rights to account for unrecognised identities in order to reconfigure them as liberal subjects. For both choices, the good life does not preclude suffering.<sup>41</sup> Kapur reminds us that suffering arises as an individual choice in the liberal realm. The liberal subject embodies an autonomous will that is responsible for their action, including those that cause suffering.

Contrary to the conception of liberal agency, debilitation accounts for conditions that wear out the excluded, non-liberal subject in this pursuit of the good life; conditions that resemble an 'incomplete death'.<sup>42</sup> For Fanon, the incomplete death articulates the psycho-affectivity of anti-colonial resistance in which the intensification of suffering is met with a great passivity in order to sustain oneself against colonisation. Documenting the refusal of medical treatment from colonial doctors and resorts to traditional medicine, Fanon observes the pejorative gaze that the colonised are always seen through so that every act of resistance is an irrational one.<sup>43</sup> Seen through the colonised psyche, the act of refusal addresses any bond to the coloniser. It is an act of distancing oneself from the realities of colonisation. The refusal becomes a sustenance of oneself but without being able to completely reject the realities of colonisation that manifest in the everyday social, economic, and administrative realm. Fanon's polemical observation maintains this incomplete death as the ongoing confrontation with the colonial world, even when the subject accepts the medical treatment.

The incomplete death advances a process of what Puar refers to as 'the right to maim',<sup>44</sup> and which is helpful to understand the limitations of an agentic module. In an incomplete death, the ontology of the colonised subject is not one that can claim rights to their resistance; it only reflects racial differences, and that in itself gives a 'right to maim'. The right to maim 'attempts to preemptively debilitate the resistant capacities' through the continuous destruction of social and welfare infrastructures.<sup>45</sup> Puar's right to maim traces the destruction of crucial infrastructures in order to maintain 'physical enclosure and virtual high-tech enclosure' that targets the capacity to act, while simultaneously encoding the outcome of resistance to reiterate the status quo. Unlike the liberal conceptualisation of agency, debilitation attends to such socio-spatial exclusions that impede action and foreclose the impact of resistance. These physical exclusions crystallise the turn to the carceral state in the realisation of the right to maim, as will be detailed in the next section.

Debilitation as such cannot be reduced to an agentless state. Rather, it showcases the conditions that transfigure resistance to sovereign relations. To that end, Nesiah demonstrates how the radical mobilisation of the right to self-determination falls short against global legal frameworks that tame struggles for liberation, specifically frameworks that are related to the war on terror and socio-political atmospheres of racial capitalism.<sup>46</sup>

An example of these contemporary global legal frameworks is the proliferation in counter-terrorism feminism that mobilise feminist critiques of the public/private divide in international legal doctrines in order to argue for greater state responsibility over the private sphere.<sup>47</sup> Such arguments aim to emphasise state responsibility over nonstate actors in all spheres and which become a potential terrorist threat; an argument that was mobilised to curb Palestinian resistance by Tal Becker, former legal advisor to Israel's permanent mission to the UN and current legal advisor of the Israeli Ministry of Foreign Affairs.<sup>48</sup> Such counter-terrorism arguments delegitimise anti-colonial action on a national level that are instantly deemed as threats to state security.

More importantly, the implications of counter-terrorism arguments manifest in legitimising forms of state captivity, like what Salamanca terms 'infrastructural violence'.<sup>49</sup> 'Infrastructural violence' addresses the hampering of the capacity to resist when the Israeli government turned Gaza's essential service buildings into 'terrorist infrastructures' and unspecified portions in the northern and eastern border became 'closed military zones' in 2005.<sup>50</sup> While resistance to such violence requires an act of negation of Israel's territorial control, such negation does not address Israel's spatial and temporal grip over Palestine that turns every act of resistance to a reactionary force. This spatial and temporal control, or what Rodriguez calls the 'condition of state captivity',<sup>51</sup> entraps the impact of resistance to the reproduction of relations in the status quo. Reactionary resistance becomes problematic when it cannot devise a path to freedom; when freedom derives its meaning from the reproduction of sovereign relations. At the same time, reactionary resistance is captured in naturalised racial difference as race gives meaning to belonging/unbelonging to the settler-colony.

