Migration, Diasporas and Citizenship

MIGRATION POLICY AND PRACTICE

Interventions and Solutions

Edited by Harald Bauder and Christian Matheis

Migration, Diasporas and Citizenship

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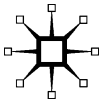

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Preface

Migration Policy and Practice has its origins in a paper session titled *Open Borders, Migration, and Labor Shadows: From Theorizing Causes to Proposing Interventions,* which we organized for the 2014 Annual Meeting of the Association of American Geographers in Tampa, FL. This session laid the foundation for the contents and focus of the book in two important ways. First, *Migration Policy and Practice* has been conceived as a conversation across disciplines. We, the session organizers and editors of this volume, have different disciplinary backgrounds in Geography and Philosophy. In our view, both Geography and Philosophy are well positioned to lead cross-disciplinary normative explorations in borders, migration and citizenship due to the way these two fields propagate questions of space, territory and place (Geography), and discern foundational biases in order to foster conceptual resources in the interest of practical wisdom (Philosophy). Second, we are drawing from different national experiences of migration. Correspondingly, this volume is not restricted to one particular national context. Rather, developing critical interventions and practical solutions requires looking beyond national particularities and, in some cases, the national scale.

Migration Policy and Practice benefits not only from different disciplinary backgrounds of the chapter contributors but also from their variable positions in the academic field. As editors, we exemplify these complementary positions. Christian Matheis is a recent PhD graduate in the Alliance for Social, Political, Ethical, and Cultural Thought (ASPECT) from Virginia Polytechnic Institute and State University. As an emerging scholar he is well in tune with novel research trends in ethical and political thought, policy currents and the generational challenges to established paradigms in critical scholarship. Conversely, Harald Bauder is an established scholar with considerable publishing experience who has acquired a substantial overview of the fields of migration, border and citizenship and the practical application of research in policymaking and activism through his past teaching, research and participation in interdisciplinary research teams. The original session participants all committed to contributing to this book. After the conference in Tampa, we invited additional chapter authors who could provide complementary disciplinary and regional perspectives.

We envision the primary audience of *Migration Policy and Practice* to include academics, researchers, advanced students, agents of administrative institutions and community-based activists with an interest in borders, migration, refugee issues, asylum, cross-border mobility and citizenship. The chapters are generally written in a language suitable for graduate and upper-level undergraduate teaching, making the book applicable to interdisciplinary courses; instructors may also use individual chapters as supplementary material in discipline-particular courses.

We have taken great lengths to gather contributions that will appeal to a wide audience of policy makers, practitioners, scholars, and activists. The collection will interest policymakers and practitioners who are working with "realist" or bureaucratic interests, and to those who will find the resources accessible as touchstones for reconsidering their roles as agents of change. Scholars with an interest in knowledge creation will find the empirical and theoretical dimensions of the book engaging. Activists and grassroots movement will be able to draw on the ideas presented in *Migration Policy and Practice* to inform their long-term and issue-based campaigns. While the empirical chapters focus on North America, Europe and Israel, we believe that the critical interventions and policy solutions as well as the theoretical discussion presented in the individual chapters can be applied by activists, researchers and policymakers in a variety of contexts and will therefore be of interest to a global audience. Taken as case examples of theory-driven interventions, the case studies and localized analyses given in each chapter offer templates for proposing similar interventions in other contexts.

We hope you, the reader, will find the following pages stimulating and useful in widening the current horizon of debate and policymaking related to one of the important issues of our time.

Harald Bauder
and
Christian Matheis
Toronto and Blacksburg,
January 2015

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Harald Bauder and Christian Matheis

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Introduction: Possibility, Feasibility and Mesolevel Interventions in Migration Policy and Practice

Christian Matheis and Harald Bauder

In early December 2014, six former "detainees" were transferred from a US detention facility in Guantanamo Bay, Cuba, to Uruguay following reclassification as "refugees" (Goldman 2014). After a decade of imprisonment in the US military detention facilities in Guantanamo Bay, Ahmed Adnan Ahjam, Ali Husein Shaaban, Abd al Hadi Omar Mahmoud Faraj, Abu Wa'el Dhiab, Mohammed Abdullah Tahamuttan and Abdul Bin Mohammed Bin Abess Ourgy obtained permission to reside in Uruguay. The reclassification and transfer out of detainment resulted from diplomatic negotiations held in secret, and received final approval from officials of the US Pentagon, the key authority in such matters at present. This status change from "detainees" to "refugees" and, now, to asylees in Uruguay took immense legal and political pressure. Specifically, the feasibility of the transfer arose from a confluence of factors: (1) from the actions of the organization Reprieve which provided ongoing legal and activist pressures on behalf of those detained; (2) a change in Uruguayan political climate following a crucial election, after which political figures acted to provide respite in extending refugee status; and (3) members of the Obama administration discredited false information originally used to justify the detention of the six individuals following the attacks on US soil in September 2001. Are societies such as Uruguay new role models in showing hospitality to refugees and immigrants?

Germany, too, has been portrayed as a leading receiving society. An article in *The Washington Post* dated July 27, 2014 bears the bold title, "The new land of opportunity for immigrants is Germany" (Faiola 2014). The article emphasizes that Germany now greets immigrants with welcome centers, educational access at low or no cost, vocational training, language

courses and other resources intended to ease resettlement. This represents a remarkable shift in attitudes toward migrants for a country whose leader, Helmut Kohl, not long ago said, "Germany is not an immigrant country" (Ibid.). As we learn by reading further, the same sentiment holds among many Germans who have never adequately accepted even the children of Turkish immigrants as fellow inhabitants, and who harbor deep feelings of resentment and xenophobia against waves of incoming refugees. We may have some good reason to consider Germany currently at the forefront of hospitable policies toward migrants and yet, as the article concedes, the deeply held xenophobia "…is one reason why experts say a relatively large number of immigrants who come here eventually go home." What explains the disparity between national governance and international policies that, in the eyes of the *Washington Post* journalist, paradoxically puts Germany at the forefront of newcomer integration in some ways while simultaneously leaving recent immigrants and refugees little or no choice but to flee?

For 12 years, federal agents in the United States prevented Maria Isabel De la Paz, a US citizen, from entering the country from Mexico (Greene 2014). Born in the United States to parents who entered without legal sanction, De la Paz's parents returned with her to Mexico when she was four years old. Carrying her Texan birth certificate, De la Paz tried to enter the United States at Brownsville, TX. Immigration agents acting on executive discretion, and without court proceedings, made the determination both times that her birth certificate had been faked and denied her entry. In early 2014 De la Paz tried again to cross the border without legal permission in order to visit her mother who now lives in Houston, TX. Only after her mother hired an immigration attorney did De la Paz obtain a passport from the US embassy in Mexico City. According to a 2014 report by the American Civil Liberties Union titled "American Exile: Rapid Deportations that Bypass the Courtroom" (ACLU 2014), immigration enforcement officers decided the outcome of 83 percent of removals and deportations at borders; these cases did not pass through judicial procedures by immigration courts. How can advocates intervene to address the increasing shift of immigration decisions away from judicial appeal toward executive, administrative actions by individual border enforcement agents? How might policymakers balance the discretionary authority of law enforcement officers with the right to appeal before a court of law?

These three examples and the questions they raise illustrate the kinds of problems with state-managed migration that administrative actions and activists can address. Some migrants spend years seeking fair access

to judicial processes, some find temporary hospitality in the form of institutional support only to then flee cultural exclusion and xenophobia and some have to prove their legitimate claims of citizenship to agencies that should, ostensibly, bear the burden of proof. State institutions will, for the foreseeable future, continue to wield forces of law, bureaucratic procedures and military might that intersect at the pivot points of migration policies and practices. The examples above also show how a confluence of different factors can join at a midpoint—between conventional practical politics and radical transformation, or what we define below as the "mesolevel"—to produce beneficial changes following periods of disenfranchisement. Similarly, drawing from various theoretical traditions, the chapters in this book, first, problematize real-world and conceptual facets of migration policies and practices and then, second, show the possibility of critical interventions and practical solutions on behalf of migrants.

Receiving societies are not always greeting migrants with open arms. In fact, receiving societies are often responding with measures that restrict migration and refugee flows, policies that criminalize migrants and refugees, and efforts that deny them equal rights, often through institutionalized practices of exclusion and discrimination. For instance, in 2012, refugees fleeing conflicts in Syria and the neighboring regions sought asylum in the European Union (EU) only to find most EU member nations quickly altering their asylum practices in defiance of previously stated commitments (UNCHR 2012). Three years later, little has changed and the UNCHR finds itself in the difficult position of both answering to receiving societies as political allies while also needing to criticize the state agencies that have placed such strict regulations on petitions for asylum, duration of temporary asylum and pathways to citizenship that the term "asylum" barely seems an accurate description of what now appears more like "temporary detention" leading to deportation (UNCHR 2014). The case of "Middle-Eastern" refugees in Europe is just one example of the lack of welcome migrants and refugees are receiving at their places of destination or refuge. Similar problems experienced by various groups of migrants are mounting in different regions of the word.

There are no easy solutions to such problems given the interests of dominant actors and entrenched political structures regulating migration. Even the accuracy of data and the portrayal of human migrations are highly contested issues. Contemporary studies in migration, settlement, refugees, diaspora and human trafficking have raised serious concerns about the reliability of theoretical and analytical models that claim to accurately portray human population movements. To which

organizations, methodologies and fields of research can twenty-first-century policymakers and activists turn in order to find minimally dependable explanations of global human migration? Questions about migration range from the phenomenology of identity, "who is a refugee?," to discourse analyses, "how does the rhetoric of 'refugees' reify or challenge systems of power and hegemony," to seemingly simple questions such as "how many persons live in precarity, seeking refuge?" Different explanatory projects contradict one another to such an extent as to raise suspicions about the potential for either a great deal of discrepancy and political gerrymandering of available data, or a troubling lack of reliable data from which to develop explanatory models (Fernandes and Zinn 2011). Even rigorously substantiated explanatory projects can wind up coopted and politicized by those who seek to weaken legislative and judicial powers by transferring greater measures of executive authority to border patrol agencies, military officials and private (nongovernmental) interests.

Theorists involved in the study of contemporary migration owe great debt to prior generations of scholars who engaged in public debate to influence national and international politics, and several fields of research set the context for understanding many of the problems this book addresses. The liberal nation-state template that arose out of the fall of traditional monarchies during the modern period in northern and western Europe has since its origins faced scrutiny—even granting the allegedly emancipatory benefits that liberal nation-states afford in comparison with autarchic rule by monarchal dynasties (e.g., claim to privacy as noninterference in individual liberties, rights to appeal through judiciary proceedings, property ownership, etc.). Indeed, critical questions about modern citizenship, nation and requisite loyalty to a bordered state appear prefigured as early as Jean-Jacques Rousseau's 1755 *Discourse on the Origin and Basis of Inequality* (2007) wherein he reminds readers that "forcing the imaginary barriers that separate people from people" has resulted in a particularly horrific outcome:

> The worthiest men [sic] learned to consider the cutting of the throats of their fellows as a duty; at length men began to butcher each other by thousands without knowing for what; and more murders were committed in a single action, and more horrible disorders at the taking of a single town, than had been committed in the state of nature during ages together upon the whole face of the earth. Such are the first effects we may conceive to have arisen from the division of mankind into different societies. (Rousseau 2007, 78–79)

At least since Marx's "Theses on Feuerbach" (1978) do scholars realize the value of their research to unveil the structures of oppression as a tool assisting radical activists and grassroots organizers in the struggle for liberation. In the twentieth century, figures, such as Jane Addams, Noam Chomsky, John Dewey, Simone de Beauvoir, Edward Said, Jean-Paul Sartre, Frantz Fanon and Catharine MacKinnon, to name but a few, developed rigorous academic material while actively debating government policies and industry activities. Little forestalled their work to propose practical interventions even while continuing to advance theoretical investigations of social problems.

Various disciplines of academic research provide outstanding scholarship that has exposed many of the material circumstances, power inequalities and social inequities related to borders, human mobility and citizenship. These researchers are working at the intersections of critical theory, poststructuralism, deconstructionism, postcolonial, decolonial and liberation theories to vastly expand the kinds of questions and strategies open to consideration. Along these lines, Liisa H. Malkki (1995) shows confluences and contradictions between migrant narratives and sociological data about migrants, and Mimi Thi Nguyen (2012) illustrates the conundrums refugees face in choosing whether to live out unending performances of gratitude as emigrants to neoliberal states, or to remain in the caustic and life-threatening need to seek refuge that, in most cases, neoliberal states cause in the first place. Highly innovative recent works in Foucault-inspired critical border and migration studies have added to the list of scholarship aiming at social transformation (e.g., Parker et al. 2009; Walters 2006). Other researchers affiliated with academic, governmental, nonprofit and for-profit organizations have given further extensive accounts of the social practices, political processes and material causes associated with migration. The explanatory power of any scholarship, however, faces inherent limitations and, as with all theory-driven research, continues in earnest to elucidate previously unacknowledged and misunderstood facets of migration and belonging.

Perhaps because of these limitations, the remarkable recent advancements made by scholars have rarely translated into action at the policy level or into corresponding shifts in public debate and practice. Rather, public policy and practices seem to increasingly criminalize migrants, public debate continues to vilify refugees and the ideas of ethnicity and "race" remain entrenched in the imagination of national communities and citizenship. This book complements explanatory scholarship related to migration and then extends this scholarship to place normative interventions and solutions to particular problems related to migration and

belonging at the forefront of concern. It asks: what kinds of interventions in policies and practice could alleviate problems that rigorous migration scholarship has identified? We believe that this question can be answered at the "mesolevel" of migration policy and practice.

The mesolevel

The particular focus of this book is on "mesolevel" solutions and interventions in migration policy and practice. These mesolevel solutions and interventions bridge gaps between microlevel business-as-usual political tactics and pork-barrel politics, and the macrolevel radical reimagination and revolutionary transformation of borders, migration and citizenship. Etymologically, the term "meso" has been most widely used as the prefix to modify scientific terms familiar to chemistry, biology and anatomy (Dictionary 2014). More generally, "meso" shares semantic affinity with a cluster of concepts, including "meta" (transformation, change, etc.), "pro" (biased for, intended for, favoring, etc.) and "proto" (earliest form of, earlier stage, potential, etc.). In recent sociological studies of migration, the term "mesolevel" designates data, issues and analyses overlooked or obfuscated when researchers conceptualize too rigidly in terms of "micro-level," such as individual rational-choice theories, and "macrolevel," such as population studies and theories of migration economics (Martiniello and Rath 2010). As Thomas Faist explains in the context of social capital, "The primary question concerning the mesolevel is how social capital is created, accumulated and mobilised by collectives and networks, given certain macro-conditions" (Faist 2010, 73). In this case, macro- and microsociological processes intersect at the mesolevel. Our use of "meso" differs from this sociological definition and places emphasis on historical circumstances and present conditions to propose changes at the intermediate level of possibility and feasibility.

Critical scholarship has much to offer for transformation in migration policymaking and practice in government and civic society at this mesolevel. As developments in theory continue in perpetuity, the urgency of problems related to migration calls for concrete action informed by scholarly rigor and theoretical nuance. In particular, we believe that the contemporary efforts to diagnose and theorize conflicts related to borders, migration and citizenship require translation into interventions and solutions that reach beyond the restricted range of policy options that are conventionally presented as "realistic," but that do not challenge existing political circumstances to such a degree that they can easily be dismissed as "utopian." Correspondingly, the authors of the chapters in

this book maintain strong regard for the urgency facing tens of millions of people today and seek to bridge the gap between radical transformations in the notions of border, migration and citizenship, and immediate and ad hoc policy maneuvers.

Although mesolevel interventions and solutions may not count as *revolutionary transformations*, such as dismantling contemporary neoliberal state borders, they are *transformative*. Intervention in the form of changing the principles according to which states grant asylum and expand rights to migrants, how states extend citizenship to residents or the ways in which localities respond to migrants needs matter substantially in the lives of migrants and refugees. Thus, while being appreciative of the necessity both for strategic maneuvering of everyday activism and politics, and for radical and utopian visions, the contributors to *Migration Policies and Practices* engage different disciplinary perspectives, draw on a range of theoretical frameworks and explore variable empirical contexts to translate critical scholarship into pragmatic ideas that offer fresh thinking for shaping policy and public debate at the mesolevel.

Theorizing the "possible" and the "feasible"

Migrants and refugees tend to pursue a better future for themselves and their families; they tend to be driven by the possibility that conditions are better elsewhere and that these conditions are feasible to obtain. Thus, the "possible" and "feasible" are inherently important concepts for the study of human mobility. These concepts apply not only to migrants' and refugees' expectations, but also to the circumstances under which migrations occur and the conditions that migrants and refugees encounter when they arrive at a destination. Migrations occur for various reasons of crisis, and also to pursue new opportunities. Sometimes groups of migrants traveling together do not share the same reasons for seeking to relocate even though they wind up sharing parts of their journeys (Kumin 2014). Although migration, refuge and settlement may occur in certain ways, they do not necessarily have to happen in these ways. Rather, there are other possibilities of organizing human mobility and of receiving migrants and refugees at their destinations.

Social scientists and philosophers have long theorized the "possible" as a particular modality of thought and theory (Baldwin 2002; Hume 2002; Normore 1991). This scholarship has not conceived the "possible" as something that is static or one dimensional but rather as ranging from the immediately feasible to the hypothetical to the utopian. The concept of the possible can be envisaged in different ways (Bloch 1959, 258–288).

For example, the statement "it could rain today" describes a condition that *could* occur but where the material circumstances are insufficiently known to assess whether this condition actually will happen. In the migration context, the statement "millions of illegalized migrants in the US could receive a pathway to citizenship" is a possibility depending on the political outcome of immigration reform. Or, in the European context, the statement "the number of deaths among migrants trying to cross the Mediterranean Sea could be severely reduced" is a possibility depending on European efforts to rescue migrants and refugees at high sea and to provide them with regular migration channels. For these possibilities to occur merely requires the political decision to apply policy tools that are already available. The everyday politics revolving around decisions of whether or not to achieve possible outcomes by applying an existing tool is important to study but this is not the main concern of this book.

The "possible" can also describe a condition that exists under circumstances that are radically different from the circumstances existing in the here and now. This possibility may be impossible to conceive using today's concepts, knowledge and ontologies. We would associate, for example, the no-border project with this type of possibility (Bauder 2014). This project pursues the possibility of liberating migrants from oppressive border policies and politics by rejecting the territorial state and nationhood as the very origin of these policies and politics (Anderson et al. 2009; Sharma 2003). It is difficult, however, to imagine from the present—a time in which nations and borders are firmly enshrined in almost every aspect of our lives—what a no-border world would look like in concrete terms. This far-away, utopian possibility is also not the primary concern of this book.

The "possible" can also be associated with the capacity to bring about change under circumstances that are conceivable under today's political and material conditions. For example, assuming that territorial nation-states remain the fundamental organizing principle of the global political order, and that political borders will endure as a concept framing migration and as a material reality structuring the flow of migrants and refugees, one can contemplate how novel policies and practices—such as open borders—can provide concrete solutions to the injustices experienced by migrants (Bauder 2014). *Migration Policy and Practice*'s primary concern rests with such mesolevel practical solutions and critical interventions—between everyday politics and intangible utopias.

Thinking in terms of possibility may also perpetuate general assumptions about resources and opportunities migrants do not and likely will not have available to choose. Posing a contrast to predominant philosophical

investigations of possibility, Enrique Dussel (1985, §4.3.7.5; 2008, §8.3) argues that to understand those living in dire conditions requires scholars, activists and policymakers to think in terms of "feasibility." Doing so, we must consider that possibilities are also constrained by immediate circumstances or that they are entirely infeasible given the real-world conditions people face. That which counts as "possible" for migrants in general may not be "feasible" for a migrant in particular circumstances.

What counts for migrants as feasible given particular circumstances? In some cases, migrants may obtain a share of *formal* institutional resources (e.g., asylum, temporary protection) and recognition (e.g., citizenship status, verified status as a refugee). Yet, without practical resources (e.g., money, employment, education, medical care, etc.) migrants have limited feasible options to make use of formal institutional resources and recognition. A migrant may hold formal status as a citizen and, therefore, lay claim to the possibilities that citizenship can offer in a given society—and yet she may possess little or no feasible means of actualizing the possibilities of formal citizenship. Different populations in migration have access to widely disparate sets of resources (e.g., social capital, money, citizenship, education, gender or sexual orientation, etc.).

An individual's or group's feasibility to pursue and achieve possibilities, therefore, differs from the possibilities that theorists can assume or propose. Likewise, policymakers cannot always hold to allegedly universal standards of possibility when considering the physical, emotional, cognitive and material resources available to someone seeking asylum after flight from genocide. The constraints on theorizing from the perspective of feasibility pose implications for how to intervene given material resources (materiality) that meet basic needs, institutions of legitimacy (formality) that stem from mutually accepted consensus, and also for *de jure* administrative policies and practices.

We suggest that possibility and feasibility do not mutually exclude but, in fact, complement each other. As the chapters in this book illustrate, critical border, migration and citizenship scholarship can pursue the complimentary aims of seeking immediate alleviation of the suffering, cruelties and injustices that are recognized as such by the prevailing juridical systems, political establishments, individual empathy or among the general public; suggesting mesolevel interventions and solutions that push the envelope of possibilities and feasibilities under existing material and political conditions; and of pursuing the distant goal of human liberation.

In assuming the middle ground, the aim of this collection of essays is to prompt scholars to develop novel mesolevel interventions and

solutions that draw attention to the possible and the feasible, and thus take scholarship into a direction that is currently neglected. In addition, we seek to encourage activists and practitioners to incorporate mesolevel interventions and solutions in their campaigns and platforms, and we challenge policymakers to widen their horizons to include more far-reaching possible and feasible solutions to existing problems. We do not claim to have solutions for all problems, but rather aim to make a modest contribution toward opening up the discursive and political space between everyday politics and principled positions impractical for concrete policies.

Why now?

More people are now on the move and migration flows are more diverse than in any previously recorded era—with many migrants leading transnational lives, migration assuming increasingly temporary character and families being split and scattered across continents. These developments have been triggered by a range of factors, including transportation improvements that have made travel cheaper and faster, advances in communication technology that provide information about prospective destinations, the disintegration of the Soviet Bloc and the associated lifting of travel restrictions and political reorganization of parts of the world, as well as newly waged wars, global economic consolidation and growing international political interdependencies (e.g., Castles and Miller 2009; Samers 2010). With these changes there is an increasing range of policies and practices for border, migration and citizenship scholars to critique. Moreover, these scholars have identified a growing list of problems and contradictions with respect to international borders, human migration and belonging in territorial political communities.

Due to contemporary developments toward restricting human migration, enhancing surveillance technologies and excluding non-national populations, there is a pressing historical and political need for mesolevel interventions and solutions. For many critics of contemporary migration practices, a rigid and increasingly entrenched network of factors looms on the horizon, including but not limited to the following concerns:

- Increasingly arbitrary reconfiguration of criteria and procedures required for obtaining citizenship.
- Increasingly polarized loyalties to either neoliberal or antiliberal ideologies and economic practices, including global concentration and consolidation of mass wealth under the control of an increasingly small minority of individuals and consortiums.

- Proliferation of military technologies and armed personnel as a means to secure territorial claims, and the growth of private military corporations hired as contractors by state agencies, and deployed to operate outside the regulatory powers governments use in constraining and adjudicating regular military operations.
- Persistent xenophobia and racial profiling of migrants resulting in cultural hegemony and targeting through legal and police actions.
- Urgent and gradual migration resulting from radical environmental degradation as a byproduct of the resource consumption required to sustain the items above.

The chapters in this book will relate to many of these developments. Moreover, in light of the apparent impasse of solving the problems associated with these developments, the chapters exemplify how rigorous empirical and careful theoretical analyses can offer fresh visions of mesolevel interventions and solutions.

We believe that offering examples of mesolevel interventions and solutions is especially important in a time when debate over fundamentally diverging models of social organization—including anarchism, capitalism, communism, socialism, etc.—has given way to a dominantly neoliberal logic in policy circles around the globe. Thinking outside of this neoliberal "box" while still offering meso-interventions and solutions has become rare. Yet, these interventions and solutions are important to inspire decision makers, shape public debate and spur further work in the area of migration, borders and citizenship studies that can translate into forward-thinking policies and practices.

The existing literature has provided a sound foundation for such an endeavor. Social scientists have recently situated "mobility" at the center of theorizing contemporary society and social life (e.g., Cresswell 2006; Urry 2006). The study of human mobility thus resonates strongly with key scholarly trends in the social sciences. The particular field of human mobility encompasses an enormous scholarly terrain. For example, various disciplines draw on diverse sets of theories to examine issues related to migration, borders and citizenship (e.g., Brettell and Hollifield 2000); even with a single discipline, such as geography, there are complex approaches toward mobility and bordering practices as they relate to concepts of territory, space and place (e.g., van Houtum et al. 2005; Samers 2010). Philosophy and social theory, writ large, continue to wrestle with questions of national solidarity, cosmopolitanism, identity recognition and a gamut of concerns about human freedom and individual agency in tension with collective responsibilities (e.g., Appiah 2007; Blake 2013; Lister 2013; Manning and Agard-Jones 2008; Miller 2000).

Of course, critical scholarship with transformative aspirations already plays an important role in migration, borders, and citizenship studies. For example, a recent edited volume by Martin Geiger and Antoine Pécoud's (2012) focuses on international migration management, policy-making, and inter-government coordination. While we try to build on such outstanding existing work, we are also trying to expand the quest for critical interventions and practical solutions beyond the management of international migration towards interventions and solutions that target other contexts and scales of belonging. Another example of excellent critical scholarship is a recent collection edited by Jenna Loyd, Matt Michelson and Andrew Burridge (2012), which aims to develop the "analytic ability" (p. 3) to understand how institutions interconnect to produce oppressive regimes and violent policing and incarceration practices targeting people who can be identified as migrants. We full heartedly agree that these analytic abilities are important preconditions for developing the capacity to abolish oppressive policies and practices, and we are very sympathetic with the goal to transform existing social relations through developing analytical tools exposing the inner workings of oppression. Such analytical tools are crucial for revolutionary transformation evoking radical possibilities beyond today's concepts, knowledges and ontologies. In this book, however, we are also seeking to push the envelope in advancing mesolevel interventions and solutions building on these analytic abilities. Critical scholarship can also produce tools that are more tangible and applicable at the mesolevel—which is the aim of this book.

Migration Policy and Practice thus builds on a long tradition of critical scholarship that has the noble goal of a fundamental reorganization of society but that has, in our opinion, neglected to offer mesolevel interventions and concrete policy solutions. At the same time, it also connects with grassroots advocates and political actors who seek to immediately improve the situation of migrants but who—given the overwhelming magnitude of this task—often lack the time, energy and resources to focus their efforts beyond immediate relief. Critical scholarship must therefore step up to the plate and provide important mesolevel practical and conceptual tools to engage the contemporary developments related to migration, borders and citizenship in variable contexts and situations, and at various geographical scales.

Organization of the book

Each chapter in this book is grounded in a specific thematic literature, and is written from a disciplinary perspective that frames causes and problems

in distinct ways. The chapters derive their mesolevel interventions and solutions based on rigorous empirical and comprehensive theoretical analyses and draw on a range of different resources and strategies. The chapters further contextualize the relationship between the underlying conditions that cause particular problems and the corresponding interventions and solutions. For example, different chapters cover empirical contexts in Canada, the United States, the Schengen Area and Israel, develop general arguments related to diverse policies such as citizenship, refugees or the treatment of particular ethnic groups, and make concrete suggestions toward transformative policies and practices at international, national, local and urban scales. Furthermore, the authors' viewpoints are informed by their situations as established and emerging researchers and activist-scholars. In correspondence with the overarching theme of the book, each chapter assumes that some of the underlying material and political configurations and dominant political and social practices continue to exist, but also asserts the need to push conceptual boundaries so as to imagine and subsequently instigate progressive change.