The conception of debilitation addresses conditions that speak to settler-colonial settings, in which colonial carcerality operates beyond prison confinement and through spatio-temporal control, like the ongoing military siege over Gaza and military checkpoints. Such conditions of confinement isolate Palestinian communities, while constructing inescapable systems of incarceration and slow deaths, proclaiming the inconceivability of action.<sup>52</sup> As a diagnostic framework, debilitation attends to various forms of incarceration that an agentic framework tolerates in the turn to the carceral state, as I will detail.

The next section outlines the relationship between the reproduction of debilitation/value in rights-claims within the international and national sphere through the turn to the carceral state. Later on, I read forms of resistance – mainly that of BDS – as a redefinition of the boundaries between the legitimacy and illegitimacy of resistance in which its anti-carceral narrative actualises as a 'counter-world', borrowing from Odysseus.<sup>53</sup> This 'counter-world' is one in which nurturing the commitment to human rights is not an aim of mobilisation, but a figuration of freedom that is practiced against settler-colonial carcerality and the inconceivability of anti-colonial action. In doing so, I am breaking apart from the intellectual tendencies within human rights critique to inscribe the potential of counter-hegemonic practices in acquiring sovereign power.

### **The carceral grip 'after rights'**

This section showcases the proximity of human rights to the global reproduction of carcerality. It draws the link between debilitation, carcerality and sovereignty through the

turn to the carceral state. It defines carcerality beyond discourses on penalty and criminality, while affirming the role of the sovereign state. It maintains ‘after rights’ – as a space of critique – illuminates on the impossibility of decoupling rights-claims from the global flow of carcerality.

Debilitation and carcerality are interrelated concepts on the analysis of subjectivity and corporality. The most obvious forms of carcerality are state-sanctioned mechanisms through prisons and law enforcement. Critical reflections have pointed that carcerality is not exclusively present through penalty, while penalty as a term is sometimes used to signpost the culture of control that extends beyond prisons and states.<sup>54</sup> Carcerality unfolds ‘as a vehicle through which to understand ongoing socio-spatial and political relations’.<sup>55</sup> Carcerality, in its entrenched form, unearths forms of debilitation that reconfigures and repositions the capacity to act.

While carcerality extends beyond formal criminalisation, it captures the many ways in which the sovereign state is culpable for shaping and organising spaces of un-freedom. The link between sovereignty and carcerality foregrounds the rise of the ‘carceral state’. The ‘carceral state’ captures the punitive logic that impacts every aspect of living, marking the increase of mass incarceration and deportation, building on the Foucauldian disciplinary state.<sup>56</sup> Foucault notes the rise of biopower that shifts the sovereign administration of living from ‘the physical existence of a sovereign’ to ‘a closely meshed grid of material coercions’.<sup>57</sup> Biopower extends the sovereign juridical control as ‘the right to take life or let live’ in modernity. It captures the contemporary capacity to ‘foster life or disallow it’ in the disciplinary state, and precisely the capacity to sustain debilitation – as an almost-death, marked by continuous destitution and dispossession. The authority over life characterises the carceral state that is capable of defining and confining living. Unlike in the modern embodiment of the sovereign as one entity, the carceral state operates through financial and social investments that reproduce carceral logics through a multiplicity of actors and institutions, like detention centres and surveillance infrastructure. As Lamble suggests, such investments highlight profit-making enterprises that monetise debilitation, but they also reflect sovereign power.<sup>58</sup>

In the rise of the ‘carceral state’, human rights have facilitated the global turn to punitivity. Scholarship on global governance in international legal and human rights work usually focuses on the impact of global agendas, like the war on terror and mainstreaming gender.<sup>59</sup> The capacity to act and mobilise resources is bound to value that is predetermined by the urgencies created by these global agendas. Human rights in the Violence Against Women (VAW) agendas – as freedom projects and legal processes – act as a tool to preserve bodily autonomy and hold national states accountable for tackling gender-based violence. They also reconfigure resources for human rights activism to carceral mechanisms through responding to gender-based violence with strengthening state penal apparatus. Here, human rights work facilitates state accountability and redress through the propagation of carcerality.