We refrained from organizing the text into sections because each chapter is unique in the way it contextualizes particular problems and develops tool to address these problems. Nevertheless, the sequence of chapters follows a particular rationale: it takes the reader on a journey that begins with philosophical and practical arguments for concrete policy change focused at national and supra-national scales, is followed by discussions involving the urban scale and the politics of place, and ends with analyses that are grounded in particular geographical contexts.

The first set of chapters address the national and supra-national scales. In chapter 1, Christian Matheis critiques the use of status determination criteria used by state immigration institutions, arguing that such criteria serve as politically expedient but not respectful of the moral status of persons. In response, he argues for a set of moral criteria that can regulate the way immigration agencies treat those seeking asylum. José Jorge Mendoza, in chapter 2, challenges the use of the "social trust argument" that often appears as a justification for strong immigration restrictions and enforcement-first strategies. He calls for immigration practices guided by a model that not only protects immigrant rights, but also advances the integrity of political communities in ways the social trust model cannot achieve via conventional immigration enforcement practices. Bernd Kasparek's analysis of the Dublin System in chapter 3 reveals the growing problems with strategies of data management and processing of asylum applications that ultimately results in certain populations being denied refuge. Such populations have little choice, he explains, but to maintain

perpetual mobility, relocating over and over again amid ongoing exclusion from full citizenship. As he explains, the system does not manage asylum but, rather, functions to sustain particular models of state governance. In place of this system, Kasparek calls for giving migrants access to rights in a way that does not require conventional state citizenship.

Chapters 4, 5, and 6 focus on the urban scale and the politics of place. In chapter 4, Harald Bauder delineates between citizenship as territorial claim based on birth and residence. As an alternative to the immobility presumed by territorial claims, Bauder shows the benefits of domicile citizenship not only for populations in migration but for generalized claims of citizenship in ways that mitigate exclusions, criminalization and exploitation of immigrants. In chapter 5, recent sanctuary movements intended to shelter immigrants without legal status come under scrutiny. In this chapter, Serin D. Houston and Olivia Lawrence-Weilmann show how the rhetoric of model migrant ultimately consigns immigrants to the role of exploited laborers in the service of a neoliberal paradigm. We learn in chapter 6 about the ways that migrants provide unique and crucial perspectives on place making and, as John Hultgren explains, a migratory conception of place can help to formulate environmental and immigration policies that concurrently advance socioecological justice.

The final two chapters offer insights into particular geographical contexts. In chapter 7, Eli C. S. Jamison applies political sociology to reveal how the state of Alabama supersedes federal immigration policy and, in effect, requires undocumented migrants to live as internally displaced persons. This practice stemming from a conglomeration of racialized prejudices and state's rights ideologies violates international human rights laws and, as Jamison argues, shows the need for federal-level interventions when historical racial discrimination determines the way local governments address immigration. Finally, in chapter 8, Holly Jordan traces variations in the way the Israeli state has historically granted citizenship on the bases of religious affiliation, and yet at the same time uses medical practices as a way to segregate migrants with certain phenotypes and immutable characteristics differently from the dominant population. Her work provides a diagnostic resource for identifying and then challenging racialized biases that state immigration agencies conceal in medical practices associated with migration.

References

ACLU. 2014. *American Exile: Rapid Deportations that Bypass the Courtroom—Report*. New York.

Anderson, Bridget, Nandita Sharma and Cynthia Wright. 2009. "Why No Borders?" *Refuge* 26(2): 5–18.

Appiah, Anthony. 2007. *Cosmopolitanism: Ethics in a World of Strangers*. New York; London: W. W. Norton.

Baldwin, Thomas. 2002. "Kantian Modality." *Supplement to the Proceedings of the Aristotelian Society* 76(1): 1–24.

Bauder, Harald. 2014. "The Possibilities of Open and No Borders." *Social Justice* 39(4): 76–96.

Blake, Michael. 2013. "Immigration, Jurisdiction, and Exclusion." *Philosophy & Public Affairs* 41 (2):103–130. doi: 10.1111/papa.12012.

Bloch, Ernst. 1959. *Das Prinzip Hoffnung*. Frankfurt am Main: Suhrkamp.

Brettell, Caroline B. and James F. Hollifield (eds.). 2000. *Migration Theory: Talking Across Disciplines*. New York: Routledge.

Castles, Stephan and Mark J. Miller. 2009. *The Age of Migration: International Population Movements in the Modern World*, 4th ed. Basingsoke: Palgrave Macmillan.

Cresswell, Tim. 2006. *On the Move: Mobility in the Modern Western World*. New York: Routledge.

Dictionary, O. E. 2014. *"meso-, comb. Form."* Oxford: Oxford University Press.

Dussel, Enrique D. 1985. *Philosophy of Liberation*. Maryknoll: Orbis Books.

Dussel, Enrique D. 2008. *Twenty Theses on Politics,* Latin America in Translation/en traducción/em tradução. Durham: Duke University Press.

Faiola, A. 2014. "The New Land of Opportunity for Immigrants is Germany." *The Washington Post*. Accessed December 05. http://www.washingtonpost.com/world/europe/the-new-land-of-opportunity-for-immigrants-is-germany/2014/07/27/93464262-7eff-4931-817c-786db6d21ec8_story.html.

Faist, Thomas. 2010. "The Crucial Meso-Level." In *Selected Studies in International Migration and Immigrant Incorporation*, edited by Marco Martiniello and Jan Rath. Amsterdam: Amsterdam University Press.

Fernandes, D. and H. Zinn. 2011. *Targeted: Homeland Security and the Business of Immigration*. New York: Seven Stories Press.

Geiger, Martin and Antoine Pécoud. (eds.). 2012. *The Politics of International Migration Management*. Basingstoke, UK: Palgrave Macmillan.

Goldman, A. a. J. T. 2014. "Six Guantanamo Detainees Transferred to Uruguay as Obama Works to Close Prison." *The Washington Post*.

Greene, D. a. J. B. 2014. "Born in the U.S. but Turned Back at The Border, Time after Time," National Public Radio. Accessed December 24. http://www.npr.org/2014/12/12/370264909/born-in-the-u-s-but-turned-back-at-the-border-time-after-time.

Hume, David. 2000. *A Treatise of Human Nature*, edited by David Fate Norton and Mary J. Norton, Book I, part III, sections XI–XII. Oxford: Oxford University Press.

Kumin, J. 2014. "The Challenge of Mixed Migration by Sea." *Forced Migration Review* (45): 78.

Lister, Matthew. 2013. "Who Are Refugees?" *Law and Philosophy* 32(5): 645–671.

Loyd, Jenna M., Matt Mitchelson and Andrew Burridge. 2012. "Introduction: Borders, Prisons, and Abolitionist Visions." In *Beyond Walls and Cages: Prisons, Boders, and Global Crisis*, edited by Jenna M. Loyd, Matt Mitchelson and Andrew Burridge, 1–15. Athens and London: The University of Georgia Press.

Malkki, Liisa. H. 1995. *Purity and Exile: Violence, Memory, and National Cosmology Among Hutu Refugees in Tanzania*. Chicago: University of Chicago Press.

Marable, Manning and Vanessa Agard-Jones. 2008. *Transnational Blackness: Navigating the Global Color Line*, 1st ed. *The Critical Black Studies Series*. New York: Palgrave Macmillan.

Martiniello, M. and J. Rath. 2010. *Selected Studies in International Migration and Immigrant Incorporation*. Amsterdam: Amsterdam University Press.

Marx, Karl, 1978. "Theses on Feuerbach." In *The Marx-Engels Reader*, edited by Robert C. Tucker, 2d ed., 143–154 New York: Norton.

Miller, David. 2000. *Citizenship and National Identity*. Cambridge; Malden, MA: Polity Press; Blackwell Publishers.

Nguyen, Mimi T. 2012. *The Gift of Freedom: War, Debt, and Other Refugee Passages*. Durham: Duke University Press.

Normore, Calvin G. 1991. "Descartes's Possibilities." In *René Descartes: Critical Assessments*, edited by Georges J. D. Moyal, Volume III, 68–83. London and New York, Routledge.

Parker, Noe, Nick Vaughan-Williams et al. 2009. "Lines in the Sand? Towards an Agenda for Critical Border Studies." *Geopolitics* 14(3): 582–587.

Rousseau, Jean-Jacques. 2007. *Discourse on the Origin of Inequality*. Minneapolis: Filiquarian Publishing, LLC.

Samers, Michael. 2010. *Migration*. London: Routledge.

Sharma, Nandita. 2003. "No Borders Movement and the Rejection of Left Nationalism." *Canadian Dimensions* May/June: 37–39.

UNCHR. 2012. "Syria Crisis: UNHCR Urges European Union States to Honour Their Asylum System Principles." Accessed December 01, 2014. http://www.unhcr.org/507d4c586.html.

UNCHR. 2014. 2015 UNHCR Subregional Operations Profile—Northern, Western, Central and Southern Europe: Sweden. Geneva, Office of the United Nations High Commissioner for Refugees. Accessed December 01, 2014. http://www.unhcr.org/5423f9699.html

Urry, John. 2000. *Sociology beyond Societies: Motilities for the Twenty-First Century*. London: Routledge.

van Houtum, Henk, Olivier Thomas Kramsch and Wolfgang Zierhofer (eds.). 2005. *B/Ordering Space*. Aldershot, UK: Ashgate.

Walters, William. 2006. "Rethinking Borders Beyond the State." *Comparative European Politics* 4(2/3): 141–159.

1

Refuge and Refusal: Credibility Assessment, Status Determination and Making It Feasible for Refugees to Say "No"

Christian Matheis

Introduction

At present, administrative justifications for states to grant asylum tend to refer explicitly to moral and ethical "humanitarian" obligations. However, despite these motives, the broad preponderance of policies and governmental practices refer only to mere administrative expediency and not to humanitarian concerns. *Why* does a nation grant asylum—ostensibly, for reasons of humanitarian morality? *How* does a nation-state go about the tasks of granting asylum—through administrative practices generally un-informed by corresponding moral or ethical humanitarian guidelines? The standard for treatment quite often comes down to a minimal requirement, albeit a self-imposed one, for agencies to avoid "refouling" refugees—that is, to avoid putting refuge seekers in immediate danger as bad as or worse than what they fled. The prohibition on refoulment counts as a negative imperative designating what administrative agents ought not to do, but does not provide for specifically positive commission to treat refugees in any particular ways. Moreover, non-refoulment rules depend largely on domestic and international legal-juridical models that place primacy on risk reduction, ostensibly intended to minimize potential legal liabilities. As I argue, these minimum standards for asylum procedures count as *politically expedient*, but do not reflect *moral* criteria for evaluating such practices. What sort of criteria might nation-states use to evaluate the morality of institutional agents who administer and enforce

asylum procedures, particularly given the need for political expediency in international contexts?

Contemporary scholarship on the topic of persons classified as "refugees"—whom I will refer to as *persons seeking refuge* or *PSRs*—provides little to no explanation on how state agencies convert the *moral claims* for refuge into corresponding *political claims*.[1] Put differently, if at some point the administrative procedures involved in granting asylum respond less to moral claims and more to political expediency (procedures directed by policies), what explains the transition from reasoning in terms of morality primarily to strategic political processes? How do policymakers get from principled obligation to bureaucratic procedure? Even though modern nation-states instruct their state administrative institutions to grant asylum on moral grounds, such as on the basis of human rights, PSRs must appeal through processes designed in terms of *political expediency*.

Here, political expediency broadly refers to evaluating administrative actions primarily by whether or not certain actions accomplish the goals set forth in policy; that is, posing a course of action as justified simply because the action effectively carries out a policy (Thoreau 1854). An action may serve an institutional regime as a matter of efficiency or productivity, such as the kinds of actions considered prudent for legal risk reduction. The expediency of an action that carries out political ends germane to policies and institutions does not, however, stand in for moral or political justifications. Acting on the priority of political expediency, state agents who review petitions for refuge may act as if the original moral claims only guide the obligation of a state to grant refuge, but also as if morality does not guide the particulars of how, when, and why to grant or deny refuge in specific cases. An agent of the state who acts to carry out governmental policies may, therefore, do so in a politically expedient way while at the same time treat the entire framework of actions as amoral.

Granted, state agencies must, at minimum, not refoul refugees by putting them in situations similar to or worse than they have fled. Other than that and other minimalist requirements, it would seem that conceptions of morality inform the commitment of nation-states to provide for refuge while conceptions of politics as expediency guide administrative agents in treatment of PSRs. This scheme, one in which policymakers and agents operatively divorce politics from ethics, results in an inability to evaluate whether administrative agents have acted morally or immorally in applying political procedures.

My inquiry stems from a concern about the treatment of PSRs that results from the dispensation of morality in favor of political expediency.

What do contemporary nation-states perpetrate when they effect the conversion of PSRs from people with moral claims into subjects of political expediency? Presumably, contemporary political states act on moral principles in granting refuge to people fleeing their nation-states of origin, sometimes as internally displaced persons (IDPs), yet the administrative responses to PSRs tend to supplant morality. As I argue, political expediency, however one may justify it on administrative terms, tends to obfuscate moral principles unless normative criteria guide and constrain executive actions. That is, PSRs may make moral claims in seeking refuge, but the arbitrary political conditions of contemporary states determine—and perhaps overdetermine—the actual treatment of PSRs. If this analysis holds, then administrative agents serve as *ciphers*: those who, by action or inaction, convert broad moral claims into bureaucratic-particular political actions by *zeroing out* (ciphering) the ethical content of procedural politics.

Without specific criteria for considering the morality or immorality of treatment, how can PSRs appeal (challenge) the administrative procedures that determine their fundamental living conditions and erstwhile rights while petitioning for asylum, and, moreover, how can administrative agents respond to claims about unethical treatment? To answer this question I propose that a concept I call "feasible refusal" can guide the political decisions of policymakers and administrative agents in the moral treatment of refugees. This concept can serve as a relatively demanding evaluative criterion, and yet I do not pose the idea as a strict regulatory principle. As a strict regulatory principle, it would leave little flexibility for addressing the myriad variations in circumstances that agents might need to consider in evaluating petitions. However, as a demanding evaluative criterion, it can help agencies assess whether administrative actions count as moral or expedient.

I begin by providing a brief survey of contemporary discourses on "refugees" in fields of policy, analytical discourse, and discourse analysis to illustrate the prevalence of the normative dichotomy in which expediency supersedes morality. Then, I explain why a political ethics for the treatment of PSRs requires understanding their global situation as one of "accidents" or "chances"—that is, random circumstances that influence the eventual fate of PSRs more than any locally organized or internationally coordinated scheme of refugee resettlement. To further clarify, by this I do not suggest the sociopolitical circumstances causing the need to flee in search of refuge count as accidents; rather that once displaced, PSRs live fated to unpredictable accidents of fortune or misfortune. This turns on a notion of "accident "as something irrespective of intentions,

unexpected so as to remain out of the control of individuals, groups, or agencies, and fundamentally involuntary out of the control of any identifiable agent. "Precarity" and "precariousness," despite the popularity of these terms in some scholarly circles (Butler 2004), leave unchallenged the false belief that any government, united in coalition or independent, has any grasp on global refugee crises. At present, tens of millions of PSRs live in "accidentality" beyond the scope of any currently operating organization's capacities to effectively manage.

I acknowledge the intervention of scholars who convincingly foreshadow the eventual failure of contemporary nation-states as effective mechanisms for managing the growing numbers and increasingly horrific situations of PSRs. Although critiques of state violence seek the eventual demise of institutionalized hegemonies, I argue that scholars can make an immediate intervention in current policies and practices by outlining conceptual resources for constraining mere political expediency. With the context set, I explain in detail my contention that, currently, political expediency trumps morality in the treatment of refugees and then argue the necessity of developing criteria such as feasible refusal—criteria by which to evaluate the morality or political and administrative decisions with regard to the treatment of PSRs. Finally, I summarize some possible implications and limitations of adopting the criterion of feasible refusal.

Policy criticism and discourses of refuge

Consider some of the leading sources of information about PSRs and the common tendency to subordinate morality to political expediency. According to the provision that established the United Nations High Commissioner for Refugees (UNHCR), the office must explicitly act on "[…] an entirely non-political character; it shall be humanitarian and social and shall relate, as a rule, to groups and categories of refugees" (UNHCR 2013). Although the statute establishes the provisions on moral terms—responses motivated by humanitarian and social interests for the protection of persons—the pronouncements throughout the rest of the document prioritize the political and economic constraints by which the UNHCR must function administratively. Moreover, the statute provides no explicit criteria by which to evaluate the treatment of PSRs, offering only criteria for categorization of persons as such.

Recent work in policy studies shows that researchers tend to accept the moral obligation of preventing "harms" toward PSRs, and in this case, the prevention or amelioration of harms counts as a moral consideration (Hamlin and Wolgin 2012). However, even though policy activists stress

the tensions between the daily experiences of practitioners and the legal-bureaucratic scope of policies, the criticisms they leverage remain in the context of the same procedural and juridical considerations. The sweeping assumption is: once states establish ideal (or best possible) procedural and administrative systems, then the moral norms for treatment of PSRs will somehow become known (Ibid. 602–607). At best, the moral considerations represent "symbolic" referents with little or no potency in terms of policy and administrative practices (Ibid.).

In a recent intervention Matthew Gibney addresses the concern at issue in the context of political liberalism:

> Admittedly, governments have displayed a general respect for international refuge and international human rights law obligations in their dealings with those refugees who manage to evade numerous barriers and obstacles…What seems lacking, however, is a dedication to the principle of asylum that is founded on an *ethical* commitment to alleviating the plight of refugees rather than simply a *legal* obligation to the minimal requirements of inherited international agreements. (Gibney 2004)

Through an extensive analysis of theorists in the liberalist tradition, Gibney provides a careful summary of possible implications as states carry out administrative policies without a normative criterion for evaluating the treatment of PSRs. He argues that a normative "principle of asylum" must guide burden sharing and that humanitarian interests informing such a principle can mediate tensions between a state's need to limit the entry of PSRs and the specific claims of PSRs. Yet, Gibney's humanitarian ethical principle amounts only to the claim "that states have an obligation to assist refugees when the costs of doing so are low" (Ibid. 231). In other words, political expediency dictates that state institutions provide asylum so long as the process poses little risk to the overall economic and ideological stability of the state. This seems a prudent proposition if we assume the necessity or inevitability of state politics. However, other than the proposition of protecting consolidations of wealth and policy-informed institutional stability, Gibney provides no resources for evaluating the actions of administrative agents toward PSRs; the semantics of a purportedly moral criterion refers to a politically expedient criterion of state security.

Political scientist Ricard Zapata-Barrero (2010) provides a helpful nuance to this discussion in the form of a typology of ethical frameworks by which policymakers may evaluate state practices with regard

to migration policies, writ large. His analysis spans the broad moral conventions of deontology, consequentialism, nationalism, and cosmopolitanism. Zapata-Barrero uses a diagnostic matrix—a grid for matching concerns with particular moral theories—in order to identify the moral criteria used to justify specific policies and practices and the relative priorities associated with those criteria in terms of the identity, security, and welfare of PSRs. Although this resource may help to sort the different categories of moral theory according to the priorities of PSRs' identity, security, and welfare, we cannot consider it "evaluative" in the sense of moral norms. At best Zapata-Barrero's heuristic model provides a diagnostic scheme by which to associate (1) administrative actions with (2) the priorities motivating those actions, and (3) the moral theories by which someone could post-facto justify 1 and 2. However, the sorting mechanism cannot provide criteria for evaluating the treatment of PSRs; it can only tell us which of the leading moral conventions likely come into play when setting specific policies. Using this model, an agent of the state has no specific reason to choose, for example, a deontological approach as opposed to one informed by nationalism (MacIntyre 1984).

Recent scholarly attempts to critique state administrative treatment of refugees show a concern for questions of morality but with the same default emphasis on political expediency in administrative actions. Consider some of these recent works. In "Reflections on Exile" (Said 2000) theorist of postcolonial culture Edward Said poses a challenge to dominant intellectual scholarship in which authors conscript descriptions of refugees' circumstances into romanticized narratives. This helps to open analyses onto questions of vulnerability and state security. Edward Newman of the United Nations Peace and Governance Programme, and policy analyst Joanne Van Selm compiled an edited volume, *Refugees and Forced Displacement: International Security, Human Vulnerability and the State*, in which the contributing authors attempt to construct a new discourse on the global situation of PSRs, expounding on the shared proposition that the "state" can no longer serve as the primary unit of analysis. Likewise, in *Rights in Exile: Janus-Faced Humanitarianism*, (Newman and Selm 2003) law professor Guglielmo Verdirame and refugee rights expert Barbara Harrell-Bond apply various social science methodologies to document and elucidate some of the ways in which UNCHR, government agencies, and nongovernment organizations (NGOs) fail to protect the rights of people seeking refuge and asylum (Verdirame et al. 2005).

In response to neoliberal political theories that critique the state but leave it more or less intact, a broad range of scholars use strategies stemming from Foucauldian discourse analysis in order to elucidate the

conditions of refugees, specifically to obviate what statist discourses tend to obscure or malign. Consider the work of anthropologist Liisa H. Malkki whose *Purity and Exile* (1995) offers an analysis of individual narratives, various sociological data sources, and sociogeographic variables. Malkki provides insight into what PSRs endure by illustrating and comparing both the collective narratives and shared belief systems of Hutu refugees from Burundi, as well as the lived confluences and contradictions with those shared beliefs. More recently in *The Gift of Freedom: War, Debt, and Other Refugee Passages* (2012), Mimi Thi Nguyen, scholar of both Asian studies and gender and women's studies, argues that when liberal empires extend asylum they offer freedom only in a particular sense. PSRs must choose lives of homogeneity under the neoliberal conditions of the state or violence under any other conditions; overall, PSRs remain permanently indebted as a result of "salvation" by liberal states.

In another branch of critique, historian and theorist of subaltern studies Gyanendra Pandey's *Remembering Partition: Violence, Nationalism, and History in India* (2001) surveys the possibilities and limitations of developing historical accounts of partitioned subjects and nationalization from among the various particular pasts, owing no specific obligations to any one particular narrative as if final or authoritative. Responding in part to Pandey, in *Life and Words: Violence and the Descent into the Ordinary*, anthropologist Veena Das confronts assumptions underlying scholarly attempts to tell and represent narratives by considering language and pain and the interactions between the two that arise in particular cultures (Das 2007).

The aforementioned interventions devise strategies for thinking about PSRs without necessarily relying on the modern nation-state as the eminent context (or "unit") of analysis and furthermore show how the conditions of PSRs put the legitimacy of statist politics in question. Scholars engaged in analyses of discourse about PSRs often endorse research projects that illustrate the particularities of specific populations and/or individuals, defying the potential erasure or conscription of those particularities when broad-based analyses impose general evaluative frameworks. Although scholars in this branch of discourse would likely reject my attempt to propose normative moral criteria for the treatment of PSRs by agents of state institutions, I contend that their analyses actually illustrate the need to intervene with more immediacy. Although poststate ideal institutions may eventually emerge, we need not wait in order to develop moral criteria for the treatment of PSRs. It will help to note how the primary postcolonial, decolonial, antistate contentions about morality and politics appear consistent throughout these projects:

whether to intervene and risk furthering hegemonic interests or commit to principled nonintervention and risk preventable atrocities?

Alison Jaggar has responded to feminists who debate whether to intervene in the lives of women in poor societies and risk imposing cultural hegemony or to commit to nonintervention even though atrocities may persist (Jaggar 2005). As she notes, the bulk of contemporary Western scholarship regarding morality, politics, and global interventions seems to leave scholars with a paradoxical choice between two competing ideals: "colonial interference" on the basis of hegemonic "moral universalism" or "callous indifference" on the basis of insensitive "moral relativism" (Ibid. 657–568). On Jaggar's account, we can and should dismiss the paradox by accepting the reality that the global context of interstate and internation interactions *already constitutes interventions* for which people in relatively wealthy nations must take some active responsibility and that nonintervention is no longer possible. Wealthy nation-states have already intervened. Nation-states in a position to give refuge to PSRs have built their relative wealth and their capacities to grant asylum on the back of global economic systems that impoverish and make PSRs vulnerable.

For one example among many, consider the vast amounts of wealth extracted from Nigeria by Shell Oil Corporation, afforded in part through US diplomatic negotiations and brought into the United States through the brutal displacement of the Ogoni peoples who then sought refuge within and outside of Nigeria (Okonta and Douglas 2003). To put it more assertively, wealthy industrialized nations with the resources and stability to grant refuge likely derived those resources and the corresponding political stability from actions that resulted in the dire conditions from which people seek refuge. Of course, the case bears much more complexity than I can analyze here; yet it remains illustrative as a high-profile and well-documented example.

Jaggar aims to dismantle the common assumption among postcolonial scholars that relatively wealthy, powerful nations save refugees from some distinct and distant threat like so-called ethnic wars or random occurrences of poverty. Rather, she argues, powerful nation-states have had a role in fostering social, political, and economic conditions that result directly or indirectly in destabilizing poorer nations. We must, Jaggar contends, take our own heels off of their necks. No reasonably defensible moral position can justify nonintervention since, by default, no such thing as nonintervention exists anymore.

I concur with Jaggar at least to the extent that committing to principled, radical nonintervention denies the reality of the ongoing economic,

military, and political influences already at work for decades (Acemoglu and Robinson 2012). However, I remain skeptical of Jaggar's assumption that acts of nonintervention cannot at times help. Some attempts at nonintervention and/or limited intervention may further humanitarian goals more effectively than active interventions. Though I cannot adequately address this point here, I mention it in order to illustrate the limitations of the normative criteria for which I argue later in this essay. Although normative moral criteria may help administrative agents of state institutions evaluate how they treat PSRs, it does not necessarily guide the broad-based decisions of states to intervene in the affairs of people around the world.

We must take account of both the need for moral imperatives that justify providing refuge and the need for moral criteria by which to evaluate the treatment of PSRs. Without attention to both, the administrative actions tend to subordinate the moral claims of refugees in favor of political expediency. Next, to clarify the justification for this approach, I explain two key considerations that influence a political ethics of granting refuge. The first regards the random, accidental situation of PSRs as the primary factor determining the possibility of refuge. The second regards the importance of conceding that we need not eliminate state institutions in order to enact morally normative criteria for the treatment of PSRs in the immediate future. Whatever the eventual fate of modern nation-states, we must presently redress the treatment of PSRs.

Credibility amid accidental asylum: The contemporary conditions of people seeking refuge

Currently, when evaluating the petitions of people seeking asylum state and nongovernmental refugee aid organizations place primary emphasis on "credibility assessment" in processes of "refugee status determination" (RSD). However, taking into consideration the contemporary conditions of people seeking refuge worldwide, we do better to acknowledge their circumstances as the product of random conditions. Agencies portray credibility assessment as if the veracity or falsity of a PSR's story matters more than the sheer particulars of vulnerability.

Consider, for example, the Hungarian Helsinki Committee's recently published manual, "Credibility Assessment in Asylum Procedures" (Gábor et al. 2013). Michael Kagan, a coauthor of the manual, explains,

> This is now probably the state of the art in capturing best practices in one of the hardest and high stakes challenges in refugee status determination.

> Doubts about credibility probably lead to more rejections of refugee claims than any other issue, but such denials are often only thinly justified. Moreover, if an adjudicator doubts someone and refuses he or she asylum and they later prove to be telling the truth, a person in danger of persecution will be put in harm's way. (Kagan 2013)

Decisions about asylum petitions depend on credibility assessment as the means of determining "refugee status"—specifically, whether a PSR can prove she endured whichever persecution, war, genocide, etc., destroyed her regular living conditions and claims to state protections. Now, look more closely at how the Helsinki manual sets the context for RSD:

> Before discovering the scope, limits and methodology of credibility assessment, it is crucial to understand the general evidentiary framework of asylum procedures and its specific characteristics. In particular, this chapter will help to understand:
> - Why, and to what extent asylum procedures differ from other procedures with regard to evidence assessment and the establishment of facts and circumstances?
> - Who has the duty to substantiate facts and circumstances in asylum procedures and what does this mean in practical terms?
> - What is the level of conviction an asylum decision-maker needs to have regarding the existence of relevant facts and circumstances in order to make a favourable decision, and what does this mean in practical terms? (Gábor 9)

Assessment criteria of this sort seek principally to protect interests in national security and to detect fraudulent refugee claims (Lee 2001). Agents charged with making refuge decisions do so first by assessing the risk that a potential refugee is not telling the truth and second by attempting to avoid causing immediate harm ("refoulment") to the lives of people seeking protection. This obfuscates the present circumstances of PSRs—their current abject vulnerability—by emphasizing their prerefuge trauma. Looking to the *past* to determine the credibility of a story about how a PSR ended up in need of asylum does not change the *present* fact of the person's need. Moreover, if that vulnerability occurs in radically unpredictable circumstances, then it works better to assess the accidental conditions as such.

Overwhelmingly, living as displaced persons, or "IDPs," while seeking asylum turns out to be influenced more by random factors than by any

other condition that states have prepared to control. Whether a person seeking refuge works incredibly hard or with casual interest, such individualized efforts matter little when taking into account the broad array of random factors that condition the lives of most people in such circumstances. By the time an asylum-granting nation-state evaluates the credibility of an asylum seeker, PSRs have appeared at the evaluation process more by random chance than by factors having to do with their credibility. As it turns out, credibility merely seems to offer administrative cultures a procedural guide to *character assessment* and past events but not a realistic evaluation of the overall circumstances facing people who seek refuge. By downplaying or ignoring the global conditions of random chance currently facing PSRs worldwide—something no state can control—administrative agencies have attempted to construct the semblance of moderation and predictability amid the growing chaos, precarity, and vulnerability of millions of people.

To understand the need for immediate responses to PSRs in ways we can consider morally defensible, it becomes crucial to take into account how far the problems extend beyond what state agencies and other administrative organizations actually handle. Reading contemporary discourse about PSRs, one might easily get the wrong impression that something orderly, institutional, or well coordinated helps PSRs attain asylum. On the contrary, it seems prudent to assume that refuge seekers who gain asylum do so as a result of chance and random accidents largely outside individual and/or institutional control. To say otherwise would commit to two unjustified beliefs, one about institutions and one about individuals.

First, to presume that the attainment of refuge by PSRs results primarily from coordinated administrative institutions wrongly implies that any individual nation-state or collection of nation-states working in tandem currently hosts such operations. At this time, no such institutional scheme exists on the order of magnitude that would sufficiently counterbalance the random circumstances in which PSRs generally live. Consider some recent figures. With an estimated population of more than 40 million PSRs worldwide in 2013, and given that 56,419 were granted official asylum in the United States in 2011, and 58,236 in 2012, we have better reason to treat the attainment of asylum as a result of something akin to a lottery versus a product of orderly procedure (Negash 2013; Resettlement 2013). Even though refuge management and resettlement agencies may collect and analyze extensive sources of data regarding PSRs, and even though analyses may help agencies to reasonably predict some of the probabilities that certain PSRs *could qualify* for resettlement and asylum, this does

not translate into securing or attaining those outcomes. In fact, the terms "securing" and "attaning" probably paint a misleading picture unless we associate these notions less with *achieving* and more with *winning* as in games of chance.

Second, to deny the random accidents that overdetermine the attainment of refuge may also involve the false belief that the outcomes depend greatly on the efforts individual PSRs demonstrate. Therefore, the idea that PSRs who attain refuge work harder on average than PSRs who do not attain refuge corroborates a belief that some orderly, predictable, and consistently reliable scheme of fair procedures governs the worldwide circumstances of PSRs. For comparison, consider the process of applying for US citizenship. A foreign-born applicant can memorize facts about the United States, learn English, and participate in the requisite procedures with relative certainty of attaining the intended outcomes. On the contrary, however diligently individual PSRs may invest themselves in pursuit of asylum, such actions only alter the degree of prospects for some PSRs to attain refuge. The efforts of PSRs cannot substantively or reliably inveigle necessary prospects, to say nothing of inducing certain prospects. I cannot here make the case to call the individual actions of PSRs outright "marginal," yet I suspect an extensive analysis comparing PSRs efforts with corresponding outcomes over a long period would substantiate my hypothesis.

To develop a normative criterion for treatment of refugees we must refuse to burden PSRs with the false assumption that their relative efforts and strategies might somehow overcome the random circumstances in which states grant refuge. Exceptionally rare cases in which PSRs exhibit efforts that radically alter circumstances merely illustrate the norm. Likewise, no national institution or international global scheme of institutions effectively mediates the random circumstances facing PSRs. For these reasons, we err by choosing to engage in scholarly critique of identities (e.g., what labels apply to which populations) and the modern nation-state as if such critiques necessarily also guide administrative officials in the *immediate treatment* of PSRs. Likewise, PSRs cannot currently appeal the ways administrative officials treat them on anything other than procedural grounds as determined by the priority of political expediency.

Toward immediate interventions

I concur with scholars who argue that contemporary liberal/neoliberal nation-states cannot serve as an effective reference in theorizing normative criteria for treatment of PSRs. However, I diverge from this critique

by arguing that theorists need not require the elimination of state administrative institutions in order to develop such criteria for immediate changes to the treatment of PSRs. Suppose we accept that nation-state agencies and borders remain intact for the foreseeable future and aim instead for the best possible treatment of PSRs as they engage in procedures for attaining asylum. By what sort of normative reference points could we evaluate whether or not administrative procedures for granting refuge count as fair, ethical, or at least as decent?

To develop reasonable, workable, normative criteria for evaluating the treatment of PSRs would allow scholars and activists a resource for prompting revision to *current* policies and practices of granting refuge by state administrative institutions in *immediate and short-term* timeframes. I think it important to acknowledge the serious concerns that this approach risks reifying existing hegemonic norms. In the choice whether to intervene pragmatically right now in the interest of actual PSRs and risk reification of troubled institutional patterns or to aim for a long-term solution that avoids reification by creating new practices, both must be considered. Scholars have not done enough of the former—intervening as "public intellectuals" in the immediate situations—even though we have spent a great deal of time on visions and critique. Between these two kinds of cautious and precarious problems, I do not find any compelling paradox that justifiably prevents immediate interventions aimed at fostering the ability of PSRs to appeal the treatment of administrative agents. Morally guided actions now would prove better than no action, even if we need to dismantle this pragmatic intervention in the near future. Next, I argue that a notion of feasible refusal derived from Enrique Dussel's conceptions of "respect" and "consent" offer a possible reference point for evaluating the treatment PSRs endure when petitioning for asylum.

Refusal, respect, and consent: feasibly saying "no"

Given the conditions that asylum-granting nations have reasonable authority to control or mitigate, what might count as a reasonable moral guideline for evaluating the institutionally administered conditions (e.g., potential humiliation, pain, and suffering) that people endure while seeking refuge? Suppose we evaluate the treatment of PSRs on the basis of *what they can and cannot feasibly refuse while enduring administrative processes involved in granting refuge*. Philosopher Enrique Dussel's broad work to articulate a philosophy of liberation for people marginalized by hegemonic states relies on a particular concept of "respect." On his account, persons may evaluate their actions as respectful by whether or

not another person can feasibly refuse said actions, particularly if people differ with regard to their access to force, wealth, authority, or influence (1985). Let me explain feasible refusal more substantively by outlining both Dussel's understanding of "feasibility" and my understanding of "respectful consent" implied by his theory.

First, Dussel's commitment to thinking from "feasibility" plays a key role. For him, most modern, contemporary, and postcolonial thought tends to rely on a methodological disposition of "possibility." In the context of possibility, operative ideas stem from a vast, even transcendental range of imaginative conceptions that need not refer to actual conditions in the world. In this way, theorizing from possibility tends to lead scholars to posit normative conceptions that individuals and groups cannot practically obtain from their lived circumstances (proyectos) (Dussel 1985, 2008). For example, an agent may imagine it possible for a PSR to muster procedurally satisfactory evidence of traumas suffered and humiliations endured. Alternatively, theorizing from "feasibility" involves a commitment to consider specific circumstances that specific people might actually have capacities to endure or not. An agent may also find ways to limit or even commute the requirement for PSRs to scrounge for evidence or to tell repeatedly of atrocities suffered.

Second, to elucidate Dusselian respect more clearly, consider this form of respect foundational to a co-extant model of "consent." In a wrong-headed sense, one person "has consent" of another person when that other person has either passively not refused or has actively given the first person permission. For example, I might claim to have consent to enter your home if you do not stop me, if I plead for entry until you relent, or cajole you with various offers in trade for letting me enter—if I get to a "yes." Opportunistic use of passivity and negotiating permission may get one access, may get a "yes," and yet we ought not to think of this as *respectful* consent. Why? Dussel's version of respect implies that one person only has consent of another when the first person has actively sought to make it feasible for the other person to say "no," to *feasibly refuse*. How can I feel reasonably confident I have your consent? If keen on respect, then I consider the ways to actively reassure you that the integrity of our relationship—the condition of our moral regard for one another—does not hinge on whether or not you reject my requests. The two notions, *feasible refusal* and *respectful consent*, work in tandem to make it not merely possible for you to reject my requests, but a potent option within a real moral status you and I share as peers in relevant regards. That you can feasibly refuse, I have shown respectful consent, and that I have shown respectful consent, you can feasibly refuse.

Can a PSR refuse to tell the manner in which someone raped him as an act of war and still obtain asylum? Can a PSR openly decry US involvement in the atrocities that befell her, refusing to portray herself as the saved and the United States as the savior and still obtain refuge? A concept of feasible refusal requires that agents consider the conditions and circumstances of PSRs as they, quite particularly, present themselves.

In the case of refuge seeking, it does not count as respect for an agent of the state to merely acknowledge PSR attempts at refusal. The resources that come with the responsibilities to enact state authority also come with a specific demand since, for Dussel, only *obediential* power—power accountable to the least advantaged—counts as legitimate (Dussel 2008). Put differently, when an agent acts with politically vested and institutional claims, the legitimacy of said actions depends on whether or not the agent uses such powers to relieve or mitigate the suffering of PSRs. Specifically, an agent of the state would need to take responsibility for attempting to foster conditions in which someone could feasibly refuse certain impositions *and still gain refuge*. Feasible refusal cuts off at the threshold revealed in the kinds of actions a PSR can and cannot take while retaining access to petition processes and asylum. Otherwise, we burden PSRs with the role of asserting themselves and defending themselves amid their already precarious circumstances, all while institutional agents play the role of meting out asylum according to political expediency.

Suppose a postulate of feasible refusal: the impositions of authority one can feasibly refuse will designate whether moral considerations take priority in limiting political authority, and political authority imposed with priority over moral considerations designates what one cannot feasibly refuse, making refusal infeasible. Recall that the postulate of feasible refusal originates in a notion of "respect," whereby the consent a person can or cannot give in response to authority indicates whether or not the agent of authority has acted respectfully.[2] If PSRs cannot feasibly refuse certain impositions without compromising a successful petition for refuge, then we should carefully consider the rationales used in the design of status determination. Likewise, if agents of the state establish policies and procedures in ways that functionally dismiss whether PSRs can feasibly refuse, then those decisions likely count as mere procedural results, not as politically successful in a way we ought to permit. Given the fact that most PSRs enter processes of petitioning for refuge (1) largely at random and (2) with little chance of abolishing or transforming the state institutions that likely disenfranchised them in the first place, particularly demanding moral criteria seem necessary for counterbalancing such pronounced vulnerabilities.

I propose the use of feasible refusal as a postulate for normatively evaluating the actions of state agents in response to PSRs and not as a strict matrix for resolving a choice among different options.[3] As a postulate, feasible refusal works in the manner of a thought experiment for vetting the implications of different actions. An agent involved in RSD can consider whether it is necessary for a PSR to endure specific aspects of the process. If it is not feasible for a PSR to refuse something and still gain asylum, then we ought to question the necessity of that aspect of the process. Thus, status determination on the basis of credibility assessment may seem unwarranted. If a PSR currently lives in abject vulnerability at the whim of accidental circumstances and chooses not to disclose the requisite convincing details from the past—refuses to try to establish credibility based on a narrative of the past—then a nation-state still has a humanitarian call to grant asylum.

Such a conceptual device can and should produce demanding evaluations. Agents who compare policies and practices to this postulate may come to either particularly strong or weak intuitions about specific actions under consideration. Or they may find that the postulate provides only increased ambiguity in unusual cases. I do not propose the criteria as a panacea for all situations or as a transcendent principle by which to finally and conclusively resolve complex moral considerations. Instead, I suggest that *overall more humane* policies and practices likely result from evaluating potential actions as a result of (1) the fact that feasible refusal, if acted on strictly, poses relatively demanding impositions on authority and (2) that feasible refusal gives priority to people in the least advantaged circumstances.

Conclusion

Changing the bureaucratic status of PSRs by nuancing administrative definitions—asylum seekers, displaced persons, IDPs, people without states, etc.—can help to show different causal models for displacement. The explanatory power of these labels can help to track varying circumstances that cause people to seek refuge. However, changes in explanatory terminology cannot replace the need for normative criteria in deciding treatment of persons. Proliferating new identities and terminology for labeling PSRs may only tell us more about the diversity of different kinds of displacement and suffering. Theorists and administrative agents cannot conflate the change of identities, labels, and conceptual descriptions, with a substantive change to the consequences for PSRs. Alternatively, a change to the political realm resulting from the shift to a

strong liberatory criterion such as feasible refusal may offer a substantive basis for improving the treatment of PSRs by agents of state administrative institutions.

When agents act on state authority to implement political procedures, they should have a way to answer charges about the immorality and indecencies resulting from those decisions, just as PSRs should have a way to leverage moral claims against those procedures. Without the availability of moral criteria useful to both state agents and PSRs, neither can evaluate the morality or immorality of administrative actions. In the absence of such criteria, at best we can only determine whether or not procedures have accomplished the intended outcomes by the state agents who enact them. Giving priority to PSRs through the postulate of feasible refusal, or other demanding evaluative criteria, appropriately places burdens on state agents to act obediently in the application of authority that their nation has conferred upon them.

In the midst of global nation-state supremacy at this point in the twenty-first century, the lives of PSRs may depend on actionable interventions in administrative policies and practices. The postulate of feasible refusal can serve as a practical meta-criterion for moral reasoning, a way to place a check on otherwise politically expedient policies and practices. This particular intervention necessarily entails the elimination of neither hegemonic state actions nor worldwide suffering that has long resulted from state-sanctioned violence. In particular, violence carried out in the interest of imperialist globalization that results in the displacement of persons. Out of the millions of PSRs in the world today, the relative minority who may win a chance at refuge ought to endure the least possible degradation to their dignity.

Notes

1. As of yet, no commonly endorsed definition for "refugees" persists, and the proliferation of a number of context-dependent terms (e.g. IDPs, stateless persons, asylum seekers, etc.) fails to provide a final identity category. To that end, when I use the term "refuge" in this essay chapter, I defer to the UNHCR uses of the term since it is these uses that seem to pose the most consequences for actual people, for better or for worse. Moreover, whenever possible I use phrases such as "persons seeking refuge" and "persons who seek asylum" and the acronym "PSRs" to designate the activity as prior to and more relevant than the identity category. This by no means resolves the identity and category controversies, but I aim to show the resolution of those concerns may not warrant as much attention as scholars give them.
2. Catharine MacKinnon (1989, 2006) argues that the patriarchal construction of sociopolitical systems, particularly bureaucratic legal systems, denies the

possibility for women to feasibly give consent. Law and policy designed on the basis of patriarchal, masculine biases considers an ideal citizen-subject as individualized, empowered, assertive and capable of refusing. Women, MacKinnon argues, cannot give consent and do not even appear as legitimate political subjects in such systems. Thus, men can consent whereas women can only submit. It seems no less true of refugee status determination and asylum procedures that assume an idealized subject capable of refusing. PSRs can only submit.

3. Here, I mimic a pragmatist strategy borrowed from John Dewey, J. (1905). "The Postulate of Immediate Empiricism." *The Journal of Philosophy, Psychology and Scientific Methods* 2(15): 393–399.

References

Acemoglu, D. and J. A. Robinson. 2012. *Why Nations Fail: The Origins of Power, Prosperity and Poverty.* New York: Crown Publishers.

Butler, J. 2004. *Precarious Life: The Powers of Mourning and Violence*. London; New York: Verso.

Das, V. 2007. *Life and Words: Violence and the Descent into the Ordinary*. Berkeley: University of California Press.

Dewey, J. 1905. "The Postulate of Immediate Empiricism." *The Journal of Philosophy, Psychology and Scientific Methods* 2(15): 393–399.

Dussel, E. D. 1985. *Philosophy of Liberation*. Maryknoll, NY: Orbis Books.

Dussel, E. D. 2008. *Twenty Theses on Politics*. Durham: Duke University Press.

Gábor Gyulai, Michael Kagan, Jane Herlihy, Stuart Turner, Lilla Hárdi, Éva Tessza. 2013. "Credibility Assessment in Asylum Procedures: a Multidisciplinary Training Manual." In. Budapest, Hungary: Hungarian Helsinki Committee. http://helsinki.hu/wp-content/uploads/Credibility-Assessment-in-Asylum-Procedures-CREDO-manual.pdf

Gibney, M. J. 2004. *The Ethics and Politics of Asylum: Liberal Democracy and the Response to Refugees*. Cambridge; New York: Cambridge University Press.

Hamlin, R. and P. E. Wolgin. 2012. "Symbolic Politics and Policy Feedback: The United Nations Protocol Relating to the Status of Refugees and American Refugee Policy in the Cold War." *International Migration Review* 46(3): 586–624.

Jaggar, Alison M. 2005. "'Saving Amina': Global Justice for Women and Intercultural Dialogue." *Ethics and International Affairs* 19(3): 55–75.

Kagan, M. 2013. "New Training Guide to Credibility Assessment in RSD." RSDWatch http://rsdwatch.wordpress.com/2013/10/16/new-training-guide-to-credibility-assessment-in-rsd/.

Lee, L. T. 2001. "The London Declaration of International Law Principles on Internally Displaced Persons." *The American Journal of International Law* 95(2): 454–458.

MacIntyre, A. C. 1984. "Is Patriotism a Virtue?" In *Debates in Contemporary Political Philosophy: An Anthology*, edited by D. a. J. P. Matravers, 286–300. New York: Routledge.

MacKinnon, Catharine A. 1989. *Toward a Feminist Theory of the State*. Cambridge, Mass.: Harvard University Press.

MacKinnon, Catharine A. 2006. *Are Women Human? : and Other International Dialogues*. Cambridge, Mass.: Belknap Press of Harvard University Press.

Malkki, L. H. 1995. *Purity and Exile: Violence, Memory, and National Cosmology among Hutu Refugees in Tanzania*. Chicago: University of Chicago Press.

Negash, Eskinder. 2013. "The Office of Refugee Resettlement." Lecture, March 19, 2013.Newman, E. and J. v. Selm. 2003. *Refugees and Forced Displacement: International Security, Human Vulnerability, and the State*. Tokyo; New York: United Nations University Press.

Nguyen, M. T. 2012. *The Gift of Freedom: War, Debt, and Other Refugee Passages*. Durham: Duke University Press.

Okonta, I. and O. Douglas. 2003. *Where Vultures Feast: Shell Human Rights and Oil*. London; New York: Verso Books.

Pandey, G. 2001. *Remembering Partition: Violence, Nationalism, and History in India*. Cambridge; New York: Cambridge University Press.

Resettlement, U. S. O. o. R. 2013. "Refugee Arrival Data." Retrieved April 22, 2013 from http://www.acf.hhs.gov/programs/orr/resource/refugee-arrival-data.

Said, E. W. 2000. *Reflections on Exile and Other Essays*. Cambridge, MA: Harvard University Press.

Thoreau, H. D. 1854. "Slavery in Massachusettes." *The Thoreau Reader*. Retrieved January 3, 2013 from http://thoreau.eserver.org/slavery.html.

UNHCR. 2013. "Statute of the Office of the United Nations High Commissioner for Refugees." Retrieved April 20, 2013 from http://www.unhcr.org/3b66c39e1.html.

Verdirame, G., B. E. Harrell-Bond, Z. Lomo and H. Garry. 2005. *Rights in Exile: Janus-Faced Humanitarianism*. New York: Berghahn Books.

Zapata-Barrero, R. (2010). "Theorizing State Behavior in International Migrations: An Evaluative Ethical Framework." *Social Research* 77(1): 325–352, 425.

2

Latino/a Immigration: A Refutation of the Social Trust Argument

José Jorge Mendoza

Introduction

In debating the politics and ethics of immigration, it is not uncommon to come across a version of the "social trust argument." The basic form of the argument is always the same. It contends that a political community cannot survive without social trust, and that social trust cannot be achieved or maintained without a political community having discretionary control over immigration.

Where *social trust arguments* diverge from one another, however, is on the matter of what social trust should be based on. For example, there is a version of the *social trust argument* that insists that social trust is (or should be) based on a shared race, ethnicity, or culture. According to this version of the argument, immigration dilutes or destabilizes social trust by introducing different races, ethnicities, or cultures into the political community (Grant 1922). In the late nineteenth and early twentieth century, this version of the *social trust argument* was often used to justify notoriously discriminatory US immigration policies, such as the 1882 Chinese Exclusion Act and the "national origin" quota introduced in 1924.

This version of the *social trust argument* has already received a lot of criticism, but most of the objections leveled against it do not extend to more sophisticated versions of this argument. For example, there is another version of the *social trust argument* that suggests that social trust is (or should be) based on shared institutions (e.g., welfare services, social programs, and public education) and not on arbitrary factors such as race or ethnicity. This more sophisticated version of the *social trust argument* holds that a political community must have discretionary control over immigration because immigration threatens these shared institutions, either by undermining the faith people have in them or by straining them

beyond their capacity. Today, US immigration policy eschews this earlier bigoted version of the *social trust argument*, but since the 1990s it has not shied away from adopting a more sophisticated version of this argument to justify its "enforcement first" approach to immigration reform. This has been the case at both the state level (Schuck 1995) and the federal level (1996 Illegal Immigration Reform & Immigrant Responsibility Act; 1996 Personal Responsibility and Work Opportunity Reconciliation Act).

In this chapter, I offer a line of criticism directed at this more sophisticated version of the *social trust argument*. I begin by first explaining what the *social trust argument* is, what some of its critics have said about it, and how those criticisms have not succeeded in completely refuting it. Then, I look at the sociohistorical circumstances of Latino/as in the United States. The purpose of this investigation is to expose an inherent weakness of the *social trust argument*: it not only fails to deliver on its promise of social trust, but actually promotes its opposite, social mistrust. The later sections then make the case that a better way of promoting social trust, and at the same time abating social mistrust, is to circumvent a political community's ability to control immigration by giving priority to both sociohistorical circumstances and, at least in a minimalist sense, immigrant rights. If my argument is successful, it will show not only why the social trust argument is indefensible, but also why "enforcement first" approaches to immigration reform should be rejected in favor of a more comprehensive approach.

The social trust argument

The *social trust argument* is typically presented as a consequentialist argument.[1] This means that proponents of the argument are not necessarily claiming that a political community is in some absolute sense entitled to social trust, but rather that without social trust, many unfortunate consequences will befall the political community. According to Shelley Wilcox, the *social trust argument* can be articulated in one of two ways. First, it can be argued that newcomers are not sufficiently integrating into their receiving societies and therefore "…embracing large numbers of unacculturated immigrants will disrupt the cultural conditions that enable citizens to act autonomously" (Wilcox 2004, 559). Or, secondly, it can be argued that: "…the presence of ethnically diverse immigrants will diminish the strong sense of national solidarity that is necessary to sustain vital liberal democratic ideals [and institutions]" (Wilcox 2004, 559). In either case, the result would be the same: if a political community lacks discretionary control over immigration, then social trust, which

is instrumentally necessary to sustain political autonomy and/or liberal principles, values, and institutions, will be undermined.

Along similar lines, Ryan Pevnick has explained the dilemma of social trust in the following way. Most advocates of open borders justify their position by appealing to some version of moral egalitarianism,[2] which is a position that believes that all persons deserve equal moral consideration. However, another egalitarian commitment is that institutions ought to provide distributive and/or redistributive justice (i.e., provide welfare services, social programs, and public education). According to Pevnick, proponents of the *social trust argument* see a problem here: "...citizens will refuse to support justice-required redistributive programs if such programs incorporate nationally diverse immigrants" (Pevnick 2009, 156). If it is the case that citizens will only support institutions of distributive and/or redistributive justice if those institutions help only their fellow citizens, then "...egalitarian liberals cannot have their cake and eat it too; instead, they must choose which commitment—increased immigration or redistributive programs—takes precedence and accept that they will have to abandon the other" (Pevnick 2009, 148). The point here is that there is *no* inconsistency, as most open-borders advocates have suggested, in justifying a political community's discretionary right to control immigration from an egalitarian perspective (Pevnick 2009, 148).

Neither Wilcox nor Pevnick subscribe to the *social trust argument* and both have raised their own objections to it. Pevnick, for example, has argued that: "the trust on which the welfare state relies depends more on the shape of the institutions than on the identity of the population that they serve" (Pevnick 2009, 148). In other words, the social trust that bolsters these institutions depends less on the particular individuals who make up the political community, than it depends on institutions giving off the appearance of fairness. For example, if the individuals who benefit from these institutions are recognized as individuals who have contributed, or will contribute, to them, then the institutions seem to be operating as they should and people will have faith in them.

Going a step further, Pevnick also notes that: "*even if successful, the social trust argument can only provide reason to limit claims of membership*. The social trust argument provides no reason to forbid migrants from entering the territory" (Pevnick 2009, 156–157 emphasis in original). In other words, for Pevnick, citizenship and residency are, at least analytically, two distinct things. So whatever discretion the *social trust argument* might grant to political communities, that discretion is limited to claims of citizenship and not to claims of residency. This leaves open

the possibility that while the *social trust argument* might be sufficient to show why a political community ought to have the discretionary right to control citizenship, it does not show why it ought to have the same discretion over residency.

For her part, Wilcox makes the case against the *social trust argument* from a liberal democratic point of view. According to Wilcox, in a liberal democracy a thick national identity (i.e., an identity that functions as both a political and cultural identity) will not only be unnecessary, but will also be undesirable and even unjustifiable. On these grounds, Wilcox proposes that a better, and more consistent (at least more consistent with liberal democracy) way of obtaining and maintaining social trust is through "a non-nationalist model of naturalization that would encourage immigrants to become integrated into liberal democratic societies by participating in their major economic and sociopolitical institutions and practices" (Wilcox 2004, 560).

While I am sympathetic to both of these responses and find them both persuasive, their applicability is restricted to cases wherein liberal commitments (e.g., respect for individual liberty and universal equality) are already in place. As it turns out, most supporters of the *social trust argument* either do not harbor these commitments or at least do not prioritize them in the same way that liberals do. Supporters of the *social trust argument* are, by and large, more nationalist and/or communitarian in their moral and political commitments. These commitments tend to generate thicker notions of citizenship, or at least thicker than what most liberals would be comfortable with. These thicker notions of citizenship exclude the possibility that residency can or ought to be delinked from citizenship or that non-nationalist models of naturalization would be sufficient for political integration. In short, it seems that proponents of a thinker version of the *social trust argument* could withstand the sorts of liberal objections being raised by Wilcox and Pevnick, by maintaining that the alternatives provided by Wilcox and Pevnick would not generate the kind of social trust that is necessary for the continued existence of the political community.