For example, success stories of feminist activism on the international level – like the UN slogan ‘women’s rights are human rights’, the criminalisation of sexual violence in armed conflict, and the integration of feminist approaches in counter-terrorism agendas – have reinforced the role of national enforcement through mobilising state responsibility and state resources (i.e. through investigation, prosecution, and punishment) to combat sexual violence.<sup>60</sup> Significantly, Mimi E. Kim examines the reliance on carceral

systems that have limited feminist mobilisations to the reproduction of state relations.<sup>61</sup> Kim exposes the contradictions of what counts as 'progress' in feminist rights-claims work in order to 'remind us that radical movements are not immune to contested and puzzling pathways toward their intended liberatory ends'.<sup>62</sup> The contradictions manifest in how success stories of feminist mobilisations in international and national legal reform are inattentive to the role of state violence in interpersonal violence. Kim questions 'the machinery of carceral buildup'<sup>63</sup> in global feminist agendas that call for legal reform through criminalisation. Calls for criminalisation and incarceration (such as calls for special police and court units for sexual assaults, or strict criminal laws against gender violence) have transformed the resisting feminist subject into an agent of the state that 'cloaked white, middle-class-defined social movement priorities'.<sup>64</sup>

'After rights' as a space of critique allows us to trace how human rights work circulates resources, failing to condemn debilitating conditions and extreme carceral violence, and at the same time, legitimating a degree of 'normal' carceral violence. 'After rights' also offers a space of situating strategic utilisations of human rights outside the propagation of carcerality and beyond the liberal commitment to reproduce human rights as a freedom project. Examining human rights penalty, Tapia Tapia highlights the reduction of the 'embodied experiences' of the survivors to the procedural and penal processes that concern state obligations.<sup>65</sup> The criminalisation of VAW showcases epistemological and ontological commitments in global human rights advocacy that 'rationalise punitive power' while moralising it.<sup>66</sup> In Tapia Tapia's analysis, we are offered a nuanced understanding of feminist commitments in VAW agendas, in which feminists – who are aware of the role of state in perpetuating violence – have also turned to rights-claims, sometimes in an attempt to make the state itself respond internationally.

We can understand the multifaceted role of human rights in reproducing spaces of unfreedom and further debilitation when we attend to how human rights work is capable of recircuiting resources globally and through global legal agendas, like the VAW agendas that I mentioned above. Rights-claims happen within the search for the 'good life' or 'infinite prosperity', borrowing from Ruth Wilson Gilmore.<sup>67</sup> Within this 'infinite prosperity', global patterns in racial capitalism have altered the liberal progression to an accumulative one. Gilmore defines racial capitalism as simply 'turning objects and desires into money' through the extractive labour of those who are 'unfree'.<sup>68</sup> The accumulation here is not just material resources but also monopolising the capacity to debilitate. The problem for Gilmore is always about freedom and its 'contours and limits'.<sup>69</sup> Freedom concerns a spatial mapping of 'the resource of life-time'.<sup>70</sup> The unfree are those like the incarcerated, who are denied of freedom not as a legal status (equivocated to agency), but freedom as a practice of the life-time resource. Tracing the capacity to act becomes a priority in order to attest to the spaces that the debilitated subject occupies in the social world.