Arguably one of the most well-known proponents of this thicker version of the *social trust argument* is Samuel P. Huntington. Huntington's version of the *social trust argument* can be found in his second major work, *Who Are We?*, in which he defends the controversial claim that the United States is fundamentally an Anglo-Protestant nation. By Anglo-Protestantism, Huntington has in mind a certain type of "culture," which falls somewhere between an ethnicity and a civic identity. As he writes:

> Hence there is no validity to the claim that Americans have to choose between a white, WASPish ethnic identity, on the one hand, and an abstract, shallow civic identity dependent on commitment to certain political principles, on the other. The core of their identity is the culture that the settlers created, which generations of immigrants have absorbed, and which gave birth to the American Creed. At the heart of that culture has been Protestantism. (Huntington 2004, 62)

Huntington's central contention, which is expressed in this passage, is that besides being an Anglo-Protestant nation, the United States is also a settler nation and not a nation of immigrants. In fact, he goes on to argue that Americans have historically not liked immigrants and that they "…did not celebrate their country as a 'nation of immigrants'" (Huntington 2004, 38). The distinction Huntington draws between a settler nation and a nation of immigrants is that: "settlers leave an existing society…They are imbued with a sense of collective purpose. Implicitly or explicitly they subscribe to a compact or charter that defines…the community they create…" (Huntington 2004, 39). Immigrants, according to Huntington, do not do these things because their migration from one society to another is a very personal process, and for that reason they are not interested in forming compacts (Huntington 2004, 39–40). Huntington uses these points to justify his claim that, in the twenty-first century, the biggest threat to the national unity (i.e., social trust) of the United States is immigration from Latin America and, in particular, from Mexico. As he writes:

> The continuation of high levels of Mexican and Hispanic immigration plus the low rates of assimilation of these immigrants into American society and culture could eventually change America into a country of two languages, two cultures, and two peoples. This will not only transform America. It will also have deep consequences for Hispanics, who will be in America but not of it…There is no Americano dream. There is only the American dream created by an Anglo-Protestant society. Mexican-Americans will share in that dream and in that society only if they dream in English. (Huntington 2004, 256)

There are some serious doubts as to whether Huntington's account is correct (Kaag 2008; Orosco 2008, 16–19). Nonetheless, it is his version of the *social trust argument* that we should consider because, in contrast to Wilcox and Pevnick, Huntington believes that social trust requires more than having the right civic institutions; it also requires that individuals

have something akin to the right "culture." While this argumentative move allows Huntington to avoid the objections raised by Wilcox and Pevnick, it also exemplifies for many the problem that has historically haunted the *social trust argument*: at its core this is really an argument that aims at, or is driven by, racial, ethnic, or cultural animus.

This is a problem because, on the one hand, a sure way of fomenting social mistrust is by ostracizing a particular segment of the political community (i.e., discriminate against people based on race, ethnicity, nationality, sex or gender). On the other hand, if social trust requires the promotion of the right kind of "culture," then a political community should, as Huntington suggests, be free to deny entry to those (e.g., Mexican immigrants) whom it sees as promoting the wrong kind of "culture." For example, while the United States currently has no "cultural" restrictions on immigration, there are many politicians who actively oppose immigration on grounds that certain immigrants (e.g., immigrants from Latin America) bring with them a kind of criminal culture that would undermine social trust. For example, Iowa Congressman Steve King has suggested: "For [every immigrant] who's a valedictorian, there's another 100 out there that—they weigh 130 pounds and they've got calves the size of cantaloupes because they're hauling 75 pounds of marijuana across the desert" (Wilstein 2013). Representative King's views on Latino/a immigrants are not merely reprehensible; they also breed mistrust of the entire Latino/a community, regardless of whether they are or are not citizens.

This is where we find the rub: promoting social trust in Huntington's thicker sense allows one to avoid the criticisms of Wilcox and Pevnick, but it does so only at the expense of promoting immigration policies that breed a kind of social mistrust (i.e., ostracizing a certain segment of the citizenry as permanent national outsiders).

A cynical—although not totally unfounded—response to Huntington's version of the *social trust argument* is that it should not be taken seriously at all. This cynical response suggests that the discriminatory implications of his *social trust argument* are not accidental or peripheral, but are a core part of all *social trust arguments*. They claim that the *social trust argument* is merely an attempt by nativists and xenophobes to justify (either to themselves or to others) their own irrational dislike of immigrants and have little to do with social trust. Edwina Barvosa articulates such a view when she states: "…identity contradictions and fragmentations within the psyches of some, if not many, mainstream white Americans underlie persistent patterns of anti-immigrant hostility…" (Barvosa 2012, 20). She goes on to say that the result of these psychic fragmentations is "…a

political quagmire in which reason-based public deliberation is stymied by mass reactivity arising from the activation of constructed identity contradictions, unrecognized mass melancholia, residual trauma, or other intra-psychic fragmentations" (Barvosa 2012, 20). In other words, proponents of the *social trust argument* are not so much trying to stake out a reasonable position on immigration policy; they are attempting to justify their own persistent patterns of racial, ethnic, or cultural resentment. Therefore, Barvosa would claim, it is no wonder that a position like Huntington's suffers from a contradiction, of attempting to promote social trust in a way that is sure to foment social mistrust, because it is based on an irrational hatred and not on a rational evaluation of immigration policy.

An analysis like Barvosa's is helpful in both exposing and explaining the discriminatory potential of Huntington's version of the *social trust argument*. That said a more philosophically sophisticated version of the *social trust argument* might still be able to avoid these irrationalities and thereby survive a Barvosa-style critique. For example, some proponents of the *social trust argument*, like David Miller, have recognized the discriminatory potential of the *social trust argument* and have tried to immunize their own position against these noxious entailments. Miller, like Huntington, believes that maintaining a political community (even, and especially, a liberal state) will "require a common public culture that in part constitutes the political identity of their members" (Miller 2005, 199). Unlike Huntington, however, Miller explicitly rejects the possibility that a political community can use such things as race, ethnicity, sex or gender as criteria for exclusion because: "to be told that they belong to the wrong race, or sex…is insulting, given that these features do not connect to anything of real significance to the society [potential immigrants] want to join" (Miller 2005, 204).

Assuming for the moment that something like Miller's anti-discriminatory addendum would allow for a version of the *social trust argument* that can (a) skirt the initial criticisms of Wilcox and Pevnick and (b) avoid the discriminatory potential that makes Huntington's version so repulsive, would this be sufficient to salvage the argument? At first glance it seems that this might do the trick. After all, if admissions and exclusions criteria are nondiscriminatory and treat everyone equally, how could they possibly be the source of social mistrust?

The remainder of this chapter will make the case that, even if proponents of the *social trust argument* come to adopt something like Miller's addendum, the argument is still not salvageable. Its two conflicting components (viz., a political community's discretionary control over

immigration and the need for social trust) remain at odds with each other. So while it is true that social trust depends largely on how a political community deals with immigration, proponents of the *social trust argument* have either misidentified or overlooked an important source of social mistrust. In the next section I will shed some light on this source by briefly exploring the case of Latino/as in the United States.

The curious case of Latino/as in the United States

This section outlines some of the key flashpoints in US immigration policy and how they have affected the Latino/a community. Understanding the historical relationship between the Latino/a community and US immigration policy is important because it exemplifies the two claims that this chapter is attempting to establish: (1) the *social trust argument*, even when it adopts something like Miller's addendum, still fails to provide social trust, and (2) avoiding social mistrust necessitates that the control a political community has over immigration be circumvented and not discretionary.

Most historians would probably concede that US immigration law and policy reached its discriminatory zenith in the early part of twentieth century. By 1900 the Chinese Exclusion Acts were not only the law of the land, but they had survived various Supreme Court challenges (see Chinese Exclusion Act 1882; Chae Chan Ping v. United States 1889; Fong Yue Ting v. United States 1893). In 1917 this race-based form of exclusion was further expanded to include most of Asia, which subsequently came to be known as the "Asiatic barred zone" (1917 Immigration Act). Then, in 1924, the Johnson-Reed Act barred from entry all immigrants who were ineligible for US citizenship and also introduced a system of "national origin" quotas (1924 Immigration Act).

The provisions of the 1924 Act were perniciously discriminatory in two ways. First, they made most nonwhite persons ineligible to enter the United States because, as far back as 1790, naturalized US citizenship had been restricted to "white persons" (1790 Naturalization Act). After the 1924 Act went into effect, nonwhite persons were not only barred from obtaining US citizenship, but were also denied admission into the United States. Second, the "national origin" quota did not apply equally to all nations. The quota was intended to reflect the true composition of the United States, and based on this mandate Congress felt justified in using the 1890 census, which took place just before a large wave of immigrants from eastern and southern Europe came to the United States, to determine the quota numbers. Not surprisingly, the 1924 Act allocated

higher quota numbers to northern Europeans and very few to eastern or southern Europeans (Ngai, 2004, 23).

Interestingly enough, these overtly discriminatory laws and policies did not place any restrictions on countries from the Western hemisphere, which made Latino/a immigrants different from other immigrants. At a time when nonwhite persons were routinely being denied membership and entry into the United States, Mexican nationals were not only being allowed to enter the United States, but in many cases were even eligible for US citizenship (De Leon 1979).

This is not to say that at the turn of the twentieth century Latino/as in the United States did not face social ostracism and discrimination. Despite their eligibility to enter and become US citizens, the nonwhite, non-northern European status of people with Mexican ancestry still branded them as national outsiders and even subjected them to unjust forms of deportation (see Johnson 2005) and even violence (see Delgado 2009). The larger point, however, still seems to hold: at the turn of the twentieth century, the social positioning of Latino/as in the United States was not necessarily worse and in some cases (e.g., with respect to immigration and citizenship eligibility) might have been better than that faced by other similarly situated ethnic groups we now consider "white" (e.g., Irish, Italian, Poles, and Jews).

Beginning in 1943, with the repeal of the Chinese Exclusion Act (Magnuson Act 1943), and culminating in 1965, when the "national origins" quota was replaced with a system of numerical caps (1965 Immigration and Nationality Act), the more noxious (i.e., Huntington-like) aspects of US immigration policy were supposed to have come to an end. Admissions and exclusions criteria were no longer supposed to be discriminatory (thereby satisfying Miller's anti-discriminatory addendum), so it should have been the case that they would not generate the type of social mistrust that is commonly associated with xenophobic immigration laws and policies.

For members of the aforementioned "white" ethnic groups this was in fact the case. As the United States came to embrace a "nation of immigrants" narrative, "white" ethnic groups were able to obtain national insider status (see Gabaccia 2010). Interestingly enough, however, these same anti-discriminatory immigration reforms seemed to have the opposite effect on the Latino/a community. Post-1965, the association of Latino/as with being national outsiders gained in strength (see De Genova 2004). This presents us with a strange turn of events. Where, at the turn of the twentieth century, Mexican nationality could provide a noncitizen with at least some reprieve from the discriminatory nature of

US immigration controls, now, at the start of the twenty-first century, we have a situation where a hint of Latin American ancestry is sufficient to arouse suspicion of one's civic standing and thereby be viewed as a threat to national unity (i.e., a threat to social trust).

So what explains the deteriorating social standing of the Latino/as in the United States, especially during a time when similarly situated ethnic groups saw their standing drastically improve? One could make the argument that the reason today's "white" ethnic groups (e.g., people of Irish, Italian, Polish, and Jewish descent) were able to gain a kind of national insider status while other groups (e.g., people of Asian and Latin American descent) were not was because of the way "whiteness" functions. On this view, ethnic groups that are today considered "white" in the United States were not fully white before 1965. Prior to 1965, their status was somewhere between "white" and nonwhite. However, those ethnic groups that are today considered nonwhite (e.g., Asian-Americans and Latino/as) are groups that have always unambiguously fallen on the nonwhite side of this divide. This view goes on to claim that, while various factors played a role in transforming those in the "in-between" category to full "white" status, the aforementioned immigration reforms played a primary role in making this transformation possible (see Roediger 2006).

The strength of such an account is that it helps to explain why certain groups, for example Asian-Americans, did not suddenly gain social acceptance, even as the immigration restrictions that most directly affected them were being lifted. On this account, the ethnic groups that gained national insider status were those, and only those, who could potentially fall on the "white" side of this divide. Ethnic groups that did not have this same "in-between" status therefore could not benefit from changes to immigration law and thereby remained firmly entrenched on the nonwhite side of this divide.

The problem for an account like this, however, is explaining the curious case of Latino/as. If, at the turn of the twentieth century, there were an ethnic group in the United States that could be considered "in-between," it would likely have to have been Latino/as. When Irish, Italian, Polish, and Jewish immigrants were finding it difficult even to enter the United States, Latino/as were not only permitted to enter, but also had US courts recognize their eligibility for citizenship. So why, post-1965, did Latino/as not also come to enjoy a national insider status as many of today's "white" ethnic groups do? Appeals to a lack of "whiteness" seem only to beg the question.

A more plausible explanation seems to be that, while these reforms treated all immigrants formally equal, they still left immigration control

(specifically the enforcement of immigration laws) at the discretion of the political community, in this case at the discretion of the US federal government. If nondiscriminatory admission and exclusion policies were, by themselves, sufficient to neutralize their discriminatory potential, it stands to reason that in post-1965 United States this is what we would have seen. Instead, as we see with the case of Latino/as, these reforms failed to ameliorate social mistrust. This suggests that Miller's addendum, while well intentioned, is still insufficient.

Nativists, such as Huntington, would argue that Miller's addendum fails to deliver on the promise of social trust because it gives the political community less, rather than more, discretion in the admission and exclusion of nonmembers. Miller's addendum, on their view, only handcuffs the political community in its attempts to foster the right "culture" (e.g., Anglo-Protestantism), which for them is essential to social trust. Therefore, from their perspective, it is not surprising that anti-discriminatory immigration reforms did not lead to social trust nor ameliorate social mistrust.

My position is that thinkers like Huntington are correct when they say that the national outsider status of groups like Latino/as in the United States is a threat to social trust and that political communities should address this. They are wrong, however, in believing that the solution to this problem is to give the political community more, rather than less, discretion in controlling immigration. The national outsider status that Latino/as are currently saddled with is not an essential feature of Latino/a-ness (as Huntington contends). This outsider status is the result of various factors, not the least of which is an immigration policy that did not sufficiently take into account sociohistorical circumstances or respect, even in a minimalist sense, immigrant rights.

The next two sections will therefore attempt to do two things: (1) explain what is meant by "sociohistorical circumstances" and "immigrant rights," and (2) suggest that an immigration policy that respects both of these is essential in developing social trust and ameliorating social mistrust. This is the critical point of the argument. If the promotion of social trust and the amelioration of social mistrust require that a political community's immigration policy adhere to these conditions, then the political community has, at best, a circumscribed—not discretionary—right to control immigration. In practical terms, this means that the "enforcement first" approach to immigration reform, which the United States has favored in recent years, might in fact be self-defeating and that a return to comprehensive approaches, especially those that mirror the recommendations made in the following two sections, should be adopted instead.

Sociohistorical circumstances and social trust

The phrase "sociohistorical circumstances" is here used to mean the way the world really is, its real history, real international and global relations, and real material circumstances. This is obviously a very broad definition, but with regard to immigration the focus can be narrowed to the history, relations, and material circumstances that political communities have (or have had) with each other and with the individual members of each other's communities. Under this, admittedly broad, understanding of sociohistorical circumstances, we can see how adhering to them could take away some of the discretion that a political community has in controlling immigration.

For example, if we return to the case of the United States, we can see that, despite all the immigration reforms that were passed after 1943, the number of undocumented immigrants, specifically undocumented immigrants from Mexico, actually went up. The cause of this sudden increase could be attributed to various factors, but unquestionably a principal cause was the 1965 policy of numerical caps. These numerical caps placed a 20,000 persons per year cap on all nations, thereby treating all countries the same and removing the last reminisce of overtly discriminatory immigration restrictions. As already mentioned, however, before 1965 the United States had no limits on people migrating from the Western hemisphere. So, as Mae Ngai nicely summarizes:

> The imposition of a 20,000 annual quota on Mexico recast Mexican migration as "illegal." When one considers that in the early 1960s annual "legal" Mexican migration comprised some 200,000 braceros and 35,000 regular admissions for permanent residency, the transfer of migration to "illegal" form should have surprised no one. The number of deportations of undocumented Mexicans increased by 40 percent in 1968 to 151,000 . . . [by 1976] the INS expelled 781,000 Mexicans from the United States. Meanwhile, the total number of apprehensions for all others in the world, *combined*, remained below 100,000 a year (Ngai 2004, 261). In short, because of these numerical caps Latino/as suddenly came to comprise a disproportionately large segment of the undocumented immigrant population, even though their actual numbers hardly changed.

So, similar to the way racial profiling assumes that nonwhites are criminals until they are proven innocent, since the late 1960s Latino/as in the United States have been assumed to be unlawfully present until

their lawful status can be confirmed. While this is a fallacious way of reasoning—thinking that because Latino/as make up a disproportionate segment of the undocumented immigrant population, that therefore Latino/a identity is somehow a good marker of unlawful presence (i.e., affirming the consequent)—it is nonetheless an inference and association that is made in the United States and it is especially made by enforcement officers (see United States v. Brignoni-Ponce 1975 and United States v. Martinez-Fuerte 1976).

It should be obvious why this type of profiling is pernicious, even if it does result in better and more efficient enforcement of current immigration laws. It is pernicious because it breeds social mistrust among citizens, as most Latino/as in the United States are actually citizens, and constantly suspecting them of being improperly present puts their citizenship into doubt.[3] To end or prevent these types of pernicious associations from forming, one of two things needs to happen. First, a way needs to be developed so that no one particular group within the larger political community comes to make up a disproportionate segment of the undocumented immigrant population. If this is done correctly, then these pernicious kinds of associations should never get off the ground. Alternatively, and likely in conjunction with the former, proactive measures need to be taken so that particular groups are not only not stigmatized by immigration law, but also not stigmatized in the *enforcement* of those laws. The way to address the former has to do with adhering to sociohistorical circumstances, so it will be the subject of the remainder of this section. The latter has more to do with immigrant rights, so it will be the subject of the section that follows.

If we recall, one of the problems with the post-1943 US immigration reforms was that they failed to adequately account for the 200,000+ annual migrants from Mexico. This failure served as a catalyst for the sudden increase in undocumented immigrants from Mexico because, even though the United States changed its immigration policy, its need for Mexican immigrant labor in the mid-1960s had not changed. The vast majority of Mexican immigrants, who were both needed by US employers and needed the jobs those employers offered, simply went from being legal migrants to being undocumented workers. This shift in the legal status of migrant workers is in large part what has led to the strong identification of Latino/as with being national outsiders (see De Genova 2004 and Chomsky 2014). Within the United States this identification has led to an increase, as opposed to a decrease, in the social mistrust of Latino/as. For example, Latino/as have come to be seen as unfairly using or straining beyond capacity the welfare services, social programs and

public education of the United States, and this mistrust has served as the motivation for recent anti-immigrant state reforms, such as California's proposition 187, that prioritize enforcement by denying benefits to immigrants, but where the real target of the proposed law is the entire Latino/a community (Schuck 1995).

Therefore, if social trust—and not merely an immigrant-free environment—is the goal, then future US immigration reforms should have adhered to sociohistorical circumstances. For example, if it is a fact of the world that the US economy needs and will continue to draw immigrant labor from certain parts of the world (either because of its historical or geographical connections to this area or for other reasons), then US immigration policies ought to reflect this. The same can also be said about family relationships. This does not, however, entail that the United States must completely open its border. All it means is that if it seeks to reduce the number of undocumented immigrants in its territory, because large numbers of undocumented immigrants have the potential of fomenting social mistrust, then admissions policies need to take into account sociohistorical circumstances.

Social trust requires immigrant rights

Having immigration policies adhere to sociohistorical circumstances might limit a political community's ability to exclude immigrants, but it does not necessarily bring the *social trust argument* to an end. The fatal blow comes in the form of immigrant rights, especially if by immigrant rights we mean presumptive protections that limit a political community's right to expel noncitizens. If it turns out that these sorts of protections are necessary, even at a minimal level, to obtain social trust (or at least to not further foment social mistrust), then the *social trust argument* has been defeated. The difficulty, however, is in showing that proponents of the *social trust argument* are bound to accept such protections based on their own moral or political commitments.

As we already saw in the possible replies to Wilcox and Pevnick, proponents of the *social trust argument* tend to be more nationalist or communitarian in their moral and political commitments. This means that, unlike liberal cosmopolitans, they believe that there are some meaningful (i.e., moral or political) differences between citizens and noncitizens. For them, these differences make the denial of immigrant rights seem almost like common sense. After all, immigrants are not, or at least are not initially, citizens of the political community and therefore are not owed the same political, and maybe not even the same moral, consideration that is owed

to other fellow citizens. So, even if citizens have the right to enter and remain within their own political community, as most nationalists and communitarians conceded that they do, immigrants are not owed the same courtesy. At best, immigrants might be granted the privilege to enter or remain within a political community, but that is at the discretion of that political community.

In this section, I challenge this conclusion by suggesting that social trust requires that a political community offer protections against overly intrusive immigration enforcement and that in order for these protections to be effective they also must extend to immigrants as well. The argument for this is as follows. While the *social trust argument* does not require a commitment to universal moral or political equality, it does demand respect for the moral and political equality of citizens. As we have already seen, a failure to respect the moral and political equality of citizens can relegate certain citizens to a kind of second-class status, which in turn undermines social trust. In short, there is no surer way of sowing the seeds of social mistrust than by undermining the moral or political equality of citizens.

There are many ways that the moral and political equality of citizens can be undermined, but as mentioned already, one sure way of doing so is to allow a certain group of citizens to bear a disproportionate amount of the burdens associated with enforcement. For example, if law enforcement agents disproportionately target nonwhite persons because they believe there is a strong link between being nonwhite and committing crime, then, regardless of how law enforcement agents might have come to make that association, the moral and political worth of nonwhite citizens has been undermined. These sorts of associations are therefore a source of social mistrust (specifically between white and nonwhite citizens). This means that if the end goal is social trust, then practices like racial profiling ought to be prohibited, even when prohibiting these practices might make law enforcement and crime fighting more difficult and less efficient.

Prohibiting these sorts of enforcement practices does not necessarily entail that laws cannot be enforced or that criminal activity must be tolerated. All that the preceding argument establishes is that, for the sake of social trust, the amount of discretion a political community has in enforcing its laws must be circumvented by what we might call an *equality of burdens* standard: whatever burdens result from the enforcement of laws, social trust requires that these burdens be allocated as equally as possible among all citizens, so that no citizen or group of citizens are given less moral or political consideration. As far as implications for immigration

policy, the *equality of burdens* standard would merely ask for the nondiscriminatory element that is already present in US admissions and exclusions policy to be extended to the enforcement of these policies. This seems like a reasonable recommendation for any future immigration reform to adopt.

If this policy recommendation were to be adopted in some future immigration reform, its implementation would see to it that any person, neighborhood or workplace be as likely as any other to be investigated, and in a similar manner, by immigration enforcement agencies. The reasoning behind this is that if only certain persons, jobs or neighborhoods are subject to enforcement or disproportionate enforcement, then the citizens who happen to be, live or work in those neighborhoods or perform those particular sorts of jobs will have been given less moral and political consideration than citizens who do not.

But while meeting an *equality of burdens* standard might be necessary for social trust, it is not sufficient without also having a corresponding commitment to *universal protections*. Another key component of social trust is that citizens have faith in their political institutions. If political institutions are corrupt or despotic, then, even if all the burdens (e.g., abuses) are equally shared, citizens will only be fulfilling their civic obligations out of fear rather than out of trust. This potential for corruption and despotism suggests that a further standard must be met in order to generate or maintain social trust. This standard will insure social trust by making transparent and limiting the coercive powers of political institutions. To meet this standard a political community does not necessarily need to be prohibited from deploying coercive force, but there must be some mechanisms in place for oversight and restrictions on excessive use when it does deploy force. We can call this the *universal protections* standard.

As a policy recommendation, it is difficult to say what specific types of oversight or restrictions would be necessary in order to adequately meet this standard, as different communities will have their own unique situation and set of challenges, but there does seem to be at least one universal restriction that this standard should will entail. There must at least be a "presumption of innocence" restriction. This means that all persons should be assumed to be, and treated as though they were, innocent until their guilt has been definitively proven. The justification for this seems obvious; if institutions are allowed to treat citizens as though they are guilty before they have been proven guilty, then there will be little trust, and in fact a whole lot of mistrust, in and within these institutions.

This means that if a future immigration reform were to adopt something like a *universal protections* standard, a political community would have to treat all persons present as though they were lawfully present until their status is proven to be irregular. In more concrete terms, if US immigration policy had to adhere to something like a *universal protections* standard, it would need to give all persons present, regardless of their immigration status, such basic protections as the right to due process, equal protection under the law, freedom from unreasonable searches and seizures, and a right to an attorney, which is currently not the case in removal proceedings.[4] Protections like these are essential because without them immigration controls could easily infringe on the rights of citizens.[5] So again, the control a political community has over immigration should be circumvented, not for the sake of noncitizens, but for the sake of not fomenting social mistrust among fellow citizens.[6]

If the two aforementioned standards (*equality of burdens* and *universal protections*) were to become part of an immigration policy, they would form a canopy that protects citizens from the excesses of a political community's enforcement mechanisms and in this regard would be essential to the effort of promoting and maintaining social trust. However, one of the consequences of adhering to these standards would be that a political community would lose much of its discretionary control over immigration enforcement. For example, a political community would not, without violating the *equality of burdens* standard, be able to target certain persons, communities, or occupations with more enforcement, even when it believes that these persons, communities, or occupations are more likely than others to harbor undocumented immigrants. In more concrete terms, this would prohibit raids such as the infamous Postville Raid, which at the time was the largest immigration raid in US history. This raid on a meatpacking plant in Postville, Iowa netted close to 400 undocumented immigrants and in its aftermath close to 1,000 Latino/as—both citizen and immigrant alike—left Postville (Yu-Hsi Lee 2013).[7]

A political community would also be prohibited from commandeering police officers for immigration enforcement activities, which in the United States is currently a favored enforcement tactic.[8] The *universal protections* standard either would prohibit this because of the potential for police abuse (e.g., police could use immigration enforcement duties as an excuse to target people they would otherwise have no excuse to target), because it might make some citizens less likely to come forward to report crimes (e.g., citizens who are the victims of crimes and also happen to live in a household where someone is undocumented might be hesitant to call police) or would make some persons less likely to come forward as

witnesses or whistleblowers (e.g., the safety of all citizens and the preservation of law and order are dependent on the cooperation of all persons present, regardless of their immigration status).

Now, even if there is disagreement over the details of the two standards I have proposed in this section, the more general point about future immigration reform still seems salient: *maintaining moral and political equality among citizens is a key component of social trust, and this equality is put in jeopardy if certain presumptive checks are not placed on a political community's ability to enforce immigration*. These checks, while not necessarily entitlements, do provide immigrants with a minimal set of presumptive protections (i.e., immigrant rights in the "negative" sense of rights) that circumvent the discretion a political community enjoys in controlling immigration. This, again, with regard to immigration reform means that increasing enforcement is not a solution. In order for immigration reform to be successful, at least with respect to developing and maintaining social trust, it must make some accommodations for immigrant rights, even if only in a minimalist sense.

Conclusion

As mentioned in the first section of this chapter, the *social trust argument* maintains that a political community cannot survive without social trust, and that social trust cannot be achieved or maintained without a political community having discretionary control over immigration. However, as the previous two sections have argued, promoting social trust (or at least abating social mistrust) requires that a political community's immigration policy adhere to sociohistorical circumstances and, at least in a minimalist sense, respect immigrant rights. This critique of the *social trust argument* is substantially different from prior criticisms that have focused their efforts on developing alternative ways (i.e., resorting to liberal democratic principles or institutions) for keeping the political community together.

While remaining sympathetic to these prior criticisms, this chapter challenged the key assumption of the *social trust argument*: that discretionary control over immigration can be consistent with a political community achieving or maintaining social trust. If successful, the arguments presented in this chapter not only have undermined the *social trust argument*, but more importantly have shown why "enforcement first" approaches to immigration reform are, and inevitably will be, unsuccessful. As the case of Latino/as in the United States has shown, social mistrust can arise even in cases where discretionary immigration policy is not motivated by prejudice and even when its intended aim is to rectify

past injustices. In order to help generate or maintain social trust, adhering to sociohistorical circumstances and respecting immigrant rights must play a more central role in future immigration reforms.

Notes

1. In this regard, the *social trust argument* is substantially different from deontological arguments, which defend the claim that "legitimate" states are morally entitled to self-determination, and that a central component of self-determination includes the right *not* to associate with nonmembers. One such example can be found in the work of Christopher Heath Wellman (see Wellman 2008).
2. For example, Joseph H. Carens and Phillip Cole have made such arguments (see Carens 1997; Cole 2000).
3. James W. Boettcher makes a similar argument, but from the perspective of democratic theory (Boettcher 2013).
4. Under the "Plenary Power Doctrine" the US federal government is free to deport noncitizens without judicial review and because deportation is not considered a punishment, noncitizens also do not have recourse to many important constitutional protections, such as the right to due process, equal protection under the law or the right to have an attorney appointed to them if they cannot afford one while in "removal proceedings" (see Senh 2009; Kanstroom 2007, 16–17).
5. This is an important point to keep in mind because US immigration enforcement has wrongfully deported some of its own citizens and people who were otherwise eligible to remain in the country. In one case, the US citizen wrongly deported was a developmentally handicapped man, whose return trip home was traumatic and very easily could have ended in tragedy (see Powers 2007). A different case did end in tragedy when a wrongly deported man died in a fire inside the Honduran jail where the Honduran immigration agency was holding him (see Guidi 2012).
6. This argument is largely a readaptation of an argument put forth by Michael Blake (see Blake 2003, 224–237).
7. Not all of the Latino/as who left Postville necessarily left the country. This raid can therefore be seen as an example of what Elizabeth Jamison in chapter 7 of this volume refers to as State-based Internal Displacement (Jamison 2015).
8. US federal law currently allows for local law enforcement to be commandeered for immigration enforcement duties under section 287 (g) of the Immigration and Nationality Act (1996 Illegal Immigration Reform & Immigrant Responsibility Act). Also, this linking up of immigration enforcement with local law enforcement has appeared in various state immigration bills. The most notorious of these being Arizona's SB 1070 (see State of Arizona Senate).

References

1790 Naturalization Act, Chap. 3; 1 Stat 103. 1st Cong., 2nd sess. (March 26, 1790).
1917 Immigration Act, H.R. 10384; Pub.L. 301; 39 Stat. 874. 64th Cong., 2nd sess. (February 5, 1917).

1924 Immigration Act, H.R. 7995; Pub.L. 68–139; 43 Stat.153. 68th Cong., 1st sess. (May 26,1924).

1943 Magnuson Act, H.R. 3070; Pub.L. 78–199; 57 Stat. 600.78th Cong., 2nd sess. (December 17, 1943).

1965 Immigration and Nationality Act, H.R. 2580; Pub.L. 89–236; 79 Stat. 911. 89th Cong., 2nd sess. (October 3, 1965).

1996 Illegal Immigration Reform & Immigrant Responsibility Act, H.R. 3610; Pub.L. 104–208; 110 Stat. 3009–546. 104th Cong. (September 30, 1996).

1996 Personal Responsibility and Work Opportunity Reconciliation Act, H.R. 2260; Pub.L. 104–193; 110 Stat. 2105. 104th Cong. (August 22, 1996).

Barvosa, Edwina. 2012. "Applying Latina Feminist Philosophical Approaches to the Self to Reinterpret Anti-Immigrant Politics in America." *APA Newsletter on Hispanic/Latino Issues in Philosophy* 11(2): 16–21. Accessed May 13, 2014. http://c.ymcdn.com/sites/www.apaonline.org/resource/collection/60044C96-F3E0-4049-BC5A-271C673FA1E5/v11n2_Hispanic.pdf.

Blake, Michael. 2003. "Immigration." In *A Companion to Applied Ethics*, edited. R. G. Frey and Christopher Heath Wellman, 224–237. Oxford: Blackwell Publishing.

Boettcher, James W. 2013. "Immigration Policy and Civic-Political Identity." *Public Affairs Quarterly* 27(1): 1–23.

Carens, Joseph H. 1997. "Aliens and Citizens: The Case for Open Borders." In *The Rights of Minority Cultures*, edited by Will Kymlicka, 331–349. Oxford: Oxford University Press.

Chae Chan Ping v. United States, 130 U.S. 581 (1889).

Chinese Exclusion Act, Chap. 126; 22 Stat. 58. 47th Cong., 1st sess. (May 6, 1882).

Chomsky, Aviva. 2014. *Undocumented: How Immigration Became Illegal*. Boston: Beacon Press.

Cole, Phillip. 2000. Philosophies of Exclusion: Liberal Political Theory and Immigration. Edinburgh: Edinburgh University Press.

De Genova, Nicholas. 2004. "The Legal Production of Mexican 'Illegality'." *Latino Studies* 2(2): 160–185.

De Leon, Arnoldo. 1979. *IN RE Ricardo Rodriguez: An Attempt at Chicano Disfranchisement in San Antonio,1896–1897*. San Antonio: Caravel Press.

Delgado, Richard. 2009. "The Law of the Noose: A History of Latino Lynching." *Harvard Civil Rights-Civil Liberties Law Review* 44(2): 297–312.

Fong Yue Ting v. United States, 149 U.S. 698 (1893).

Gabaccia, Donna R. 2010. "Nations of Immigrants: Do Words Matter?." *The Pluralist* 5(3): 5–31.

Grant, Madison. 1922. *The Passing of the Great Race: The Racial Basis of European History*. New York: Charles Scribner's Sons.

Guidi, Ruxandra. 2012. "Honduran LA Resident Accidentally Deported, Then Dies in Prison Fire." *Southern California Public Radio*. Accessed May 25, 2014, http://www.scpr.org/news/2012/03/02/31481/honduran-resident-los-angeles-wrongfully-deported.

Huntington, Samuel. 2004. *Who Are We? The Challenges to America's National Identity*. New York: Simon & Schuster Paperbacks.

Jamison, Elizabeth. 2015. "State-Based Immigration Efforts and Internally Displaced Persons (IDPs): An Experiment in Alabama." In *Migration Policy Interventions*, edited by Harald Bauder and Christian Matheis. New York: Palgrave.

Johnson, Kevin R. 2005. "The Forgotten 'Repatriation' of Persons of Mexican Ancestry and Lessons for the 'War on Terror'." *Pace Law Review* 26(1): 1–26.
Kaag, John Jacob. 2008. "We Are Who? A Pragmatic Reframing of Immigration and National Identity." *The Pluralist* 3(3): 111–131.
Kanstroom, Daniel. 2007. *Deportation Nation: Outsiders in American History*. Cambridge, MA: Harvard University Press.
Miller, David. 2005. "Immigration: The Case for Limits." In *Contemporary Debates in Applied Ethics*, edited by Andrew I. Cohen and Christopher Heath Wellman, 193–206. Malden, MA: Blackwell Publishing.
Ngai, Mae. 2004. Impossible Subjects: Illegal Aliens and the Making of Modern America. Princeton, NJ: Princeton University Press.
Orosco, José-Antonio. 2008. *Cesar Chavez and the Common Sense of Nonviolence*. Albuquerque: University of New Mexico Press.
Pevnick, Ryan. 2009. "Social Trust and the Ethics of Immigration Policy." *The Journal of Political* Philosophy 17(2): 146–167.
Powers, Kemp. 2007. "Group Says U.S. Citizen Wrongly Deported to Mexico." *Reuters*. Accessed May 25, 2014. http://www.reuters.com/article/2007/06/11/us-usa-immigration-deportation-idUSN1118919320070611.
Roediger, David. 2006. *Working towards Whiteness: How America's Immigrants Became White.* New York: Basic Books.
Schuck, Peter H. 1995. "The Message of Proposition 187." *Pacific Law Journal* 26: 989–1000.
Senh, Robert. 2009. "The Liberty Rights of Resident Aliens: You Can't Always Get What You Want, But If You Try Sometimes, You Might Find, You Get What You Need." *Oregon Review of International Law* 11(1): 137–178.
State of Arizona Senate, Forty-Ninth Legislature, Second Regular Session 2010, *Senate Bill 1070*.
United States v. Brignoni-Ponce, 422 U.S. 873 (1975).
United States v. Martinez-Fuerte, 428 US 543 (1976).
US Immigration and Customs Enforcement. 2014. "Secure Communities." Last modified September 29, 2014. http://www.ice.gov/secure_communities. Accessed August 29, 2014.
Wellman, Christopher H. 2008. "Immigration and Freedom of Association." *Ethics* 119(1): 109–141.
Wilcox, Shelley. 2004. "Culture, National Identity, and Admission to Citizenship." *Social Theory and Practice* 30(4): 559–582.
Wilstein, Matt. Rep. "Steve King: Immigrants Mostly 'Evil' Marijuana-Smugglers with 'Calves the Size of Cantaloupes'." Mediaite, July 23, 2013. Accessed December 7, 2014. http://www.mediaite.com/tv/rep-steve-king-immigrants-mostly-evil-marijuana-smugglers-with-calves-the-size-of-cantaloupes/
Yu-Hsi Lee, Esther. "How The Postville Immigration Raid Has Changed Deportation Proceedings." *ThinkProgress*. May 10, 2013. Accessed December 7, 2014. http://thinkprogress.org/immigration/2013/05/10/1993661/how-the-postville-immigration-raid-has-changed-deportation-proceedings/.

3

Complementing Schengen: The Dublin System and the European Border and Migration Regime

Bernd Kasparek

Introduction

It was pure coincidence that we met Cawad, a refugee from Somalia, in Milano in September 2011. We had come to Milano a few days ago to study the reception and living conditions of refugees in Italy, with a particular focus on the Dublin II regulation. In order to prepare for the research, we had conducted interviews with several refugees who had come from Italy in Bavarian refugee camps. It was in the Bavarian city of Augsburg that we first met Cawad. He told us how he had arrived on the Italian island of Lampedusa in August 2008, where his fingerprints were taken and where he applied for asylum in order not to be deported. He spent several months in a reception center in the Italian city of Bari. After he was dismissed from the center and refused any further social assistance, he managed to reach Milano, the economic hub in northern Italy, where he spent his days on the street. Every day, he told us, he was busy securing at least some food. Without a home, without language courses, without medical assistance, without a job, he was barely able to sustain himself. Seeking assistance from the municipal authorities did not yield any results. It was only when he was offered 100 euro as a one-time payment that he took his chance and left for Switzerland where he applied for asylum again. He was swiftly deported back to Milano by the German police. Over the course of the next years, he applied for asylum in the Netherlands as well as in Sweden, but ended up being deported to Italy in all cases.

Cawad's living conditions in Italy never improved. His asylum application in Germany was his fourth attempt at building a future for himself, but it was in vain, as we would find out. Only a few days after our interview in Augsburg, he was arrested, spent two weeks in prison, and was deported to Milano where we met him two months later at a soup kitchen run by a local church that attracted a vast variety of refugees and migrants, all trying to secure one warm meal for the day. When asked about what he was going to do next, he told us that he would try to return to Germany, or perhaps try Denmark this time. I asked him if he didn't know that he would be deported again. He said that he was well aware of that fact, but he reasoned that it was better spending a few months in winter in a refugee camp in northern Europe than having to endure winter on the street in Milano: "I know that they will deport me again, but at least then it will be spring."

Cawad's is not a singular case, and his story is not about the case of an asylum seeker who fell through the cracks of the asylum system in Europe. Rather, his story is representative of the fate of many refugees. This particular trajectory of forcibly roaming Europe in search of protection and a better future has a name: Dublin. While many readers may mainly associate "Dublin" with James Joyce and Guiness, to thousands of refugees in Europe the name represents a constant cycle of departure and deportation in Europe.

In this chapter, I trace the origins of the Dublin System to its current implementation and practices. I then examine the Dublin System in the larger context of the European border and migration regime, in order to discuss the current obstacles and challenges to the Dublin System. Everyday practices of resistance combined with high-level legal challenges have already shaken the foundations of the Dublin System, but in the end, a transparent, general and honest debate about how migration is part of European societies and its consequences for democracy and participatory rights is warranted for. This is not just an idealistic demand, but a necessary conclusion informed by a research approach that focuses both on an ethnographic assessment of the existing consequences of the system and on the conflicts and negotiations that are inherently present. The findings of this approach show that the discussion about Dublin is not merely about a legal apparatus and its implications in the field of refugee rights and policies; rather, it is a discussion that entails issues such as economy and labor, citizenship and social and political rights, that is, core issues of relevance to the European societies at large.

The origins of Dublin

The so-called Dublin System takes its name from the Dublin Convention, which was signed in Dublin, Ireland, in 1990 by 12 signatory countries and came into effect in 1997. The origins of the Dublin Convention can be traced to the Schengen Convention of 1990, which in turn details the implementation of the Schengen Agreement of 1985. The relevant articles 28–38 defining the responsibilities regarding asylum seekers were simply copied from the Schengen Convention to the Dublin Convention, even though the latter was signed four days before the former (Lorenz 2013, 20).

The Schengen Agreement aimed to abolish internal border controls while reinforcing the external borders of the constructed Schengen Area with a perspective of shared responsibility. Schengen thus marks the birth of the European External Border as an institution and European policy field. Mobility and freedom of movement within the Schengen Area were counterbalanced by a reinforced border with third countries, that is, countries outside the Schengen Area. With view to unwelcome movements of flight and migration, the Agreement contained compensatory measures. Apart from the reinforced external border, harmonization of the visa requirements and entry policy were prescribed. The most important technological instrument of the Schengen Agreement, the compensatory measure with the strongest impact, was the police database Schengen Information System (SIS). It was the first supranational European database, allowing an exchange of information about third-country citizens, most notably migrants and refugees.

The control and prevention of unwanted movements of flight and migration were inscribed centrally into Schengen from the onset. For this reason, even though counterintuitive, the Schengen Agreements are the foundation of European migration policy, and the European External Border emerged as the preeminent technology for the control and regulation of migration. However, the European External Border has been mostly researched with its effect at or outside the borderline marking the European territory, that is, with view to its externalization. I argue that the Dublin System extends the border and its underlying mechanisms to the interior of the European Union.

Dublin

The Dublin Convention of 1990 dealt exclusively with asylum seekers. While there was a provision that guaranteed the right of asylum in a

signatory country, other provisions sought to prevent the lodging of asylum applications in several countries, a practice referred to "asylum shopping." This went as far as prohibiting the free movement of asylum seekers within the Schengen Area (Kloth 2000, 8). Ostensibly, the Dublin Convention (1997) laid down criteria to determine the state responsible for processing the application of an asylum seeker. While not spelled out explicitly neither in the Convention nor its succeeding acts of law, the criteria establish a *principle of causation*, that is, the state that has "caused" the entry of an asylum seeker is also responsible for processing the asylum claim. Causation may refer to insufficient policing of the border or the issuing of a visa. The principle of causation has until today remained the central rationale of the Dublin System, and the criteria are described as "objective, fair criteria both for the Member States and for the persons concerned" (Council Regulation (EC) No. 343/2003; Regulation (EU) No. 604/2013). This rationale, in turn, means that Dublin does not establish any kind of a quota system with fixed allotments of asylum application to be processed by the member states of the European Union.

With the Amsterdam Treaty of 1997, the Schengen Agreement was incorporated into European Union law, while legislative competences in the field of migration and border policies were transferred to the European level. The latter led to the creation of what is referred to as the Common European Asylum System (CEAS), the attempt to create a harmonized European asylum system. The CEAS started to take shape between 1999 and 2005. It mainly consists of five EU legislative acts: the Asylum Procedures Directive, the Reception Conditions Directive, the Qualification Directive, the Dublin Regulation and the Eurodac Regulation. All five acts were last revised in 2013 (Lehnert 2015). The Dublin Regulation and the accompanying Eurodac regulation form the centerpiece of the CEAS. The Dublin Regulation of 2003 (Council Regulation (EC) No. 343/2003) replaced the Dublin Convention as a direct European legislative act, and is referred to as Dublin II. Dublin III refers to the reform of the Dublin II regulation (Regulation (EU) No. 604/2013) that came into effect in 2013 (see Lehnert 2015; Lorenz 2013). But rather than picking up on these more fine-grained modifications, I will discuss the main concepts and mechanisms of the Dublin System.

Safe Third Countries

Since the end of the 1980s, there was a discussion within the European Community about amending asylum systems with the so-called Safe Third Countries clause in an attempt to curb asylum migration to Europe

(Lavenex 1999). The argument was that asylum seekers who had transited a country that provided protection under international law (such as the Geneva Convention on Refugees) could be safely deported to that country in order to lodge an asylum application there. For example, in 1993 the recently reunited Germany implemented this clause in its far-reaching reform of the right to asylum and declared itself to be surrounded by Safe Third Countries. Similarly, the process of the externalisation of migration control that forms one of the main policy goals of the Schengen process aims at establishing Safe Third Countries in the neighborhood of the European Union as a *cordon sanitaire* for asylum. The rationale is the same: any asylum seeker who reaches the European Union by transit through a Safe Third Country could be deported there without violation of the *Non-Refoulement principle* of the Geneva Convention on Refugees.[1]

The rationale of the Dublin System relies on the same argument. Due to the legal assumption that all member states of the European Union can be considered Safe Third Countries, the deportation of asylum seekers within the European Union can by default not be in violation of the Non-Refoulement principle. The "objective criteria" of the Dublin Regulation determine which member state is responsible for processing an asylum seeker's application. In the next section, I will discuss how these criteria are applied in practice, and what consequences they have for refugees and migrants inside Europe.

Eurodac: "The finger"

Corso Lodi is an abandoned train station in the South of Milano. Secured by fences and only accessible through a train tunnel, it is an area with unchecked vegetation and abandoned buildings. During our 2011 research in Milano, we met a group of refugees from Afghanistan there. They had constructed makeshift accommodation around the buildings, refraining from occupying the buildings for fear of being evicted by the police. While we were there, two young refugees from Afghanistan, probably not even of age, arrived. They told us that they first reached Greece, but due to the bad conditions there, they had decided to move on, through the Balkans, and into Italy. But before they could even narrate this particular trajectory, there was one question everybody—refugees and researchers alike—asked them: "Do they have your finger?" They responded in the negative, and everybody was surprised and excited at the same time. It was immediately clear that they might still have a chance to obtain asylum in a country of their choice in Europe and escape the vicious cycle of Dublin.

How can asylum authorities track people on the move who do not want to get tracked? This question lies at the heart of the implementation of the Dublin System. In order to apply the Dublin criteria, in most cases, the country where a prospective asylum seeker first entered the European Union must be identified. The Dublin bureaucracy has resorted to many methods to solve this question, like examining cellular phones for the obligatory roaming text messages that prove the arrival to a particular cell network, or by searching the belongings for receipts that can be traced to a particular city. However, "the finger" refers to the most effective measure: Eurodac, European Dactyloscopy.

Eurodac is the first pan-European fingerprint database, established in 2003 solely for the purpose of tracking irregular migrants and asylum seekers. It complements the Schengen Information System, which—until completion of its still ongoing upgrade—has not held biometric data. Each member state of the European Union is legally required to enter into this database the fingerprints of any asylum seeker or irregular migrant apprehended at the border. Through this database, the country of first entry or first asylum application can be ascertained. Even before processing an asylum application, national asylum authorities of European Union member states consult the Eurodac database. If the fingerprint of the asylum seeker produces a hit, a "Dublin request" from one national Dublin Unit to another will be triggered, which will eventually lead to a deportation or "transfer" of the asylum seeker (Tsianos and Kuster 2012). The practical process of negotiating such a transfer is more complicated and has opened up a space of very detailed legal discussion and contention and consequently a bloated bureaucracy.

Beyond these details, we can conclude that the rationality of the Dublin regulations, as well as its concrete implementation through Eurodac have led to a system that acts as a selective filter to the national asylum systems within the European Union. It proclaims to guarantee access to asylum but has instead created a highly mobile and excluded population of refugees in Europe. At the same time, it has clearly created a huge imbalance between European Union member states, in which the countries in the European South and South-East, with a large portion of Europe's external border, have had to handle the majority of the asylum requests within the European Union. Given this imbalance, asylum standards within the European Union have been drifting apart, jeopardizing the already ambitious policy goals of a harmonized European asylum system and at the same time exposing refugees to inhuman and degrading treatment.

Migration and border regimes

Given the current state of Dublin, activists and nongovernment organizations (NGOs), especially in Germany, have mounted criticisms that focus on the exclusionary practices of the Dublin System, that is, the tendency to restrict access to asylum, and to abandon persons in need of protection to their own, obviously limited means. Under this perspective, the Safe Third Country principle appears like a legal paraphrase of the popular sentiment that, yes, refugees should receive protection, but no, not in my neighborhood. By extension, the Dublin System then appears like the organized abandonment of the responsibility to protect refugees by the European Union member states without a significant part of the external border. Abstractly, we can refer to this argument as a *repression hypothesis*, that is, a reading of the Dublin System as a political movement toward the abolition of asylum, and a total disenfranchisement of refugees in Europe (Schuster 2011).

However, this hypothesis is problematic in many ways. For one, it reifies asylum as a moral value and ethical achievement to be defended without interrogating its concrete practices and significance to the current modes of governing migration. To this end, the hypothesis dichotomizes between those who wish to uphold asylum and those who wish to abolish it. For the other, it reads the larger dynamics of the establishment of the European External Border as well as the CEAS as a linear development toward a proclaimed end, thus erasing the many twists, turns, and internal contradictions these dynamics have already exhibited, foreclosing analytical capabilities to identify the cracks and gaps for intervention. I therefore propose an alternative reading of these developments, which are based in a perspective on migration and border regimes, informed by ethnographic research and with a focus on the negotations, contestations, and conflicts within the Dublin System.

Ethnographic Migration and Border Regime Analysis

In order to undertake such an analysis, I will draw on the methodology of the Ethnographic Migration and Border Regime Analysis, which was first developed by the interdisciplinary research group Transit Migration Forschungsgruppe (2007). The group developed this approach when faced with a similar *repression hypothesis* in their study of the European External Border. Especially in critical and activist circles, the term "Fortress Europe" had long been used to criticize the consequences of European border policies as embodied by the Schengen process, pointing at the

continued efforts to strengthen, reinforce, militarize and upgrade the borders largely by means of introducing new bordering technologies. The term implies that the border acts as a protective barrier around Europe off which migrants would figuratively bounce off and be condemned to either a perpetual existence in the netherworlds of transit or death.

Transit Migration, carrying out ethnographic research at the fringes of Europe around 2004, has criticized the notion of "Fortress Europe". Instead of reifying the border and taking the border as a quasi-naturalized entity, such as a demarcation line, the group's investigation turned to how migratory practices, discourses on migration, migration policies, strategy papers, legislation from Brussels, NGOs, border guards and border technologies were co-constitutive of the European borders, and what effects, intended or unintended, this interplay produced. This implied a turn away from the ontological question of *what the border is* to an analysis of *what doing border means*, that is, the different practices between everyday border work and political and discursive interventions on the various levels that drive the development of the ensemble known to us as the border.

One important finding from this approach, steeped in ethnographic research, is that migration itself plays an important, even primary, role in shaping the policies and practices of border and migration control. Border management practices and policies are in this sense reactive, either because they attempt to react to a specific development of the migratory movements, or they aim to anticipate future developments.

The consequences of such an approach for an analysis of the Dublin System are twofold. For one, it does indeed necessitate a rejection of the assumption that the Dublin System is the outcome of a targeted attempt to abolish asylum. Rather, I suggest a reading of the dynamics of the Dublin System as an ongoing attempt to adapt the institutions and rationales of the asylum regime to the changes in and challenges posed by migratory movements. For the other, this is a consequence of the absence of a centrally organizing rationale, it means acknowledging the multiplicity of actors that are involved in the system and researching the networked ensemble of discourses, institutions, and practices that aim to make migration governable and what is described by the term border and migration regime. With this in mind, I prefer to speak less of *governance of migration* as this implies the rather concrete engaging with migrations and even migrants, but rather seek to trace the evolving *arts of government* that this process of constantly interrogating the patterns of migration and adapting to its concrete modes represents.

Liminal institutions

Confronted with the migration and border regime as the site of analysis, and given the rejection of the repression hypothesis, what is the productivity of the institutions involved in the regime? Contemporary borders do not seek to terminate mobility across them. What is at stake at the borders—not only of Europe—today is to regain a degree of sovereignty over the mobile populations (Kasparek 2010) inhabiting the border zones, that is the regions inside and outside the borderline. Especially in the case of the European Union's migration and border policy, we are confronted with a rhetoric of a *collapse of control*, an alleged incapacity of the state to stop, manage, regulate or control migration. The most evident product of this rhetoric lies in the naturalization of migration as *flows, waves, torrents* or *streams*, that is, a phenomenon perceived to be outside of the realm of human intervention. This characterization in turn allows for emergency measures to be applied, measures that would never even be considered in the management of the sedentary population of nation-states.

As mentioned above, there has been extensive research toward the external dimension of this new government of migration. Papadopoulos, Stephenson and Tsianos (2008) use the terms liminal institutions as well as liminal spaces in order to capture this ongoing transformation of policies of border management from an act of interrupting flows toward a government of porosity and mobility. They posit that the liminal space can be understood as "a flexible regime of control which attempts to regulate mobility flows by forging contingent border zones wherever the routes of migration make the existing regime porous" (Papadopoulos et al. 2008, 74). These contingent border zones are not geographical, the term rather identifies the concrete sites where migration encounters control efforts directed against it, and they are constantly erected and torn down as the flows evolve. This practice constitutes what Sciortino has stated as the life of a regime being "the result of continuous repair work through practice" (Sciortino 2004, 32).

Following Vassilis Tsianos and Sabine Hess, the space of liminal institutions can be read as a "regime of hierarchization and heterogenization of space" (Tsianos and Hess 2010, 251; author's translation). The productivity of this regime lies in the creation of a "scaled differential homogeneity that, in turn, goes hand in glove with a de-homogenization of rights" (Ibid.), or, in other words, a graduated or "stepped zone of sovereignty" (Papadopoulos et al. 2008, 165). These spaces of the liminal institutions have replaced the hitherto homogeneous space of the nation-state and its linear border as the site of control. They are ephemeral and exist only in

reference to the current modes and practices of migration. Even though first used to describe the multiplicity of control strategies and practices deployed at the border, and its exterior, we can immediately identify these liminal spaces and contingent border zones in the trajectory of Cawad as outlined above.

In 2008, the European sea border in the central Mediterranean was particularly porous, turning Lampedusa, officially Italian territory, and especially its detention center into a site where the Italian state could not assert full sovereignty—here: control access to its territory—and where arriving migrants had to choose between different sets of rights and restrictions. They could either become an asylum seeker and give up their fingerprint, with all the known consequences, or symbolically assert their right to mobility and be deported. This differentiated set of rights and the accompanying practices of social cohesion are similarly visible in Milano, as well as in the reception centers of the asylum systems of the northern European states. To conclude: the Dublin System is not about the prevention or reversal of mobility—for that would entail deportation to Somalia in the case of Cawad—but rather the disenfranchisement of migratory populations and social practices of differential inclusion.

Negotiation, contestation, conflict

In order to turn away from Cawad's particular case, and to deepen the investigation into the liminal institutions of Dublin and how they shape the Dublin System in their attempts to engage with the changing modes of migration, I identify three main areas of conflict and contestation. They map onto different axes. The first axis is the migrants' refusal to submit to Dublin; the second axis relates to the legal arena and the third axis concerns the interconnection of labor and migration regimes within the European Union and the geographic specificity of the European External Border. Here, I explore each in greater detail and show that an investigation into the Dublin System only yields results if placed in the wider context of the European border and migration regime. It is not asylum that is at stake in Europe, it is how the existing asylum regime is adapted to the European Union's attempt at a new art of governing migration.

Evasion and escape

The first axis has already become evident in the experience of Cawad described above. It stems from the fact that Dublin may prescribe a neatly algorithmical procedure how asylum in Europe is to be treated, that is

the mechanism of Eurodac, the responsibility determination through the "objective criteria" and the steps to be taken by national asylum institutions in order to enforce them. However, this procedure takes into account neither the concrete subjectivities of the objects of the Dublin System—that is, the asylum seekers, refugees, and migrants—nor their refusal to submit to this particular system. The "objective criteria" are after all only objective by name: while they purport to establish a neutral and transparent process of distributing responsibility for processing asylum applications between the European Union member states, they do not take into account the intentions and rationalities of the refugees and asylum seekers.