Against the expansion of carceral approaches, anti-carceral practices sustain collective relationalities that exceed the logic of state and its violence. In Palestine, anti-carceral practices defy colonial carcerality that fragments the Palestinian community geographically, socially, and politically. In the settler-colonial setting, carcerality – Nabulsi tell us – arises as inevitable.<sup>71</sup> Carcerality directly targets the 'conviction' of the incarcerated Palestinians and everyone around them in order to affirm the inconceivability of another reality than that of the settler-colony.<sup>72</sup> Nabulsi traces prison graffiti that were

drawn by incarcerated Palestinians in order to highlight the anti-colonial actions that already exist.<sup>73</sup> Such acts negate the inconceivability of anti-colonial action.

As I detail specifically through the calls for BDS, anti-carceral practices in Palestine advance the urgency for carving practices of freedom that directly address the materiality of settler-coloniality. For instance, Ghabin signposts the integral role of land in colonial carcerality.<sup>74</sup> As prisons serve as places for ‘surplus populations, the unemployed, houseless, “deviant”, “criminal”, “terrorist”’, Ghabin analyses the purpose of incarceration by attending to the alienation of the Palestinian population from their land and community.<sup>75</sup> In analysing prisoner resistance, Ghabin treats prisons as sites of mobilising ‘an ethos of collectivity’ for prisoners, their families and communities.<sup>76</sup> The escape of six political Palestinian prisoners from Gilboa prison offers an example of manoeuvring alienation and repairing debilitated social relations. Gilboa was constructed on occupied Palestinian territory in 2004, as a maximum-security prison.<sup>77</sup> For Ghabin, their escape is a ‘momentary lived future through the creation of new social relations’, highlighting community support that the six escapees have received.<sup>78</sup> The escape is not romanticised as a sense of permanent freedom. The escape speaks to the social fragmentation that requires mending through re-imagining relationships to land.

As I point in the next two sections, central to anti-carceral responses is an understanding of interlocking structures of violence that are fuelled by, as Kim summarises, ‘the multiple permutations of oppression that are ill-contained by the words available to us in the English language’.<sup>79</sup> Anti-carceral practices have advanced ‘community-based responses to violence, community accountability, and transformative justice’.<sup>80</sup> While anti-carceral approaches address the contradictory carceral relations in human rights work that dismiss the role of the state in perpetuating violence, such approaches are not reactive to carcerality. They speak to the alternatives of building relationships that surpass the carceral state. The use of rights language in anti-carceral practices offers another function to human rights that addresses the constant debilitations and entrenchment of carcerality. This will be further developed in the last section through detailing the tactical usage of the rights language in BDS. The next section offers a nuanced framing of the calls for Boycott, Divestment and Sanctions (BDS).

### **The NGOisation of the Palestinian struggle and the call for Boycott, Divestment, Sanctions (BDS)**

This section moves to the tactics of Boycott, Divestment, Sanctions (BDS) movement. It examines the function of BDS in mobilising recognition, as a call for solidarity, while surpassing institutional spaces to become a practice of freedom against the inconceivability of action in colonial carcerality. BDS practices include boycotting campaigns, mobilising various global platforms to take action, like the recent ‘Mobilize now for #UNGA77’ that calls for a UN-led investigation of Israeli apartheid. BDS resonates on a global scale and interacts with NGOs and human rights work. The section highlights BDS’s anti-carceral and anti-colonial commitments. It argues the BDS’s vision of Palestinian freedom exceeds the lexicon of rights-claims in the work of NGOs.

BDS is a Palestinian-led global movement that aims to uphold the fundamental rights of Palestinians. It consists of various actors, including civil society organisations, NGOs,

academics, and professional associations. In 2005, the call for BDS aimed for a critical labour of analysis and a call for direct action. The signatories of the 2005 Palestinian call for BDS reflect an amalgamation of resistance forces, including the Federation of Independent Trade Unions, Palestinian Federation of Women's Action Committees and Palestinian refugee organisations including those in diaspora.<sup>81</sup> These forces formed the Boycott National Committee. The call centred a unified call for action that builds a form of transnational solidarity. The call answers to the mentioned social mobilisations rather than legal advocacy in closed international institutional spaces.

The call for BDS has demystified the decolonisation process. The call was triggered by the urgency of opposing the Oslo Accords.<sup>82</sup> The Oslo agreement gave sovereign authority to Israel, while restricting the autonomy of Palestinians. The legal strategies of the Palestinian Liberation Organisation (PLO) – as the international recognised non-state actor – during Oslo negotiations fixated on obtaining international recognition for the liberation movement rather than national rights for Palestinians, as Erakat suggests.<sup>83</sup> Their strategies, albeit necessary for the time, impeded the revolutionary agency that the PLO stood for through its guerrilla warfare. As a product of the Oslo peace process, Palestinian juridical status became fragmented between the West Bank and Gaza Strip, while Israel's settlement expansion was legitimated.<sup>84</sup> The call for BDS diverted from the international solidarity prevalent at the time of the Oslo accord that constructed the peace process as a problem of self-determination. BDS challenged the fragmentation of Palestinian struggles for liberation in the Oslo accord and in international legal praxis. The call for BDS sustained Palestinian people as one entity by negating their divisibility.<sup>85</sup> The call communicated their interconnected struggles regardless of their various legal statuses – as refugees, migrants, as second-class Israeli citizens living in occupied territories – that Palestinians acquired as a result of racialised governance and forced expulsions.

Salma Musa (pseudonym) situates the BDS movement within the paradoxes of self-determination and third world internationalism.<sup>86</sup> The tactics that BDS utilises are not new. Tactics of boycotting British goods were prevalent during the Great Revolt, including an organised six-month general strike in the 1930s during the Mandate period, against British efforts that were preventing self-determination.<sup>87</sup> Musa's reclaiming of BDS strategies is necessary to understand the effects of the 1993 peace process that fragmented and disaggregated Palestinian mass mobilisations and individualised calls for BDS in the shape of non-profit efforts and professional activism schemes. An example of the centrality of decolonial strategies in BDS is Stop the Wall, a Palestinian organisation that adopted tactics of fighting the South African apartheid state and which has organised an ongoing military embargo through the BDS movement. The BDS movement built on South African anti-apartheid strategies to nurture a Third World consciousness.<sup>88</sup> Moreover, the academic boycott in 2011 of Ben Gurion University at University of Johannesburg has been a testament to transnational solidarity that was galvanised through the BDS call in 2005.<sup>89</sup> Musa's genealogy of the BDS within decolonial aims – which might defy the movement's own plural self-perceptions – challenges the NGO-ised strategies that prevail in BDS mobilisations. Musa makes us attentive to the potential in BDS in which Palestinian freedom is explored beyond a political agenda and without centralised leadership.

Currently the BDS National Committee self-proclaims as a 'legitimate human rights movement' and a 'Palestinian civil society-led global movement of citizens that



contributes to ending the systematic violation of fundamental human rights of the Palestinian people resulting from the Israeli regime of occupation, settler-colonialism and apartheid'.<sup>90</sup> BDS utilises the language of human rights to highlight systematic human rights violations within Israel, as a self-proclaimed democratic state. While BDS advocates for the Palestinian right to return, a demand that opposes a two-state solution once it is actualised, it does not advocate for either a one-state or a two-state solution.<sup>91</sup> The self-proclaimed image is wary of the failures of the international community and the United Nations in respecting Palestinian right-claims, emphasising that as a movement it is driven by a moral imperative considering the failures of international institutions.<sup>92</sup>