Not surprisingly, the Dublin System, from the onset, has been confronted with a wide variety of resistance practices. Many of these practices revolve around the issue of "the finger" and are attempts to skirt the obligatory submission of fingerprints to Eurodac. They involve attempts to cross the European External Border undetected and move to the desired destination country in Europe while surpassing police controls. More visible are collective refusals to have fingerprints taken, as they took place in the detention center of the Italian island of Lampedusa in the beginning of 2013 (Libera Espressione 2013). Even in the event that fingerprints were taken, the practices of resistance have not ended. They involve a self-mutilation of the fingertips by burning them, applying acid, cutting them or any other form that destroys the fingerprints.

In the winter of 2010/2011, a rather large movement of Somali refugees migrated into the German state of Bavaria. During the course of 2010, Bavarian administrative courts had decided in a majority of cases to grant refugee or humanitarian protection to refugees from Somalia, and this knowledge spread through the social networks of migration. It was mostly Somali refugees who had arrived in Italy and that had been registered there who came to Bavaria, lodging another asylum application, while avoiding deportation to Italy by means of mutilating their fingertips. In the beginning, this strategy yielded results and led to the subsequent recognition of many as refugees in need of protection and the granting of status. However, with increasing numbers, a legal dispute erupted that revolved around the question if an (alleged) self-mutilation amounted to a refusal of fingerprints being taken, which would automatically void the asylum application under German law. While the courts rejected the position of the German authorities, subsequent quick fixes within the bureaucracy led to a near indefinite postponement of asylum decisions and a drop in the number of granted asylum applications.

Another set of practices revolves around the bureaucratic details in the Dublin System hinted at above. There are many deadlines that need to be

kept to transfer an asylum seeker from one country to another. Asylum seekers due to be transferred to another country attempt to skirt these deadlines in a variety of ways, which again led to extended legal disputes that revolve around very specific interpretations of deadlines, status, and concepts inherent to the Dublin System. Suffice it to mention just one particular strategy involving the institution of the church. Due to the sanctity of churches in parts of Germany, police would not enter churches in order to enforce a Dublin deportation. At the same time, taking up residence in a church did not amount to go into hiding, an act that would under normal circumstances lead to a suspension of the deadlines. This consequently has led to a resurgence of the instrument of church asylum lately (see chapter 5 by Serin Houston and Olivia Lawrence-Weilmann for a comparison of sanctuary legislation in the United States).

The enumeration of these practices is by no means exhaustive. However, they are all based on a refusal to submit, and an effort to circumvent the rules of the Dublin System by means of evasion or escape, even if only in the realm of digital databases (Kuster and Tsianos 2013). However, these acts of resistance are a fitting illustration for what "doing border" means in the context of the Dublin System. It is precisely the unchecked movements of migrations that have triggered reactions and quick-fixes in the liminal institutions of the German asylum system. The practice of evading the Italian asylum systems with its severe shortcomings and requesting access to the German asylum system is a conflict in which the sovereignty of the German state is challenged and through which a specific right—that is, the right to lodge an asylum application—is renegotiated in a liminal space that stretched from the reception institutions in Bavaria to the churches in Germany. It is indeed a border conflict in the sense of the liminal institutions because the border to be surpassed is not a geographical border, but the border between the status of being either a Dublin case or an accepted asylum seeker. Stepped sovereignty, then, translates into the power of the state's authorities to enforce removals. The struggles against appearing as a "hit" in Eurodac or being a Dublin returnee are the very renegotiations of the state's sovereignty.

The legal arena

The existing literature concerning Dublin consists of an overwhelming body of legal analyses, far outweighing any research in the fields of political science, sociology or anthropology. This represents a serious gap in analyzing the Dublin System in relation to its impact on migration at

large, or its role in the development of a harmonized European migration policy. However, there are indeed many legal disputes surrounding the Dublin System that ramify ever more deeply into highly specific juridical questions. While these disputes are mainly carried out in national administrative courts, Dublin has also become a subject at the highest European courts, the European Court of Human Rights (ECHR) and the Court of Justice of the European Union (CJEU).

Sonja Buckel (2013) has argued that there exists a "relational autonomy of the law" (30ff.), that is, a sphere in which the social forms abstracted by the law produce an autonomous, objective quality. In the case of the legal disputes around Dublin, the social forms are precisely the contestations that materialized in the evasion and escape of refugees and migrants from the Dublin System. While in the previous section, I have addressed a variety of bureaucratic fixes of the asylum institutions, the social forms translated very differently in the legal arena.

The main questions around which the relevant cases at the ECHR[2] and the Court of Justice of the European Union (2011) revolved were whether a sub-standard state of national asylum systems constituted a violation of human rights as laid down in either the European Convention on Human Rights or the EU Charter of Fundamental Rights, and whether a state executing a Dublin deportation was responsible for ascertaining the human rights situation in the destination country of the deportation and could subsequently be held responsible for a violation of human rights there. Effectively, these questions examine the validity of the fiction of a homogeneous asylum system in Europe.

This was especially the case with regard to Greece, the single most important milestone in the history of Dublin since, for the first time, it led to a European Union member state dropping out of the Dublin System. When the Dublin II regulation entered into force, the Greek asylum authorities pursued a very idiosyncratic interpretation, effectively denying access to the asylum system to many refugees (Papadimitriou and Papageorgiou 2005). Furthermore, the Greek asylum system remained more of a Potemkin Village, defunct and characterized by detention, long durations of the asylum procedure and a refugee recognition rate below 1 percent.

In general, the Greek asylum system was geared toward the evasion of asylum applications, effectively urging refugees to move on toward northern Europe. This coincided with the motivations of refugees and migrants, of whom only few intended to stay in Greece, preferring the economies and asylum systems of northern Europe. However, with the continued implementation and increasing precision of the Eurodac

database, this tacit agreement between the Greek state and the movements of migration came to an end. As more and more refugees were deported back to Greece under the Dublin System, the shortcomings of the Greek asylum system became apparent.

NGOs and political activists alike had been reporting on the Greek asylum system since 2007 (Pro Asyl 2007) and observed that the living conditions of refugees were effectively in violation of human rights and that there was de facto no access to asylum. In 2011, this led to the ECHR decision in the case of M.S.S. v. Belgium and Greece (European Court of Human Rights 2011), where both Belgium and Greece were convicted of human rights violations in the case of the deportation of an Afghan refugee. The decision resulted in a halt of Dublin deportations to Greece throughout the European Union and caused the deepest crisis in the Dublin System so far, challenging the CEAS as a whole.

The asylum regime and the regime of illegalized labor

The origins of Schengen and Dublin fall into a period of a sharp increase in migratory movements across the globe. In Europe, the dominant migration regimes of the Fordist era, that is, the German guest worker system and the postcolonial migrations to the United Kingdom and France, had come to a halt with the economic crisis of the 1970s. The 1980s saw an increase of migratory movements that were articulated in terms of seeking asylum. The disintegration of the Soviet Bloc led to large movements of migration, mainly directed toward Europe. Invoking their right to freedom of movement, the countries of the emerging Schengen Area were confronted with the policy objective of keeping these migrations at bay. At this point the European External Border emerges as the dominant mechanism in the government of migration, and the first steps toward an asylum system for Europe were taken.

The challenge again is not to reify asylum as a natural and somewhat morally induced category, but rather to ask what kind of technology, in a Foucauldian sense, the asylum regime constitutes via the art of governing migration, and what conflicts and negotiations its invocation by refugees and migrants produced (Foucault et al. 2009). The asylum regime—with its institutions such as refugee camps and asylum bureaucracies, its long-established legal body, its discourses about deservingness, humanitarianism and salvation, and its set of practices revolving not only around the individualizing and highly intrusive refugee determination procedures but also around integration into the local and regional labor markets—did prove

to be a flexible and easily adjustable mechanism to deal with the influx of migrant populations in the North of the European Union. Throughout the 2000s, there was little serious discussion about abandoning the right to asylum per se. Rather, the debate revolved around a gradation of access to asylum, either by means of refugee camps in North Africa as detailed in the Blair-Schily Plan, or through the instrument of resettlement.[3] Both initiatives were aimed less at abolishing asylum, but at placing further flexible and selective mechanisms constituting barriers of access to asylum. With the demand for cheap and unskilled labor in the North mainly satisfied through the expansion of the European Union to countries in the East and South-East of Europe, asylum remained the instrument of choice of governing migrations originating from outside of Europe.

From the perspective of the southern countries of the European Union, a different image emerges. Countries such as Italy, Greece and Spain, to mention only the larger ones, had traditionally been emigration countries, or had witnessed large-scale internal migrations in the Fordist era. In Italy, for example, industrialization mainly took place in the North, and the demand in labor of the newly created factories, but also the provisions of the regime of "guest work" in Germany created large movements of labor migration from the agricultural South. It was only in the 1990s that these countries started to experience immigration from outside the European Union. However, the countries of the South did not rely on terms of asylum to govern migration. Rather, the government of migration was characterized by illegalized labor, outbursts of police raids, pogroms and periodic waves of legalization campaigns.[4] This mode of government provided different but also flexible mechanisms to deal with migration on-demand and in accordance with the changing dynamics of the labor market. Notably, in most cases of large legalizations, the resulting residence status was tied to employment.

These two different labor and migration regimes coincide with the geographic specificity of the European External Border. While the northern member states of the European Union share a relatively small portion of the external border, the southern countries have the larger portion toward North Africa, the Middle East and Asia. Throughout the 2000s, the external migrations into the European Union were compatible with the regime of illegalized labor migration in the South. In 2008, with the onset of the European financial crisis and the signing of the European Pact on Immigration and Asylum, an imbalance between the North and the South of the European Union emerged. While the crisis affected the southern economies the strongest and impeded the ability of regional and national labor markets in the south to absorb illegalized migration,

the European Pact explicitly banned any form of collective legalizations and cemented the dominance of the asylum regime for the European Union (Kasparek and Tsianos 2014).

It is precisely at this moment that inner-European conflicts around Dublin emerge. Even though southern member states have urged a reform of the Dublin System and proposed implementing a quota system, there is no majority in the legislative bodies of the European Union to support such a reform. The conflict extends to the technical specificities of the Dublin System, such as the reluctance of registering fingerprints and the Italian practice of granting a high percentage of subsidiary protection to asylum seekers, endowing them with freedom of movement, although no right to settlement within the European Union.

Confronted with the continued arrival of refugees and migrants to the European Union, these political conflicts between the member states are a conflict of which European Union member states are designated to become liminal spaces themselves. The dominant paradigm of reading the border as an exclusionary practice fails with view to the strategies of the southern countries. It is precisely these countries' refusal to subject the migrants to a particular set of disenfranchisement—that is, by confining them to the status of asylum seekers—that is their gambit in the conflictual negotiation of the spatiality of Schengen, and their attempt at changing the apparent fragmentations of the Schengen space.

Conclusion

The last message we received from Cawad, more than a year after our last meeting in Milano, was that he had reached Sweden and that he had been granted asylum there. Even though his fingerprint had again produced a hit in the Eurodac database, the Swedish state had invoked the so-called sovereignty clause of the Dublin Regulation, that is, the right of a state to process an asylum application despite not being designated the responsible country under the principle of causation and the "objective criteria."

If we did not know about the long trajectory of Cawad in Europe, one might applaud the decision of the Swedish state as humanitarian, or even noble. Reading the "happy end" from the perspective of migration, it only occurred because of Cawad's refusal to submit to the Dublin System and his repeated departure from Italy. The instrumental role of his determination to break the rules in this outcome underlines the notion how the asylum regime is indeed a flexible mechanism of the government of migration, a mechanism that allows quick and even individual responses to specific migratory movements.

However, this flexibility implies volatility. A particular migratory practice that works today may not work tomorrow, and in this sense it is the opposite of a right. While it may make sense to the Swedish state to be able to "pick" at will from the population of the Dubliners, this action may in turn trigger an increased attempt by others to reach Sweden, which will in turn lead to restrictive measures: the constant flux of the regime, its inherent dynamics.

The European Migration and Border Regime is produced, and shaped by the very dynamics of migration, escape, evasion, deportation and refusal. It is the very conflicts, and the unforeseeable tacit alliances such as between the southern countries and the movements of migration, as well as the highest European courts eager to extend their reach that produce gaps and cracks that form the very terrain of intervention and transformation. One particular example for these gaps is the lack of information about the actual implementation about the asylum systems in the European Union member states that the fiction of a homogeneous European asylum system has created (Kasparek and Speer 2013). This has led critical researchers and activists to do field work in these countries, publishing their findings in the form of rather ad hoc reports (Bayer and Speer 2012, 2013; Giamattei et al. 2013; Hristova et al. 2014) and thus providing evidence in many cases where Dublin deportations were challenged in court. While this particular form of practical activism is not without its own pitfalls (Hristova et al. 2015), it has contributed not only to the ban of many deportations, but also to a re-reading of what human rights mean at the level of the European courts (Meyerhöfer et al. 2014).

The fact that having to live on the street as an asylum seeker can now be considered a form of inhuman and degrading treatment as banned by the European Charter of Fundamental Rights has opened up yet another debate in how far the right to specific forms of social assistance derives from human rights. While the ECHR is walking a very thin line on this subject, it speaks to the notion that in the end, the practice of graduated disenfranchisement which is at the heart of the European border and migration has to be abandoned and that social and political rights will have to be recodified in a way that does not bind to institutions such as formal citizenship, but that recognizes migration and mobility as phenomena at the center of what constitutes society in the twenty-first century.

Legal Acts

Convention determining the State responsible for examining applications for asylum lodged in one of the member states of the European

Communities. August 19, 1997. Official Journal of the European Communities No C 254/1.

Regulation (EU) No 604/2013 of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the member states by a third-country national or a stateless person (recast). June 26, 2013. Official Journal of the European Union L 180/31.

Council Regulation (EC) No 343/2003 of February 18, 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the member states by a third-country national. February 18, 2003. Official Journal L 050.

Notes

1. The 1951 Convention Relating to the Status of Refugees (Geneva Convention on Refugees) places an explicit ban on the expulsion and return of refugees to countries where their lives or freedom can be considered as threatened.
2. Among the most important cases are M.S.S. v. Belgium and Greece of 2011, Mohamed Hussein v. the Netherlands and Italy 2013 and Tarakhel v. Switzerland 2014.
3. In 2003, the UK prime minister Tony Blair proposed to set up so-called Transit Processing Centres outside the European Union where prospective asylum seekers would be detained and their asylum claims processed. This plan was further concretized by the German Interior Minister Otto Schily in 2005, but was never put into practice.
4. The term "illegalized," as opposed to "illegal," stresses that the condition of illegality is not essential, but enforced by another party, like the state. For a detailed discussion, see Bauder (2014).

References

Bauder, Harald. 2014. "Why We Should Use the Term 'Illegalized' Refugee or Immigrant: A Commentary." *International Journal of Refugee Law* 26(3): 327–332.

Bayer, Marion and Marc Speer. 2012. *Ungarn: Flüchtlinge zwischen Haft und Obdachlosigkeit. Bericht einer einjährigen Recherche bis Februar 2012*. München: bordermonitoring.eu.

Bayer, Marion and Marc Speer. 2013. *Ungarn: Flüchtlinge zwischen Haft und Obdachlosigkeit. Aktualisierung und Ergänzung des Berichts vom März 2013*. München: bordermonitoring.eu.

Buckel, Sonja. 2013. *Welcome to Europe. Die Grenzen des europäischen Migrationsrechts*. Bielefeld: transcript.

Court of Justice of the European Union. 2011. "Press Release No 140/11." Accessed November 26, 2014. http://curia.europa.eu/jcms/upload/docs/application/pdf/2011-12/cp110140en.pdf.

European Court of Human Rights. 2011. "Case of M.S.S. vs. Belgium and Greece. Application no. 30696/09." Strasbourg.

Foucault, Michel, Michel Senellart, François Ewald and Alessandro Fontana (eds.). 2009. *Security, Territory, Population: Lectures at the College de France 1977–1978*, Vol. 4. London: Macmillan.

Giamattei, Antonella, Matthias Schmidt, Sarah Sembdner and Bernd Kasparek. 2013. *Vai Via! Zur Situation der Flüchtlinge in Italien*. München: bordermonitoring.eu.

Hristova, Tsvetelina, Raia Apostolova and Matthias Fiedler. 2015. "On Some Methodological Issues Concerning Anti-Dublin Politics." *movements* 1(1) : *Journal für kritische Migrations- und Grenzregimeforschung* 1(1). http://movements-journal.org/issues/01.grenzregime/10.hristova,apostolova,fiedler--dublin-methodology.html. [5.6.2015].

Hristova, Tsvetelina, Raia Apostolova, Neda Deneva and Mathias Fiedler. 2014. *Trapped in Europe's Quagmire: The Situation of Asylum Seekers and Refugees in Bulgaria*. München: bordermonitoring.eu.

Kasparek, Bernd. 2010. "Borders and Populations in Flux. Frontex's Place in the European Union's Migration Management." In *The Politics of International Migration Management*, edited by Martin Geiger and Antoine Pécoud, 119–140. London: Palgrave.

Kasparek, Bernd and Marc Speer. 2013. "At the Nexus of Academia and Activism: bordermonitoring.eu." *Postcolonial Studies* 16(3): 259–268.

Kasparek, Bernd and Vassilis Tsianos. 2014. "Whatever Works! Konitnuität und Krise des Schengener Systems." In *Grenzregime II. Migration, Kontrolle, Wissen, Transnationale Perspektiven*, edited by Lisa-Marie Heimeshoff, Sabine Hess, Stefanie Kron, Helen Schwenken and Miriam Trzeciak. Berlin/Hamburg: assoziation a.

Kloth, Karsten. 2000. "The Dublin Convention on Asylum—An Introduction." In *The Dublin Convention on Asylum: Its Essence, Implementation and Prospects*, edited by Clotilde Marinho, 7–16. Maastricht: European Institute of Public Administration.

Kuster, Brigitta and Vassilis Tsianos. 2013. "Erase Them! Eruodac and Digital Deportability." *transversal*. Accessed May 17, 2013. http://eipcp.net/transversal/0313/kuster-tsianos/en.

Lavenex, Sandra. 1999. *Safe Third Countries: Extending the EU Asylum and Immigration Policies to Central and Eastern Europe*. Budapest: Central European University Press.

Lehnert, Matthias. 2015. "Kämpfe ums Recht. Neue Entwicklungen im europäischen Flüchtlings- und Grenzschutzrecht." *movements: Journal für kritische Migrations- und Grenzregimeforschung* 1(1). http://movements-journal.org/issues/01.grenzregime/06.lehnert--kaempfe-ums-recht.html. [5.6.2015].

Libera Espressione. 2013. "Lampedusa No Finger Print." Accessed November 28, 2014. http://youtu.be/JFu0h8CYfUM.

Lorenz, David. 2013. *Die Verhandlungen um Dublin III. Eine Historisch-Materialistische Analyse der Auseinandersetzung um die Zuständigkeit für Asylverfahren in Europa*. Master's thesis. Goethe-Universität Frankfurt.

Meyerhöfer, Andreas, Ulrich Hartl, David Lorenz, Sebastian Neumann and Adrian Oeser. 2014. "Dublin II kippen! Kämpfe um selbstbestimmte Migration in Europa." In *Kämpfe um Migrationspolitik. Theorie, Methode und Analysen kritischer*

Europaforschung, edited by Forschungsgruppe Staatsprojekt Europa, 151–167. Bielefeld: transcript.

Papadimitriou, Panayiotis N. and Ioannis F. Papageorgiou. 2005. "The New 'Dubliners': Implementation of European Council Regulation 343/2003 (Dublin II) by the Greek Authorities." *Journal of Refugee Studies* 18(3): 299–318.

Papadopoulos, Dimitris, Niamh Stephenson and Vassilis Tsianos. 2008. *Escape Routes. Control and Subversion in the 21st Century.* London: Pluto Press.

Pro Asyl. 2007. *The Truth May Be Bitter, but Must Be Told. The Situation of Refugees in the Aegean and the Practices of the Greek Coast Guard*. Accessed November 28, 2014. http://www.proasyl.de/fileadmin/proasyl/fm_redakteure/Englisch/Griechenlandbericht_Engl.pdf.

Schuster, Liza. 2011. "Dublin II and Eurodac: Examining the (Un)intended(?) Consequences." *Gender, Place and Culture* 18(3): 401–416.

Sciortino, Giuseppe. 2004. "Between Phantoms and Necessary Evils. Some Critical Points in the Study of Irregular Migrations to Western Europe." *IMIS-Beiträge* 24: 17–44

Transit Migration Forschungsgruppe. 2007. *Turbulente Ränder. Neue Perspektiven auf Migration an den Grenzen Europas*. Bielefeld: transcript.

Tsianos, Vassilis and Sabine Hess. 2010. "Ethnographische Grenzregimeanalyse." In *Grenzregime. Diskurse, Praktiken, Institutionen in Europa*, edited by Sabine Hess and Bernd Kasparek, 243–264. Berlin/Hamburg: assoziation a.

Tsianos, Vassilis S. and Brigitta Kuster. 2012. "Transnational Digital Networks, Migration and Gender." In *mig@net, Thematic report Border Crossings*. Available at: http://www.mignetproject.eu/wp-content/uploads/2012/10/MIGNET_Deliverable_6_Thematic_report_Border_crossings.pdf.

4

Domicile Citizenship, Migration and the City

Harald Bauder

Introduction

With increasing global mobility, the populations of most nation-states are not only becoming more diverse and transnationally connected (e.g., Glick Schiller et al. 2006; Vertovec and Cohen 1999), but migrants also often lack access to formal citizenship in their adopted political community, although they may factually be members of that community (Shachar 2009, 2011). The denial of *formal* citizenship—that is, legal equality in respect to rights and entitlements—has been a major source of the illegalization, criminalization and exploitation of migrants (e.g., Bauder 2006, 2014b; de Giorgi 2010; Goldring and Landolt 2011). In this chapter, I focus on the citizenship principles based on which individuals acquire formal citizenship and become formal members of a certain polity. In particular, I explore the *domicile* principle of citizenship, which entails that a person is a citizen of the polity in which she or he resides, independent of ancestry or location of birth. The current practice of granting citizenship permanently based on the parents' citizenship and/or the country in which a person is born assumes that people do not migrate and tends to reproduce the birth privilege of nonmigrants. I suggest that the domicile principle articulates citizenship as a right to belong independent of a state's efforts to exclude people from membership based on arbitrary criteria of settlement and immigrant selection.

The term "domicile" has its roots in the Latin noun *domicilium*, which can be translated as household, habitation, home or residence. Correspondingly, the principle of domicile refers to citizenship based on "effective residence" (Hammar 1990, 76). Legal and citizenship scholars sometimes use the Latin translation of "law of residence", that is, *jus domicilii*.[1] In the scholarly literature, comprehensive discussions of the

domicile principle of citizenship are rare, although commentators are noting that it is "gaining momentum" (Levanon and Lewin-Epstein 2010, 421) and that it "becomes ever more significant" (Samers 2010, 295) in the way citizenship is practiced.

The relatively narrow focus on the citizenship principle of domicile enables me to provide a rigorous and comprehensive review of the literature and present an overview of the current state of research on this citizenship principle. Moreover, I develop a practical argument for framing the relationship between citizenship, mobility and territoriality. With "practical" I mean that I assume for the sake of this argument the relatively stable continuation of prevalent structural conditions that exist today—in particular the territorial configuration of political communities, formal citizenship as the legal mechanism of association with a political community and the framing of formal citizenship in universal terms. While the wider literature, including critical and radical scholarship, has questioned the association between citizenship and the territorial nation-state (e.g., Bosniak 2000; Isin 2012; Urry 2000) and critiqued the decontextualized liberal view of rights and citizenship as universal (e.g., Cresswell 2006, 147–174), my "practical" argument does not seek to challenge the territorial nation-state, the territoriality of formal citizenship or the existence of international borders (e.g., Austin and Bauder 2012).[2] Rather, I suggest that domicile can serve as a citizenship principle to include migrants under the assumption that their residency is defined by a bounded territorial political community. This approach to inclusion recognizes, on the one hand, the material condition that contemporary structures of governance are territorial in nature, that political communities are defined through territorial boundaries and "that territorialized forms of citizenship are the most feasible way . . . to create institutional forms that citizens can access to make claims" (Staeheli et al. 2012, 637). On the other hand, this approach also addresses the material fact that societies are increasingly mobile and transnational in character. Between 1970 and 2005 global migration has been estimated to have increased from about 82 million to some 200 million, with 213 million people living outside of their country of birth in 2010 (cf. Betts 2011, 1; Coe et al. 2013, 177). Domicile-based citizenship is a practical response to these material circumstances and aims to provide a tool for contemporary real politics based on practical considerations that complement more critical and radical perspectives (Anderson et al. 2009; Bauder 2013a; Mountz and Hyndman 2006).

Given my assumption of the prevailing territoriality of citizenship, there is a tension between domicile-based citizenship and human

mobility: citizenship that is associated with bounded territory seems ill-equipped to accommodate populations who can and do mobilize and, thus, transcend the geographical boundaries of these territories. While this apparent contradiction between territorially fixed membership and mobile populations may be conceptually impossible to resolve within the framework of political territoriality, the domicile principle presents a practical alternative for reconfiguring formal citizenship to include populations that are mobile across borders. The contribution of this chapter lies in exploring the applicability of the domicile principle to vulnerable migrant populations and investigating if and how this principle can be enacted at the urban and other scales. In this way, this chapter presents a conceptual argument that can serve as a practical intervention in the political debate of citizenship, migration and belonging. It resonates with the preceding chapters that also grabble with the territorial configurations of the state (i.e., the United States) and Schengen Area, and prepares the reader for the next chapter by Serin Houston and Olivia Lawrence-Weilmann, which delves more deeply into the topic of sanctuary, which effectively implements the domicile principle of belonging.

In the sections below, I first situate the domicile principle of citizenship in the context of other formal citizenship principles. Then, I focus on the relationship between the domicile principle and mobility. The section thereafter examines the territoriality and scale of domicile-based citizenship as well as recent alternative conceptions of citizenship. In the final section, I expand on the practicality and spatiality of this citizenship principle, in particular at the urban scale.

Principles of citizenship

I begin with considering the legacies that gave rise to dominant models of legal citizenship in contemporary international politics. The most frequent reference to the domicile principle in the literature occurs in relation to the two dominant citizenship principles, *jus sanguinis* and *jus solī*[3] (e.g., Ceobanu and Escandell 2011; Choe 2006; Dong-Hoon 2005; Faist 2001; Isin 2009; Zincone 2000). *Jus sanguinis* refers to the acquisition of citizenship through ancestry (*sanguis* = blood). This principle has its roots in ancient Greece and Roman law (e.g., Bauböck 1994; Shachar 2009, 113–120). *Jus sanguinis* has been presented as suitable for emigration countries because it enables emigrant communities to remain connected to the nation of origin (Castles and Davidson 2000, 85). It served this purpose, for example, in postwar West Germany where the descendants of German nationals who lived in Eastern Europe under oppressive

communist regimes retained their nationality and thus their membership in the German nation.

Conversely, *jus solī* grants citizenship based on place of birth (*solum* = soil). Like *jus domiciliī*, *jus solī* is a territorial principle; that is, citizenship is tied to the territory, which defines the polity in geographical terms (Bauböck 1994, 31–38; Kostakopoulou 2008). For example, *jus solī* was applied under European feudalism when feudal lords reigned over populations tied to land (Bauböck 1994, 35; Shachar 2009, 113–120). *Jus solī* has been adopted in modern immigration countries such as Canada and the United States that seek to integrate the descendants of newcomers.

In relation to *jus sanguinis* and *jus solī*, domicile has been called the "missing link" (Gosewinkel 2001, 29) that "could be an alternative premise for citizenship" (Kostakopoulou 2008, 112). While *jus sanguinis* and *jus solī* are based on birth, rendering citizenship inaccessible to persons born to the "wrong" parents or in the "wrong" territory, domicile-based citizenship is granted to people independently of the place and community of birth and includes persons who migrated into a territory and established residence there (e.g., Gibney 2009). *Jus domiciliī* thus accommodates the mobility of people between communities and territories.