Acknowledging the function of human rights in reproducing debilitating conditions 'after rights' allows us to see how the call for BDS is usually reduced to being contentious and, as such, depoliticised and rendered devoid of its anti-colonial genealogy. In examining the mainstreaming of BDS, Erakat shows the ways in which the call for BDS in various NGOs' agendas are curtailed to symbolic acts of endorsement.<sup>93</sup> For example, CODEPINK, the women-led grassroots campaign for peace against US wars and militarism, incorporated BDS in its agenda in 2005.<sup>94</sup> Their 'Stolen Beauty' campaign has targeted *Ahava* cosmetics for sourcing its resources from the occupied territories in the West Bank. The campaign included flash mobs and calls to boycott *Ahava* products. The aim of the campaign was a discursive shift in the US-narrative on the Palestinian struggle through activism and a call for abiding by international law and human rights in occupied territories.<sup>95</sup> The campaign refrained from using the word 'apartheid' as a conscious decision from the members and instead used the words 'occupation' and 'conflict' to mark the power imbalances between Palestine and Israel.<sup>96</sup> That conscious choice by members of CODEPINK signifies the contentious space that BDS occupies in activism spaces.

Such reduction in the adoption of BDS exhibits the way in which the NGO-isation of Palestinian struggles has consumed collective resources and energies without an actual aim beyond momentary solidarity. Mainstreaming BDS through various NGOs is quite successful. It has built transnational links in a tangible manner and inserted BDS within global networks to expose the human rights violations and ongoing inequalities.<sup>97</sup> However, by not actualising material changes in the settler-colonial realities, mainstreaming BDS risks replacing its roots in the revolutionary and anti-colonial lineage with a flattened activism that fails properly to appreciate and articulate a judgement of the realities of the settler-colony. For that, Takriti argues against delinking the boycott calls from the actuality of settler-coloniality as such delinking 'poses the risk of privileging the tactical form over the substantive principles underlying it, not to mention the material realities it is meant to alter'.<sup>98</sup>

It becomes important to move away from the metrics of assessing the impact of the BDS movement as a 'contentious' call and ground BDS in broader anti-colonial tactics through anti-carceral praxis. In the next section, I suggest that BDS movement offers us a practice of freedom that elevate and galvanise relations outside of carcerality. I reorient BDS from an aim – like in the CODEPINK campaign – to a practice that builds relations outside sovereign and carceral power structures. The next section situates the BDS movement through the debilitating conditions that give rise to the call for BDS, attending to its space-making potential and moving beyond the contentious space that it occupies in human rights practices.



## Freedom as space-making

As suggested in the previous section, the NGOisation of BDS treats the call as reactionary or progressive; a framing that forecloses the potential in BDS and its global resonance. This section suggests the BDS movement and its utilisation of rights inherently exceed the carceral state. The section starts by noting a shift ‘after rights’ to freedom as a practice of space-making, while the strategic mobilisation of rights in BDS surpasses sovereign structures and carceral logics. The reorientation of critique ‘after rights’ offers space to the shifting function of rights when mobilised by the excluded. The BDS movement testifies to the non-liberal subject that embodies a capacity to resist to unsettle debilitating conditions. Tactics of the BDS movement distance the debilitated (yet resisting) subject from the settler-colonial reality and its carceral grip. The BDS tactics situate its subjects in an anti-colonial genealogy that resonates across various struggles, moving forward and beyond the carceral state and the desire for one by negating all forms of incarceration. The section argues the BDS movement offers an anti-carceral practice of freedom that the liberal common sense finds unthinkable.

In abolitionist praxis, freedom is a spatial opening that makes us attentive to collective action that speaks to a ‘justice for the living’.<sup>99</sup> Attending to the continuity of debilitation, abolitionist praxis exposes the dynamic connections between carcerality and the construction of freedom in liberal humanism. Punitive spaces like prisons abstract the subject. Prisons turn the subject into a captive body outside social relations, and as such, an exploitable body rather than one that has the capacity to act of their own behalf.<sup>100</sup> Freedom arises as an attribute to possess in the carceral state. It can be enjoyed, restricted or stripped away. Freedom stands for an agentic space, and is figured into the subject, defined as sovereign through *potestas* as ability to act. As mentioned before, the agentic space of rights-claims is predetermined in power topographies between the coloniser/colonised and broadly the North/South divide. Debilitation is inevitable as when rights-claims demarcate un/freedom.