Many countries practice a combination of these three citizenship principles. For example, France, Italy, Belgium and the Netherlands grant citizenship to children born on national territory, provided that the parents fulfill certain residency requirements (Castles and Davidson 2000, 92). In this case, *jus solī* applies under the condition of *jus domiciliī* of the parents. A similar law exists in Germany. Examining the cases of Norway, Sweden, Estonia, the United Kingdom, Italy, France and Spain, Katrine Fangen and her colleagues (2008) conclude that European countries have moved toward a mixed type of citizenship regimes. In particular, countries with a *jus sanguinis* tradition have in recent decades incorporated *jus domiciliī* and *jus solī* elements into their citizenship legislation, with the aim to include newcomers and their children.

Similarly, public attitudes tend to support combinations of *jus sanguinis*, *jus solī* and *jus domiciliī*. Drawing on data from the 2003 International Social Survey Program, Asaf Levanon and Noah Lewin-Epstein (2010, 421, fn 2) find that a positive attitude toward *jus domiciliī* does not dominate in any country but rather "complements *jus sanguinis*, *jus soli*, or a combination of the two." In another study of 20 European countries, Alin Ceobanu and Xavier Escandell (2011) reveal that attitudes toward *jus domiciliī* are, paradoxically, positively correlated with countries that require longer residency periods as a condition of naturalization. They

suggest that native-born citizens of countries requiring longer residency periods feel "more confident" that migrants have adapted to the country (Ceobanu and Escandell 2011, 235). In a study investigating attitudes toward *jus solī*, *jus sanguinis* and *jus domiciliī* in countries that represent different traditions of nationhood and frameworks of national belonging, Rebeca Raijman and her colleagues (2008) find that support for *jus domiciliī* is generally low in all countries compared to support for *jus solī* and *jus sanguinis*. They suggest that in all examined countries citizens are "resistant to accept foreigners as equal members in their societies" (Raijman et al. 2008, 210).

The link between public resistance against accepting foreigners and the reluctance to embrace the domicile principle of citizenship illustrates how closely domicile and mobility are related to each other in the texts of a territorial policy. Below, I examine this relationship in greater detail.

Domicile and Mobility

Similar to *jus solī* and *jus sanguinis*, *jus domiciliī* has a long history in legal practice. In this section, I first discuss a historical perspective of the link between domicile and mobility. Thereafter I examine domicile as a contemporary alternative in light of mobile populations.

Domicile as historical practice

Although the literature does not offer a comprehensive genealogy of the domicile principle, it illustrates how this principle has served in the past to accommodate migrants. In feudal Europe, for example, the domicile principle permitted bonding people to territory if they were not born on that territory but moved there. Accordingly, legal documents from the sixteenth to nineteenth centuries used various Latin terms related to *domicilium* to articulate the territorial belonging of subjects (Grawert 1973). As feudalism came to an end, the domicile principle persisted and became an important citizenship principle in the wake of the French Revolution. Rainer Bauböck (1994, 32) suggests that the following passage taken from the 1793 French Constitution could be "the most radical formulation of *jus domicili* in history":

> Every foreigner who has completed his [sic] 21st year of age and has been resident in France for one year and lives from his labor or acquires a property or marries a French spouse or adopts a child or nourishes an aged person . . . is admitted to the exercise of French citizenship. (translated by Bauböck 1994, 50)

The geographically fragmented German states and cities of the nineteenth century implemented the domicile principle for pragmatic reasons. In order to prevent statelessness among people who migrated between German states and independent cities, they committed to treat migrants as their own and naturalize them after certain periods of residency. Rolf Grawert (1973, 75) associates this practice with the "domicile principle" (*Domizilprinzip*). Simon Green (2000, 108) concurs that "most German states preferred the principle of residence during the first half of the nineteenth century," although *jus sanguinis* citizenship was also in use (Gosewinkel 2001, 30). This legal practice continued until the German Citizenship Act of 1913 tied citizenship more firmly to descent (Fahrmeir 1997).

The domicile principle has also been a topic of legal debate in more recent times. In 1972, the United Kingdom's Committee of Ministers of the Council of Europe discussed the "concept of domicile" as a legal relationship between a person and a country that "is inferred from the fact that a person voluntarily establishes or retains his [sic] sole or principal residence within that country or at a place with the intention of making and retaining that country or place the centre of his [sic] personal, social and economic interests" (cited in Hammar 1990, 193). Likewise, recent legal practices have applied the domicile principle. For example, the place of effective residence is an important criterion for purposes of taxation and in legal cases when courts decide on the dominant nationality of persons with multiple citizenships (Hammar 1990, 76).

The way in which the domicile principle was historically applied draws attention to the fact that it was enacted by territorial political entities to include mobile populations. This function is also emphasized when the domicile principle is presented as a contemporary alternative to existing citizenship practices and policies.

Domicile as contemporary alternative

From a normative liberal perspective, the domicile principle of citizenship is very appealing because it rejects birth privilege. In the words of Yishai Blank (2007, 425), the principle of residence—which is synonymous to the principle of domicile—is "supremely liberal: voluntary, rational, and justifiable; one elects in which locality to live, contributes to it through her taxes and/or activities, is granted membership in this community, and is given equal rights that follow this membership status." Rather than being born to parents who are citizens and in a territory of which one is a citizen, the domicile principle is based on choice of residence. From this liberal standpoint, the domicile principle is thus equitable

because it extends membership to all residents subjected to the rules of the territorial state and recognizes people's right to mobility and choice of community (Gibney 2009).

A thought experiment applied the domicile principle to temporary foreign workers in Canada (Austin and Bauder 2012). In this case, implementing domicile would address labor exploitation and the unfair treatment of foreign workers who participate in local and national economies, and in civic society. In addition, enacting domicile-based citizenship would have positive practical implications by offering foreign workers an alternative to going underground after their temporary status expires.

Other research has explored the practical circumstances under which domicile could be implemented to accommodate mobile populations. Dora Kostakopoulou (2008, 114) argues that citizenship should be extended to immigrants if they intend "to reside in a country indefinitely." This does not mean that a person would be bonded for life to a particular territory. Rather, what counts is the intention to stay permanently. If this intention changes, then citizenship would expire. This position, however, can be challenged by the argument that temporary residents, too, have a moral claim to citizenship based on their contributions to the communities in which they reside (Austin and Bauder 2012; Bauder 2012).

One problem with domicile is that this principle cannot determine the citizenship of those who typically have not voluntarily chosen a place of residence but usually acquired residence through birth or through migration while dependent on someone else, such as children. A solution to this problem would be to combine *jus domiciliī* with *jus solī* acquired at birth (Bauböck 1994, 34). Another solution would be a tripartite typology of domicile-based citizenship, as proposed by Kostakopoulou (2008, 119–122): first, *domicile at birth* would prevent children from being born stateless; second, *domicile of choice* would be extended on the basis of a person's chosen permanent residence; third *domicile of association* would apply to persons who legally depend on a citizen, such as children. A person would only be able to possess one of these types of citizenships at the same time. For example, when children become adults, their citizenship would transfer from domicile at birth or domicile of association to domicile of choice.

Another problem is that if migrants retained the domicile-based citizenships of all places in which they ever resided, they would accumulate multiple citizenships. This situation would be paradoxical because citizenship would no longer be associated with territorial belonging. In fact, maintaining the citizenship of a territory in which one no longer resides defies the very logic of the domicile principle. Therefore, "[i]f citizenship

rested completely on a principle of residence, then a state might be entitled or even obliged to denaturalize anybody who has left the country for good" (Bauböck 1994, 49). Kostakopoulou (2008, 127) concurs: "A change of residence must be accompanied by the termination of an intention to reside in the country indefinitely" and would therefore result in a loss of domicile-based citizenship. To prevent statelessness among migrants who settle in a place that does not grant citizenship based on the domicile principle, Bauböck (1994, 49) proposes expatriating persons only under the condition that they are assuming another citizenship.

Revoking a person's citizenship could furthermore lead to a situation in which former citizens are denied the right to return. At the practical level, this issue could be alleviated by granting special reentry permission to former citizens. Another practical solution would be to permit emigrants to maintain citizenship if they can demonstrate to have important stakes in the political territory (Bauböck 2008). A more radical solution would combine the domicile principle with open-border practices, in which case former citizens would possess—like everyone else—a right to enter a political territory. This combination would also address the exclusion of illegalized migrants or migrants with temporary status and restricted work permits (Bauder, 2012).

Domicile and territoriality

Kostakopoulou (2008) draws attention to the tension between the territorial nature of the domicile principle and the fact that individuals are increasingly mobile, transient and noncommittal to one particular locality. It seems paradoxical that a territorial citizenship principle should be applied to accommodate human mobility across territories. One response to address this paradox is that the domicile principle applies universally and to all residents, independently of whether they are newcomers or have lived in this territory since birth. The community of citizens is thus not defined through place of birth, ancestry or mobility but rather only through residence in a particular territory.

Another response to the mobility-territoriality paradox refers to the material fact that contemporary states and political organizations are territorial in the sense that they occupy bounded geographical space. The territoriality of the nation-state is not only a historical and material fact but it is also a normalized assumption in scientific and political discourse (Wimmer and Glick Schiller 2002). Given these circumstances, territorial citizenship remains important in today's world to realize "redistributive politics" (Kostakopoulou 2008, 125). In particular, vulnerable migrants

who have not been able to accumulate locally relevant social, cultural and other forms of capital benefit from the protection a territorial state can offer (Bauder 2006). In this section, I explore in greater detail the implications of the territorial nature of domicile.

Territorial belonging as a right

Tomas Hammar (1990, 76) recognizes that existing naturalization practices in industrialized states emulate the domicile principle, that is, long-term residents are often given the opportunity to acquire formal citizenship. However, "[n]aturalization is a *discretionary act* by the state, one usually carried out by the executive in the form of the head of state, a government minister or a bureaucracy.... Apart from certain exceptional circumstances, immigrants have *no entitlement* to naturalization and are mere objects of decisions from above" (Castles and Davidson 2000, 86, emphasis in original). Thus, territorial presence is not synonymous with formal belonging to the territorial community. Furthermore, entry and thus residence in a state's territory is conditional on selective immigration policies and restrictive residence criteria that clearly do not treat all people equally (Bauder, 2012). People who do not meet the immigration and/or residency requirement, including temporary residents, are denied the possibility of domicile-based naturalization. A problem with contemporary state practices of citizenship is precisely that legal status rather than territorial presence tends to define migrants' access to citizenship. The domicile principle of citizenship, however, implies that citizenship is a right for everyone who is a de facto resident in a political territory, independent of status.

In an effort to circumvent the possibility that migrants acquire residence-based rights and become eligible for citizenship, many states impose visa and immigration restrictions limiting the period foreigners are permitted to stay in state territory. For example, the time limits of Canada's temporary foreign workers programs are designed precisely to deny foreign workers the possibility to claim domicile citizenship based on period of residence (Austin and Bauder 2012; Bauder 2010). The domicile principle of citizenship, however, entails that foreigners should be able to remain residents and are not forced to leave (Kostakopoulou 2008). In the context of the discriminatory allocation of migrants to temporary or permanent immigration programs by the Canadian state, *jus domiciliī* should therefore apply universally: it constitutes a right that "spans ethnic, social, and class divisions... and cannot be conferred selectively on some residents and denied to others" (Austin and Bauder 2012, 31). According to this interpretation, the domicile principle articulates

territorial citizenship as a right beyond state arbitrariness and based on de facto residence, independent of status or discriminatory immigrant selection procedures and settlement restrictions.

Domicile and the city

Contemporary formal citizenship tends to be tied to the nation-state. In particular in scientific and political discourses related to migration, framing territorial belonging through the nation-state has become normalized convention (Bauder 2013a; Wimmer and Glick Schiller 2002). Residence, however, is often associated with geographical scales other than the nation. For example, a person can be a resident of a neighborhood, electoral riding, municipality, city, state/province/department and supranational polity. Likewise, the territory of domicile-based citizenship should not be conceived as necessarily fixed at the scale of the nation-state. In fact, the nation-state may not be the most intuitive scale at which the a-national principle of domicile should be enacted.

Blank (2007) observes that citizenship follows different "logics" at global, national and local scales. Global citizenship is defined by universal humanity, national citizenship by birth (*jus solī* and *jus sanguinis*) and local citizenship by domicile. Similarly, the notion of nested citizenship frames membership in a political community in terms of a hierarchy defined by an inner circle based on nationality and an outer circle based on residence (Brubaker 1992; Kivisto and Faist 2007). Inner and outer circles can function at different geographic scales, including a locality in which domicile-based citizenship is enacted.

In the same vein, Bauböck (2003, 150) remarks that unlike nation-states, "provinces and municipalities have only a single rule of automatic *jus domicili*." For nationals of Western democracies, local residence effectively amounts to local citizenship because residents share citizenship rights, including the right to vote in local elections. A problem is that national citizenship (or supranational citizenship in case of the European Union) tends to be a prerequisite for local citizenship (Bhuyan and Smith-Carrier 2012). Thus, national citizens can take for granted that they will obtain local citizenship when they move to a different city or state/province/department. Conversely, foreign citizens are often denied local citizenship.[4] A universal application of the domicile principle at the local scale would extend local citizenship to all residents, including foreign nationals.

The concept of "urban citizenship" may offer the possibility of citizenship at the local scale based on domicile that is de-coupled from

membership in the nation-state (Purcell 2002). In Bauböck's (2003, 150) opinion, "restricting urban citizenship to nationals of the state is unjustifiable whether it is imposed by national constitutions or is adopted by the local government itself. Cities should fully emancipate themselves from the rules of membership that apply to the larger state." An example illustrates how domicile-based citizenship can be enacted for non-nationals at the urban scale. Monica Varsanyi (2007) has examined the importance of identity cards, so-called *matrículas consulares*, issued by Mexico's government to nationals living abroad. When local governments in the United States accept the *matrícula consular*, they acknowledge that unauthorized migrants are de facto present in the community and affirm these migrants' urban citizenship. Varsanyi (2007, 312) remarks:

> After all, formal membership in a city's polity, or "urban citizenship," is established under *jus domicili* standards in the US.... [T]here are no immigration policies governing who can move into a city. City officials cannot decide who they will admit for residence and membership in their jurisdiction, and as such, formal membership in the local community (which, for instance, gives citizens the right to vote in local elections) is simply a de facto designation. These are *jus domicili* standards: if you live in the city, you're a citizen of that city.

In another example, Rupaleem Bhuyan and Tracy Smith-Carrier (2012, 217), too, conclude that citizenship should be rescaled to "subnational levels of governance"; Canadian cities, like Toronto, have demonstrated much greater commitment to include its foreign-national and nonstatus residents than provincial or national levels of government. The City of Toronto, for example, has enacted Don't-Ask-Don't-Tell policies, according to which municipal service providers in most cases refrain from collecting information on a person's citizenship or immigration status (i.e., don't ask), and if they find out otherwise that a person does not possess legal status, they will neither relay this information to immigration authorities (i.e., don't tell) nor deny services (Berinstein et al. 2006). Thus, these policies effectively recognize urban citizenship by providing municipal services based on local residency rather than national status. In early 2013, Toronto City Council affirmed this urban citizenship by declaring itself a "sanctuary city" and thereby expanding efforts to provide all residents—including migrants who are denied status by the federal government—full access to city services (Keung 2013). Other levels of government have not been as open to enact domicile-based citizenship through provincial sanctuary policies and practices or national amnesties (Bauder 2013b).

Bauböck (2003) makes a pragmatic suggestion from a constitutional-politics perspective of how the decoupling of local and regional citizenship from national citizenship could occur: he proposes to strengthen the autonomy of city regions (i.e., cities and their geographical hinterland) and enable them to extend local and regional citizenship to all their residents. This domicile-based urban and regional citizenship would still be territorial, albeit at the non-national scale.

Alternative conceptions of citizenship

Recent scholarship on citizenship has explored principles and developed concepts other than domicile that also address the accommodation of migrants in the territorial polity and that could, like domicile, be enacted at various scales. First, *postnational citizenship* refers to civil and other rights granted to migrants who inhabit a territory but do not possess formal citizenship. Yasemin Nuhoğlu Soysal (1994) observed in a European context how foreign residents accumulate postnational rights through participation in the labor market and in civic life, independent of their historical or cultural connections to the community. In particular, the obligation to uphold international human rights law has led to the extension of domicile-based postnational rights to formal noncitizens (Oger 2003; Spiro 2008). Similar to domicile, postnational citizenship embodies the tension between mobility and territoriality: human rights that apply universally (a-territorially) are enforced by granting migrants rights and entitlements within a given territory.

Second, the citizenship principle *jus nexi*, according to Ayelet Shachar (2011, 116), is based on "connection, rootedness, or linkage." In particular, it requires a "grounded connection that stems from being a participant in the relevant bounded membership community" (Shachar 2009, 112) and from "actual, real, everyday, and meaningful web of relations and human interaction" (Shachar 2009, 167). Shachar (2009, 166–167; 2011, 129–132) makes a practical case for *jus nexi* by illustrating that the International Court of Justice already supports this principle.[5] Advocacy groups—including conservative ones in the United States—have employed *jus nexi* in an effort to frame the debate around undocumented immigration and nonstatus members of their communities (e.g., Sutherland Institute 2011). Unlike domicile, *Jus nexi* applies to persons who are absent from or inconsistently present in a territorial polity.

Finally, *stakeholder citizenship* involves all people with a stake in the future of the polity. The stakeholder principle includes not only nonimmigrants and immigrants who have an interest in their place of destination; it also applies to emigrants who maintain ties to their place of

departure (Bauböck 2008). Thus, it also applies to persons who are not residing in the territorial polity.

These alternative conceptions of citizenship reinforce my point that territorial citizenship can accommodate migrants. Yet, postnational citizenship, *jus nexi* and stakeholder citizenship are based on criteria (i.e., participation, connections and interests) that are a matter of degree and interpretation and that states can easily manipulate to exclude persons residing within state boundaries. For example, state policies often prevent migrants without status or with precarious status from making connections and from becoming stakeholders by excluding them from participation in public and civic live, keeping them from acquiring property and/or forcing them to work and live underground. Similarly, many noncitizen migrants experience tight controls to participate in the labor market and contribute to the welfare system in countries like Germany and the United States (Bosniak 2007; Soysal 1994). Thus, postnational citizenship, *jus nexi* and stakeholder citizenship lack an important feature, which domicile citizenship possesses: the inclusion of *all residents* independent of arbitrary criteria. Domicile-based citizenship "makes territorial presence the all-or-nothing criterion" (Sachar 2009, 179), while other concepts and principles of citizenship rely on the step-by-step and probationary accumulation of entitlements through participation (postnational citizenship), connections to the local polity (*jus nexi*) or the formal acquisition of interest (stakeholder citizenship). This centrality of residence is important because it includes residents, independent of status and the state's efforts to prevent temporary and undocumented residents from making contributions, establishing connections or accumulating interests.[6]

One could argue that territorial presence does not equate with residency. For example, Kostakopoulou (2008) suggests that residency in the context of citizenship acquisition should not be simply a matter of formal presence, but rather "the connections and bonds of association that one establishes by living and participating in the life and work of the community" (Kostakopoulou 2008, 115). This suggestion, however, mirrors *jus nexi* rather than *jus domicilii*. To use another example, Joseph Carens (2010) has argued that the length of time a person is present in a political territory should define whether illegalized migrants acquire access to citizenship. Linda Bosniak (2010, 90), however, counters Carens's argument by pointing to the liberal constitutional norms based on which "all persons within the state's jurisdiction are to be accorded fundamental rights, security, and recognition. For purposes of this commitment, length of stay is irrelevant; what counts in being territorially present and subject

to law." Bosniak's reasoning mirrors the domicile principle of citizenship as a matter of territorial presence rather than other criteria.

Discussion

The domicile principle offers the possibility to reconfigure formal territorial citizenship in a way that is just and equitable to migrants (Bauder 2003). It would address many of the problems associated with formal political exclusion and marginalization that migrants often face—in particular, residents who are illegalized or possess only precarious status or temporary status, and who constitute a vulnerable and exploitable workforce and group that can be threatened with detention and deportation. If these de facto residents were entitled to domicile-based citizenship, one of the root causes of their vulnerability would be eradicated. Granted, migrants may still be in relatively vulnerable positions, for example, due to practices of racialization and other forms of "cultural" distinction, unequal access to social welfare benefits that must be accumulated over time, or the personal and financial costs of migration and settlement (e.g., Bauder 2006). However, the lack of formal citizenship would no longer be a source of criminalization, political and social marginalization, and economic exploitation, thereby significantly mitigating key facets of vulnerability.

From a social justice perspective, the domicile principle holds all residents—migrant or not—accountable to contribute fairly to the community in which they live. Residence is already a key factor for determining where mobile and transnational populations pay their taxes (Hammar 1990). An argument frequently raised against illegalized immigrants is that they do not pay income taxes and some other taxes. If these migrants received domicile-based citizenship, then they would be able and required to pay taxes. The same situation applies to privileged workers and transnational elites who sometimes seek to evade taxes in the place they live by shifting capital and their legal status abroad. For example, for tax purposes, the United Kingdom distinguishes between residence and domicile, exempting some "non-domiciled" persons from taxes on their foreign incomes. In addition, countries like Austria, Antigua and Barbuda, Cyprus, and St. Kitts and Nevis offer "economic citizenship" in return for a significant monetary investment or charitable donation. Many investors accept this offer of citizenship for favorable tax rates in these countries. Domicile-based citizenship challenges these practices. While migrants acquire domicile-based citizenship by taking up residence in a political territory, they would be unable to do so if they

resided elsewhere. At the same time, citizenship would terminate when a person emigrates from a territory. In this way, domicile-based citizenship is responsive to people's migration trajectories and applies to mobile elites, migrant workers, refugees and migrants seeking to reunite with family and/or striving for a better life.

If *jus domiciliī* were adopted globally, then migrants would always and only possess the citizenship of the jurisdiction in which they currently reside. However, this scenario of identically formulated citizenship criteria is unlikely, as nation-states insist on their sovereignty. As a result, mobile elites will be able to continue to strategically acquire citizenships and residencies, exploiting the regulatory differences between jurisdictions (Ley 2010; Ong 1999), and states will continue to strategically manipulate their own citizenship policies to capitalize, for example, on expatriate and diaspora populations that reside outside the state's territory. In practice, the implementation of domicile-based citizenship by one or more jurisdictions will do little to solve geopolitical global inequalities. This is not the aim of this chapter. Rather, this chapter focuses on the mechanism of granting citizenship to migrants *within* a jurisdiction.

Perhaps the greatest practical value of domicile-based citizenship lies at the local rather than the national scale. The possibility of enacting citizenship at non-national scales is affirmed by the sizable literature related to urban citizenship, local belonging and functional city regions (e.g., Bauböck 2003; Holston 1999; Isin 2000; Isin and Nielsen 2008; Price 2012; Syssner 2011; Siemiatycki and Isin 1997; Veronis 2006). Migrants without national citizenship, including illegalized migrants, tend to assert and express their claims to political inclusion at the local scale, and cities throughout North America have subsequently implemented sanctuary and Don't-Ask-Don't-Tell policies (Nyers 2010). These policies ensure, for example, that all residents and their children have access to city services, libraries, education, health care, social housing, labor protections and safety regulations without the fear that lack of status would result in detention and deportation. It can thus be argued that domicile-based citizenship is already practiced at the urban scale, in particular when migrants assert their belonging through political action, engagement in the politics of home, performances of resistance and participation in local communities (e.g., Blunt 2005a, 2005b; Hage 2002; Honig 1994; Isin and Nielsen 2008; Nyers 2010; Staeheli and Nagel 2006; Walters 2004; Veronis 2006).

In this context, domicile citizenship appeals to liberal universalism and the democratic principle of inclusion because it defines a model of belonging that rejects birth privilege, ancestry, ethnicity, "cultural"

markers of distinction and other exclusionary constructions of nationhood and community (e.g., Anderson 1991; Bauder 2011). At the same time, the domicile principle does not challenge the territorial belonging of people but reconfigures the formal mechanism of belonging and rescales the territory to which migrants and nonmigrants belong.

My practical argument for domicile-based citizenship is intended to complement more radical scholarship that centers mobility and problematizes territoriality (Bauder 2013a; Bosniak 2000; Cresswell 2006; Urry 2000). Rather than pursuing the deterritorialization of the contemporary political world, this argument seeks to provide an intermediate policy tool to address social injustices and inequalities experienced by migrants who cross political borders and then reside in bounded political territories. Engin Isin (2012, 149)—who otherwise challenges containerized citizenship—acknowledges that a-territorial citizenship without borders is only possible beyond "the authoritiative scripts of governments." My treatment of domicile-based citizenship as a formal membership in a territorial political community does not challenge this script. Furthermore, it can be argued that the domicile principle of citizenship requires a territorial political community because it defines "residence" (domicile) as the place *where* one lives and thus in containerized territorial terms. At this point, I cannot imagine how residence could be defined otherwise.

Notes

1. *domiciliī* is the genitive of *domicilium*. Many scholars, however, have dropped the ī and speak of *jus domicili*; others use *jus domicile* (e.g., Austin and Bauder 2012; Bauder 2012; Levanon and Lewin-Epstein 2010), *jus domicil* (Raijman et al. 2008, 205) or a combination of the above (Raijman et al. 2008). Wolfgang Bosswick (2008) uses *jus domicilii*.
2. My practical argument resembles what Ernst Bloch (1985 [1959], 258–288) calls "fact-like object-based" (*sachhaft-objektgemäß*) possibility that can be brought about in situations in which certain material and structural conditions are fixed. Bloch distinguished this possibility from "objectively-real" (*objektiv-real*) possibilities that presume the transformation of material and structural circumstances. I develop these ideas elsewhere (Bauder 2014a).
3. Similar to *jus domiciliī*, *jus solī* refers to the genitive of *solum* (soil) and *jus sanguinis* to the genitive of *sanguis* (blood).
4. Within the European Union, European Union citizens possess voting rights in municipal elections independent of their nationality. In some countries (Belgium, Denmark, Finland, Lithuania, Luxembourg, Netherlands, Slovenia and Sweden), non-European residents are also able to vote if they possess residency status, although the period of required residency varies.
5. For example, in a 1955 (Nottebohm) decision. In addition, some municipalities are extending voting rights to residents based on this principle.

6. Hélene Oger (2003) proposes *residenceship* as a concept that delinks rights from nationality and ties them to "habitual residence" (Oger 2003, no page). She argues that residicenceship would address the inequalities created by the three-tier hierarchy in the European Union that endows national citizens with full political rights, EU citizens with partial rights and so-called third nationals with considerable fewer rights. She proposes a universal residency requirement of five years, and suggests that residenceship should be a right beyond the discretion of state authorities and be extended to irregular migrants. Although the term residenceship implies a substantive difference to citizenship, Oger does not say what this difference might be.

References

Anderson, Bridget, Nandita Sharma and Cynthia Wright. 2009. "Why No Borders?" *Refuge* 26: 5–18.

Anderson, Kay J. 1991. *Vancouver's Chinatown: Racial Discourse in Canada, 1875–1980*. Montreal: McGill Queen's University Press.

Andreas, Wimmer and Glick Nina Schiller. 2002. "Methodological Nationalism and Beyond: Nation-State Building, Migration and the Social Sciences." *Global Networks* 2(4): 301–334.

Austin, Carly and Harald Bauder. 2012. "Jus Domicile: A Pathway to Citizenship for Temporary Foreign Workers." In: H. Bauder (ed.) *Immigration and Settlement: Challenges, Experiences, and Opportunities*, 21–36. Toronto: Canadian Scholars' Press.

Bauböck, Rainer. 1994. *Transnational Citizenship: Membership and Rights in International Migration*. Northampton: Edward Elgar Publishing.

Bauböck, Rainer. 2003. "Reinventing Urban Citizenship." *Citizenship Studies* 7(2): 139–160.

Bauböck, Rainer. 2008. "Stakeholder Citizenship: An Idea Whose Time Has Come? Migration Policy Institute." Accessed April 23, 2012 http://www.migrationpolicy.org/transatlantic/docs/Baubock-FINAL.pdf.