In abolitionist praxis, freedom is a practice of space-making, one that is rooted in community-building. As Gilmore suggests, ‘[f]reedom is a place’, a dynamic one.<sup>101</sup> Freedom – as spatially processual – is not restricted to a stance (i.e. assertion of an autonomous subject). Rather, freedom cultivates practices of creating space to exist apart from constructed/restricted agencies. Freedom, as such, is not restricted to an attribute that can be granted to the subject. Here, we can trace a clear distinction between freedom in abolitionist thought and liberal emancipation. As Rinaldo Walcott puts it, ‘emancipation might be read as a pathway for and toward freedom, but it is not freedom’.<sup>102</sup> Emancipation is a question of legitimacy within legal categories, like that of the assertion of sovereignty. Colonial emancipation or formal decolonisation was (and still is) an ongoing consumption within the confines of legality and rights. The Palestinian struggle, along with other decolonial and indigenous struggles, unveils the illusion that Walcott is addressing. Emancipation through self-determination did not actualise the conditions for formerly colonised societies to practice freedom in actuality.

Configuring BDS as a practice of freedom foregrounds its strategies to change the material reality and the extractive nature of settler-coloniality. Erakat emphasises that the ‘tripartite strategy of boycott, divestment and sanctions is rooted in economic logic’.<sup>103</sup> The three strategies of BDS account for the link between the sovereign and

carceral grip in racial capitalist logics. First, the calls for divestment – like that against Caterpillar, Terex, Elbit Systems, AXA and ITT, companies that provide services and equipment to Israeli military – relate corporate complicity to social justice. Divestment marks collective actions from big investments that are directly linked to the demolition of Palestinian homes and expansion of settlements.<sup>104</sup> Second, boycotts address academic and cultural activities that reinforce the everyday debilitation of Palestinian agency and restrictions over their freedom of movement.<sup>105</sup> Third, the calls for economic and diplomatic sanctions address governments that normalise political and economic relations with Israel.<sup>106</sup> The tripartite tactic links corporate, government and consumer compliance in order to fight militarisation, build solidarity links between various civil societies, and channel connections against imperialist practices everywhere.

Within the tripartite tactic, the utilisation of the language of rights and human rights advocacy arise as strategic tactics for acquiring solidarity and building a platform. As Omar Barghouti argues, ‘the BDS movement has established and nourished bonds of mutual solidarity with movements defending the rights of refugees, immigrants, Black people, women, workers, Indigenous nations, LGBTQ + communities, and ethnic and religious minorities’.<sup>107</sup> Connecting the Palestinian struggle to other movements unsettles the exception discourse that characterises the question of Palestine in international legal and human rights practices. Such utilisation of the language of rights surpasses the commitment to the advancement of human rights as a freedom project.

Tactics of resistance when it comes to Palestinian struggles have been responsive to the realities of settler-colonial governance. Indeed, the BDS movement disrupts the ongoing erasures of colonial history and its continuities in practices of marginalisation in contemporary relations. For instance, the BDS movement notes the similarities between settler-colonial governance in Israel and apartheid South Africa.<sup>108</sup> The similarities manifest in the centrality of race and racism in sustaining systems of control and the capacity to debilitate. As such, contemporary practices of population-control are not necessarily new. There is a continuity to colonial violence and harm in contemporary world-relations that manifests in constant war-making, criminality, and an increase in incarceration rates. For example, Khalili examines the ways in which Palestine has served as a social laboratory for imperial techniques of population-control.<sup>109</sup> Khalili observes the transmission of counterinsurgency practices across colonies through the movement of knowledge on militarisation, policing and security training.<sup>110</sup> Contemporary policing practices build on colonial practices that were devised to quash anti-colonial mobilisations, like during the Algerian War and Great Revolt in Palestine. For instance, current Israeli emergency regulations devised techniques that were used by British Officials during the Mandate time in order to restrict movement, impose curfews and enforce administrative detentions without trials.<sup>111</sup> Khalili affirms that contemporary counterinsurgent practices can be treated as transnational doctrines of punitive control that turn civilians into ‘the central object of war making’.<sup>112</sup>

The contradictions in carceral relations create complexities in mobilising practices of freedom, like BDS, that are constantly overshadowed and delegitimised by the work of reform and rights-claims. The contradictions manifest in how carcerality mobilises anti-violence for progression, like in calls for prison reforms. For that, it is necessary to engage with abolitionist geographies that are ahead of current carceral commitments, while situating them in their insurgent histories. As Dylan Rodriguez reminds us,

abolitionist praxis is rooted in ‘*the historical present tense*’.<sup>113</sup> The *historical-present* contextualises abolitionist work in the vibrant discourse on anti-colonial mobilisations that complicate a reformist and progressive history.<sup>114</sup> At the same time, the *historical-present* situates abolition as ‘intervening in patriarchal and masculinist constructions of freedom/self-determination and obliterating liberal-optimistic paradigms of incrementalist, reformist social justice’.<sup>115</sup>

The futurity of ‘after rights’ takes a nonlinear form, as we consider how human rights transfigures revolutionary action, like in the NGOisation of BDS. Abolition praxis sustains ‘a speculative practice of immanent futurity for people who cannot presume an individual (or even collective) tomorrow in the long historical presence of gendered racist state violence structured in militarism, policing, occupation, and incarceration’.<sup>116</sup> Abolitionist work anticipates the futurity of carceral violence in the *historical-present*. ‘After rights’ develops an urgent reorientation of liberal human rights critiques and strategic mobilisations of human rights that uncover the debilitating conditions that anti-colonial mobilisations navigate while pinpointing anti-carceral practices of freedom, like that of BDS.

## Conclusion

The paper, in its analysis, highlighted the proximity between rights-claims and the reproduction of carcerality and amplified the intellectual urgency to imagine ‘after rights’. It analysed the capacity to act for the excluded, non-liberal subjectivities, like those incarcerated in a settler-colonial setting. It has initiated by questioning the function of counter-hegemonic engagements with the vernacularisation of human rights. Counter-hegemonic human rights practices have validated excluded geographies as sites of active engagement with human rights. Although these practices call for a re-commitment to the function of rights, they remain inattentive to the entrenchment of carcerality in its various forms, including colonial carcerality.

The paper utilised debilitation as a conceptual framing that addresses the capacity to act. While liberal autonomy demarcates and exhausts action through rights-claims, debilitation addresses the capacity to act in the global carceral turn in order to assess the role of human rights when it is utilised by the excluded subject. The paper treated the carceral state as systems of control that construct conditions of debilitation, where rights-claims facilitate the global reproduction of carcerality, while demarcating spaces of unfreedom. The congruent link between rights-claims and the growth of the carceral state manifests in channelling resources for strengthening punitive measures in order to uphold state accountability in global legal agendas, like that of VAW.

In configuring action ‘after rights’, the paper has engaged with the dynamic tactics of the BDS movement while acknowledging its mainstreaming in human rights practices. The analysis of the BDS movement foregrounded its anti-colonial genealogy whilst explicitly addressing the reductions resulting from adopting the call for BDS in human rights campaigns, which neglect the settler-colonial realities of Palestinian living. Moving BDS beyond a contentious space, the paper rather situated the BDS movement in abolitionist praxis, as a practice of freedom in order to highlight its organic anti-carceral tactics. The paper centred the impact of the BDS movement in its anti-colonial genealogy as the call

for BDS connects what appears as localised sites of debilitation and situates their connected sensibilities and world-making potential. At the same time, situating BDS in abolitionist praxis cultivates the ongoing assessment of the proximity between rights-claims and carcerality ‘after rights’. As a space of critique, ‘after rights’ extends an invitation to practices of freedom that are tethered, yet remain the potential in cultivating an anti-colonial consciousness.

## Notes

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17. Glen Sean Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition* (University Minnesota Press, 2014), 75–8.
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20. Ibid., 148.
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## Disclosure statement

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