Bauder, Harald. 2003. "Equality, Justice and the Problem of the International Border: A View from Canada." *ACME* 2(2): 167–182.

Bauder, Harald. 2006. *Labor Movement: How Migration Regulates Labor Markets*. New York: Oxford University Press.

Bauder, Harald. 2010. "Foreign Workers Present a Moral Dilemma: Canada Has the Capacity, and Obligation to Integrate Guest Workers." *Edmonton Journal* November 15: A17.

Bauder, Harald. 2011. *Immigration Dialectic: Imagining Community, Economy and Nation*. Toronto: University of Toronto Press.

Bauder, Harald. 2012. "Jus Domicile: In Pursuit of a Citizenship of Equality and Social Justice." *Journal of International Political Theory* 8(1–2): 184–196.

Bauder, Harald. 2013a. "Nation, 'Migration' and Critical Practice." *Area* 45(1): 56–62.

Bauder, Harald. 2013b. "Sanctuary City: Toronto's Signal to Ottawa and Queen's Park." *The Toronto Star*, February 27. Accessed April 30, 2013. http://www.thestar.com/opinion/editorialopinion/2013/02/27/sanctuary_city_torontos_signal_to_ottawa_and_queens_park.html.

Bauder, Harald. 2013. "Why We Should Use the Term Illegalized Refugee or Immigrant." *International Journal of Refugee Law* 26(3): 317–332.

Bauder, Harald. 2014. "Possibilities of Open Borders and No Border." *Social Justice* 39(4): 76–96.

Berinstein, C., J. McDonald, Peter Nyers, Cynthia Wright and S. S. Zerehi. 2006. "'Access not Fear': Non-Status Immigrants & City Services." Toronto. Accessed April 30, 2013. https://we.riseup.net/assets/17034/Access%20Not%20Fear%20Report%20(Feb%202006).pdf.

Betts, Alexander. 2011. "Introduction: Global Migration Governance." In *Global Migration Governance*, edited by Alexander Betts, 1–33. Oxford: Oxford University Press.

Bhuyan, Rupaleem and Tracy Smith-Carrier. 2012. "Constructions of Migrant Rights in Canada: Is Subnational Citizenship Possible?" *Citizenship Studies* 16(2): 203–221.

Blank, Yishai. 2007. "Spheres of Citizenship." *Theoretical Inquiries in Law* 8(2): 410–452.

Bloch, Ernst. 1985 [1959]. *Das Prinzip Hoffnung*. Frankfurt/Main: Suhrkamp.

Blunt, Alison. 2005a. "Cultural Geographies of Home." *Progress in Human Geography* 29: 505–515.

Blunt, Alison. 2005b. *Domicile and Diaspora: Anglo-Indian Women and the Spatial Politics of Home*. Oxford: Blackwell.

Bosniak, Linda. 2000. "Citizenship Denationalized." *Indiana Journal of Global Legal Studies* 7: 447–509.

Bosniak, Linda. 2007. "Being Here: Ethical Territorial Rights of Immigrants." *Theoretical Inquiries in Law* 8(2): 389–410.

Bosniak, Linda. 2010. No title. In *Immigrants and the Right to Stay*, edited by Joseph Carens,81–92. Cambridge, MA: MIT Press.

Bosswick, Wolfgang. 2008. "Immigration policy in Germany." In *Migration and Globalization: Comparing Immigration Policy in Developed Countries*, edited by Atsushi Kondo, 107–138. Tokyo: Akashi Shoten.

Brubaker, Rogers. 1992. *Citizenship and Nationhood in France and Germany*. Cambridge: Harvard University Press.

Carens, Joseph H. 2010. "The Case for Amnesty." In *Immigrants and the Right to Stay,* edited by J. Carens, 1–51. Cambrdige, MA: MIT Press.

Castles, Stephen and Alastair Davidson. 2000. *Citizenship and Migration: Globalization and the Politics of Belonging*. New York: Routledge.

Ceobanu, Alin M. and Xavier Escandell. 2011. "Paths to Citizenship? Public Views on the Extension of Rights to Legal and Second—Generation Immigrants in Europe." *British Journal of Sociology* 62(2): 221–240.

Choe, H. 2006. "National Identity and Citizenship in the People's Republic of China and the Republic of Korea." *Journal of Historical Sociology* 19(1): 84–118.

Coe, Neil M., Philip F. Kelly, and Henry W. C. Yeung. 2013. *Economic Geography: A Contemporary Introduction*, 2nd ed. Hoboken, NJ: Wiley.

Cresswell, Timothy. 2006. *On the Move: Mobility in the Modern Western World*. New York: Routledge.

De Giorgi, Alessandro. 2010. "Immigration Control, Post-Fordism, and Less Eligibility: A Materialist Critique of the Criminalization of Immigration Across Europe." *Punishment and Society* 12(2): 147–167.

Dong-Hoon, Seol. 2005. "Global Dimensions in Mapping the Foreign Labor Policies of Korea: A Comparative and Functional Analysis." *Development and Society* 34(1): 75–124.

Fahrmeir, Andreas K. 1997. "Nineteenth-Century German Citizenship: A Reconsideration." *The Historical Journal* 40(3): 721–752.

Faist, Thomas. 2001. "Social Citizenship in the European Union: Nested Membership." *Journal of Common Market Studies* 39(1): 37–58.

Fangen, Katrine and Brit Lynnebakke, and Erlend Paasche. 2007. "Citizenship Regimes: Consequences for Inclusion and Exclusion of Young Adult Immigrants in Europe." *EUMARGINS Policy Brief* No. 2. Oslo: Department of Sociology and Human Geography, University of Oslo. Accessed April 16, 2012. http://www.sv.uio.no/iss/english/research/projects/eumargins/.

Gibney, Matthew J. 2009. "Statelessness and the Right to Citizenship." Refugee Studies Centre. Oxford, UK: Oxford University. Accessed April 19, 2012. http://www.fmreview.org/FMRpdfs/FMR32/50-51.pdf.

Glick Schiller, Nina and Linda Basch, and Cristina Blanc-Szanton. 2006. "Towards a Definition of Transnationalism." *Annals of the New York Academy of Sciences* 645: 9–14.

Grawert, Rolf. 1973. *Staat und Staatsangehörigkeit: Verfassungsgeschichtliche Untersuchungen zur Entstehung der Staatsangehörigkeit*. Berlin: Duncker & Humbolt.

Green, Simon. 2000. "Beyond Ethnoculturalism? German Citizenship in the New Millennium." *German Politics* 9(3): 105–124.

Goldring, Luin and Patricia Landolt. 2010. "Caught in the Work–Citizenship Matrix: The Lasting Effects of Precarious Legal Status On Work for Toronto Immigrants." *Globalizations* 8(3): 325–341.

Gosewinkel, Dieter. 2001. *Einbürgern und Ausschließen: Die Nationalisierung der Staatsangehörigkeit vom Deutschen Bund bis zur Bundesrepublik Deutschland*. Göttingen: Vandenhoeck & Ruprecht.

Hage, Ghassan. 2002. *Arab-Australians Today: Citizenship and Belonging*. Melbourne: Melbourne University Press.

Hammar, Tomas. 1990. *Democracy and the Nation State: Aliens, Denizens and Citizens in a World of International Migration*. Avebury: Gower Publishing Company.

Holston, James. 1999. *Cities and Citizenship*. Durham, NC: Duke University Press.

Honig, Bonnie. 1994. "Difference, Dilemmas, and the Politics of Home." *Social Research* 61(3): 535–597.

Isin, Engin F. 2000. *Democracy, Citizenship and the Global City*. London: Routledge.

Isin, Engin F. 2009. "Citizenship in Flux: the Figure of the Activist Citizen." *Subjectivity* 29: 367–388.

Isin, Engin F. 2012. *Citizens without Frontiers*. New York: Bloomsbury.

Isin, Engin F. and Greg M. Nielsen 2008. *Acts of Citizenship*. New York: Zed Books.

Keung, Nicholas. 2013. "Toronto Declared 'Sanctuary City' to Non-Status Migrants." *The Toronto Star*, February 21. Accessed April 30, 2013. http://www.thestar.com/news/gta/2013/02/21/cisanctuarycity21.html.

Kivisto, Peter and Thomas Faist. 2007. *Citizenship: Discourse, Theory, and Transnational Prospects*. Malden: Blackwell Publishing.

Kostakopoulou, Dora. 2008. *The Future Governance of Citizenship*. New York: Cambridge University Press.

Levanon, Asaf and Noah Lewin-Epstein. 2010. "Grounds for Citizenship: Public Attitudes in Comparative Perspective." *Social Science Research* 39: 419–431.

Ley, David. 2010. *Millionaire Migrants: Trans-Pacific Life Lines*. Chischester: Wiley-Blackwell.

Mountz, Alison and Jennifer Hyndman. 2006. "Feminist Approaches to the Global Intimate." *Women's Studies Quarterly* 34: 446–463.

Nyers, Peter. 2010. "No One Is Illegal between City and Nation." *Studies in Social Justice* 4(2): 127–143.

Oger, H. 2003. "Residence' as the New Additional Inclusive Criterion for Citizenship." Web Journal of Current Legal Issues. Available at: http://webjcli.ncl.ac.uk/2003/issue5/oger5.html.

Ong, Aihwa. 1999. *Flexible Citizenship: The Cultural Logics of Transnationality*. Durham, NC: Duke University Press.

Price, Patricia L. 2012. "Race and Ethnicity: Latino/a Immigrants and Emerging Geographies of Race and Place in the USA. *Progress in Human Geography* 36(6): 800–809.

Purcell, Mark. 2002. "Excavating Lefebvre: The Right to the City and Its Suburban Politics of the Inhabitant." *GeoJournal* 58: 99–108.

Raijman, Rebeca and Eldad Davidov, and Peter Schmidt and Oshrat Hochman. 2008. "What Does a Nation Owe Non-Citizens? National Attachments, Perception of Threat and Attitudes Towards Granting Citizenship Rights In a Comparative Perspective." *International Journal of Comparative Sociology* 49(2–3): 195–220.

Samers, Michael. 2010. *Migration*. London: Routledge.

Shachar, Ayelet. 2009. *The Birthright Lottery: Citizenship and Global Inequality*. Cambridge: Harvard University Press.

Shachar, Ayelet. 2011. "Earned Citizenship: Property Lessons for Immigration Reform." *Yale Journal of Law and the Humanities* 23: 110–115.

Siemiatycki, Myer and Engin Isin. 1997. "Immigration, Diversity and Urban Citizenship in Toronto." *Canadian Journal of Regional Science* 20(1, 2): 73–102.

Soysal, Yasemin Nuhoğlu. 1994. *Limits of Citizenship: Migrants and Postnational Membership in Europe*. Chicago, IL: The University of Chicago Press.

Spiro, Peter. 2008. *Beyond Citizenship: American Identity after Globalization*. Oxford: Oxford University Press.

Staeheli, Lynn A. and Caroline R. Nagel. 2006. "Topographies of Home and Citizenship: Arab American Activists." *Environment and Planning A* 38(9): 1599–1614.

Staeheli, Lynn A., Patricia Ehrkamp, Helga Leitner, and Caroline R. Nagel. 2012. "Dreaming the Ordinary: Daily Life and the Complex Geographies of Citizenship." *Progress in Human Geography* 36(5): 628–644.

Sutherland Institute. 2011. "Immigration and Utah's Latin problem." Accessed April 23, 2012. http://www.sutherlandinstitute.org/uploaded_files/sdmc/Utahs%20Latin%20Problem-012011-230pm.pdf.

Syssner, Josefina. 2011. "No Space for Citizens? Conceptualizations of Citizenship in a Functional Region." *Citizenship Studies* 15(1): 109–123.

Urry, John. 2000. *Sociology beyond Societies: Motilities for the Twenty-First Century*. London: Routledge.

Varsanyi, Monica W. 2007. "Documenting Undocumented Migrants: The Matrículas Consulares as Neoliberal Local Membership." *Geopolitics* 12(2): 299–319.

Veronis, Luisa. 2006. "The Canadian Hispanic Day Parade, or How Latin American Immigrants Practise (Sub)urban Citizenship in Toronto." *Environment and Planning A* 38(9): 1653–1671.

Vertovec, Stephen and Robin Cohen. (eds.). 1999. *Migration, Diaspoas, and Transnationalism*. Cheltenham: Elgar.

Walters, William. 2004. "Secure Borders, Safe Haven, Domopolitics." *Citizenship Studies* 8(3): 237–260.

Zincone, Giovanna. 2000. "A Model of 'Reasonable Integration': Summary of the First Report on the Integration of Immigrants in Italy." *International Migration Review* 34(3): 956–968.

5

The Model Migrant and Multiculturalism: Analyzing Neoliberal Logics in US Sanctuary Legislation

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Introduction

The Federation for American Immigration Reform (FAIR), a US public interest nonprofit organization, in a 2013 publication warned of the "dangerous trend" of "immigrant sanctuary" policies "sweeping the country" (FAIR 2013, 1). The policies to which FAIR refers are described as "sanctuary legislation," local immigration policies, resolutions and/or ordinances that counter exclusionary state or federal legislation. These local policies contain a variety of stipulations, which include providing public services to residents irrespective of migration status, refusing to comply with federal law enforcement mandates, addressing place-based discrimination experienced by migrants, critiquing unequal power relations that produce migration flows and declaring a place a sanctuary. The locales that have enacted sanctuary legislation are known collectively as "sanctuary cities" or counties. The FAIR report notes that the community costs purportedly associated with unauthorized migration far surpass the possible benefits afforded through providing sanctuary. In an effort to showcase the geographic spread of this expanding "threat," the authors of the report detail the FAIR-defined immigrant sanctuary policies evident in 103 cities, towns and counties across the United States (FAIR 2103, 1–2).

Sanctuary interventions within the migration landscape produce tremendous anxiety for FAIR members. Such sentiments do not exist in isolation. James Walsh (2005, 192), for example, shares ominous tones as

he portends the "undermining [of] the American Republic" by sanctuary policies. He asserts that unauthorized migrants[1] are "keenly aware of immigration malfeasance by state and local governments" (Walsh 2005, 194) and depend on such actions to participate in unlawful activities. In short, Walsh (2005, 194), much like FAIR and a host of other organizations that are active online, argues that sanctuary cities are wholly focused on unauthorized migrants, which is not actually the case, and negatively impact all aspects of society, ranging from national security and criminal justice to environmental protection and welfare programs.

The term sanctuary itself carries a long history, some of which contributes to the concerns voiced about sanctuary cities and sanctuary legislation. Stemming from the Judeo-Christian tradition wherein sanctuary was offered to refugees fleeing violence, sanctuary was also invoked in ancient Greece and Rome and Polynesian Islands prior to European contact as the justification for providing safe spaces to those in need. Draftees who did not want to fight in Vietnam sought sanctuary in the 1970s. The Sanctuary Movement for Central Americans and the New Sanctuary Movement (NSM), both US faith-based social movements, have offered sanctuary in places of worship to Central American asylum seekers, in the case of the Sanctuary Movement, and to mixed-status families, in the case of the NSM (Houston and Morse 2015; Pirie 1990; Purcell 2007; Ridgley 2008, 2012). The appearance of sanctuary in municipal legislation reflects a geographic shift in application from religious spaces to towns, cities and counties. This move marks the secularization of sanctuary and indicates how sanctuary has become enfolded more explicitly within political practices (Ridgley 2012). Given the histories of religious and social activism wrapped up with the term sanctuary, the use of the word sanctuary within municipal legislation holds potency, as Walsh and FAIR, among others, attest.

In an effort to better understand the intentions of and rationales for sanctuary legislation, in this chapter, we conduct a textual analysis of several pieces of sanctuary legislation from around the United States. Through this critical examination, we illustrate the profound implications of neoliberalism in shaping and constraining the work of sanctuary legislation. Consistent with Wendy Larner (2000) we describe neoliberalism as both a form of reasoning and of political-economic governance premised upon the extension of market relations across spatial scales and throughout daily life. Larner (2000, 6) emphasizes that neoliberalism operates as an ideology, set of policies and a form of governmentality. Additionally, she highlights how five key values—namely an investment in "the individual; freedom of choice; market security; laissez faire, and minimal government" (Larner 2000, 7)—underpin

neoliberalism. We draw upon these interpretations in our analysis as we strive to unpack the fraught and paradoxical relationship between neoliberalism and sanctuary legislation. In particular, we illustrate how values associated with neoliberalism become incorporated within sanctuary legislation.

One key impetus for much sanctuary legislation is a reaction against the devolution of federal immigration enforcement to the local scale. Municipalities emphasize the tremendous financial burden associated with assuming this responsibility and bridle against this iteration of neoliberal governance. Accordingly, a majority of sanctuary policies indicate that the federal government, not local government, is responsible for enforcing federal immigration law. Yet, despite criticism about the rollback of the welfare state as evidenced through the off-loading of enforcement responsibilities, ironically, many places draw upon neoliberal rationales in sanctuary legislation. We examine two such patterns. First, sanctuary policies depict migrants as hardworking, taxpaying contributors to the community who do not rely upon social services. Migrants who merit sanctuary are positioned as net economic gains, which points to a market-based appraisal of individual value and worth. This is an example of what we call neoliberal logics emerging as the justification for the provision of sanctuary. Moreover, this depiction relies upon—and further instantiates—a shadow counterpart, the "criminal alien." We grapple with this dynamic of perceived "deserving" and "undeserving" migrants in our analysis.

Second, sanctuary legislation also frequently extols the benefits of diversity and mentions the perks of migrants producing multiculturalism through their physical presence. In these renderings, multiculturalism is not just about inclusion or the acceptance of difference, but rather it operates as the forum through which to achieve diversity (Mitchell 2004, 642). We are particularly interested in how neoliberalism threads through multiculturalism to generate what Hale (2005) and Melamed (2006) call "neoliberal multiculturalism," a strategy for managing people of color such that they perform the roles of productive neoliberal subjects and do not challenge the systems and power relations that routinely contribute to the struggles and inequities experienced by low-income and frequently racialized communities. We suggest that this kind of cultural commodification signals another assimilation of neoliberal logics as individuals of perceived racial and ethnic difference are framed as having specific use-value as representations of diversity.

In light of these interpretations, we argue that the simultaneous reaction against and incorporation of neoliberal rationales and approaches

mitigate the possibilities for sanctuary legislation to bear out the goal of affording safe and just spaces to migrants, authorized and unauthorized, and creating sustained social change. Through investigating policies in Hamtramck, MI; New Haven, CT; Oakland, CA; Watsonville, CA; Cook County, IL; Baltimore, MD; Takoma Park, MD; and Evanston, IL, we demonstrate how neoliberalism informs sanctuary legislation in distinct ways. Textually at least, these are not radical or even necessarily progressive policies, as FAIR and other conservative groups suggest. While we cannot assess through textual analysis how sanctuary legislation translates into everyday contexts or whether it has tangible positive impacts on places and residents, we can ascertain the perspectives and community visions that policymakers draw upon and promote. This type of investigation helps us consider the assumptions guiding, and implications of, sanctuary legislation. Through carefully examining current sanctuary provisions and detailing the extensiveness of neoliberal logics, we note the shortcomings of current sanctuary legislation and add to calls for crafting migration policy that more effectively fosters equity.

We organize our inquiry in the following manner. The first section outlines the catalysts of local sanctuary legislation as identified in policies themselves and in local popular press. The second section examines the invocation of the "model migrant" in sanctuary legislation and discusses the ties between such renderings and neoliberal logics. The third section explores policies that provide political, economic and/or racial analyses of migration and federal immigration law, yet do so principally within the frame of neoliberal multiculturalism. While we register hesitation in our analysis with the possibilities for social change encompassed by sanctuary legislation due to the extensive reach of neoliberalism, we conclude our chapter by discussing how such an interpretation serves as a cogent reminder of the deep need for actualizing different and more effective policies, procedures and processes in the name of a more just world.

Inspirations for local-scale legislation

A key motivation for sanctuary legislation stems from a reaction against the devolution of centralized federal immigration enforcement to the local scale. The decentralization of immigration enforcement has produced situations wherein an encounter with the local police turns into an immigration raid or where federal immigration officials pose as local police (Bass 2006; Reaffirming Berkeley 2007). In New Haven, CT, for instance, when a group of tenants, many of whom were unauthorized

migrants, lodged a complaint because their landlord broke the city's landlord–tenant code, the police officer who responded to the complaint transmitted the police report to ICE rather than help the tenants (Bass 2006; Wheelwright 2006). Similarly, in Berkeley, CA, witnesses to immigration raids have reported multiple instances of federal officials falsely identifying themselves as local police and then entering homes without warrants through the use of intimidation tactics (Reaffirming Berkeley 2007, 1). Given the sense of violation produced by the often intrusive and covert nature of immigration policing, and the ways in which such actions fracture trust with local police officers and make migrants particularly nervous about reporting crimes (Ridgley 2008; Tramonte 2011), declarations of sanctuary have emerged as a tool through which to resist the off-loading of federal enforcement responsibilities to the local scale.

While specific incidents frequently operate as catalysts for sanctuary legislation, outrage with federal legislation also serves as an impetus for designating a place a sanctuary. For instance, Secure Communities, the Clear Law Enforcement for Criminal Alien Removal (CLEAR) Act and Immigration and Customs Enforcement's (ICE) Operation Return to Sender all inspired local-scale public outcries in the form of sanctuary policies. For instance, in Berkeley, CA, Resolution 63,711-N.S. states unequivocal opposition to Operation Return to Sender's impact on the local community since this Operation encouraged a series of ICE raids (Carlsen 2007; Reaffirming Berkeley 2007, 1). Similarly, in Seattle, WA, critiques of the CLEAR Act and HSEA (HR. 2671 and S. 1906), bills that would have promoted local enforcement of federal immigration law in the name of national security, brought about Resolution 30672. This Resolution outlines the importance of separating local law enforcement and federal immigration officials as a necessary provision for unauthorized migrants to have equal access to city services and police protection (A Resolution Opposing 2004). Resolution LM-2011–0330 in New Haven, CT, counters Secure Communities, a program that encourages state and local police to cross-reference the fingerprints of individuals being booked in jail with the Department of Homeland Security (DHS) immigration databases (National Immigration Forum 2014), stating that this policy "disregards what has been a right and prerogative of local government: to decide for itself how to ensure public safety for all its residents" (Resolution from Alderpersons et al. 2012, 2). In short, these pieces of federal legislation blur the distinction between local law enforcement and federal immigration officials, and this raises extensive concern at the local scale. Sanctuary legislation regularly surfaces as a response to such federal actions.

A third reason for sanctuary legislation centers upon general discontent with and/or condemnation of national discourse surrounding immigration. As Davis, CA, Resolution 07–162 expresses, "Public discourse surrounding immigration has taken on a tone that ranges from irrational to racist" (Resolution Reaffirming 2007, 1). Order 16 of Cambridge, MA, notes that this language has a "dehumanizing effect" and "helps justify policies that seek to criminalize and exclude" migrants (O-16 Original Order 2006, 2). Places often craft sanctuary legislation as an antidote to the virulent language about immigration evident in the public sphere. Taken together, incidences of raids and increased racial profiling, the off-loading of immigration enforcement to local entities and the rise of anti-immigrant federal policies and vitriol have all served as important incentives for sanctuary legislation.[2]

In contrast to what groups such as FAIR suggest, sanctuary legislation is not solely focused on unauthorized migrants. For the most part, legislation identifies the impacts of racial profiling, raids, local immigration enforcement and anti-immigrant federal policies on both authorized and unauthorized migrants, and often communities of color more generally. Such legislation, therefore, strives to simultaneously decry the work of the federal government and attend to the discrimination experienced by people living in a specific county, city or town. The negative reactions to policies that shift responsibility to the state and local scales illustrate an underlying, growing and widely shared concern with the contraction of federal provisions as evidenced through neoliberal governance. Yet, ironically, much sanctuary legislation employs neoliberal assumptions in its textual form. To engage with this tension, we now turn to analyze how neoliberal logics help produce the figure of the model migrant, a valuable economic resource, in sanctuary legislation.

The model migrant

The image of the migrant as an external, parasitic and penetrating threat to the United States has become prominent within public discourse. Walter Nicholls (2014, 582) argues that politicians across the political spectrum tend to perpetuate the "immigrant threat" narrative through a shared belief that migrants, often rhetorically assumed to be categorically unauthorized, pose an "existential threat" to the United States. His research finds that conservative politicians depict unauthorized migrants as "illegal," dangerous and criminal, a threat that must be fully eradicated to insure the country's integrity. Liberal politicians, on the other hand, distinguish between "high risk" and "low risk" (2014, 583) migrants,

with the intent of incorporating "low risk" migrants into mainstream society while addressing "high risk" threats, thus transforming the migrant danger into a "manageable risk" (2014, 582). For liberals, "high risk" migrants are those involved in violent and/or criminal activity (the popularized image of the violent, "illegal alien" comes to mind) while "low risk" unauthorized migrants would be candidates for what we call, building on Grace Yukich's (2013a, 302) concept of the "model immigrant," the model migrant. The noted attempt to transform threat into "manageable risk" is an apt characterization of the trend within sanctuary policies to differentiate between law-abiding and criminal migrants. This kind of distinction not only discursively fractures and homogenizes communities, but also signals the incorporation of neoliberal logics as it evaluates migrants based on their behavior—law-abiding or not—and their tangible economic contributions.

Stratifying migrants deemed worthy from those described as unworthy is not new in the United States. Indeed, evaluative hierarchies of this sort have a long historic reach. From the 1850 Fugitive Slave Acts, to the 1882 Chinese Exclusion Act, to the internment of Japanese people in the 1940s, to Operation Wetback in the 1950s, to the contemporary targeting of people of perceived Muslim or Middle Eastern heritage in the post 9/11 era and the raft of deportations undertaken by the Obama administration, the practice of determining the inclusion of some, and the exclusion of other, migrants (and people of color assumed to be migrants) has persisted (Kanstroom 2007; Ridgley 2012). Perspectives on who is welcome in the United States vary over time and illustrate the significance of broader political, economic and social contexts to such determinations. Sanctuary legislation, most of which has emerged since 9/11, reflects such patterns as it advocates for the safety and wellbeing of particular migrants.

Given the intense scapegoating and palpable climate of fear produced after September 11, 2001, many pro-immigrant activists worked to showcase the positive attributes of migrants. Countering dominant narratives that conflated people of certain regional and/or faith backgrounds with terrorism was a key goal with much of this pro-immigrant discourse. Yet, as Yukich (2013a, 302) argues, when activists invoke the figure of the "model immigrant" to raise public opinion about immigrants in general, this often unintentionally creates hierarchies of "deservingness" within migrant communities. In other words, the act of labeling a particular person or group as "exemplary" (Yukich 2013b, 113) or "deserving" (Yukich 2013a, 302) signals that there are others who are less so. Categories of deservingness exist by virtue of a presumed counter-category of "undeserving"

(Ibid.). As Yukich (2013a, 316) demonstrates, this kind of binary framing, while often employed in an effort to safeguard collective rights, frequently jeopardizes a group's most vulnerable members.

We extend Yukich's analysis of the exemplary, model immigrant to consider the figure of the model migrant as an example of how neoliberal logics become integrated into sanctuary legislation that often originates as a critique of the neoliberal order. We examine three ways in which sanctuary legislation portrays the model migrant figure as economically valuable. Specifically, we query the production of a static dichotomy between criminal and law-abiding migrants; the evaluation and valuation of migrants' economic contributions to a locality; and the need to protect the model migrant as an asset.

Interpreting legal violations

A common discursive tool for differentiating between "deserving" and "undeserving" migrants is to draw out a distinction between criminal and civil immigration law violations. Sanctuary policies in many places—including Hamtramck, MI; Oakland, CA; San Francisco, CA; New Haven, CT; St. Paul, MN and Seattle, WA—prohibit local law enforcement from sharing information with or assisting federal immigration authorities in enforcing federal civil immigration law. Simultaneously, they almost ubiquitously state that they will cooperate with criminal cases (Administrative Code 1993; Code of Ordinances 2004; Community Participation 2008; Disclosure of Status 2006; Inquiries into Immigration Status 2002; Resolution (1) 2007). For example, Hamtramck's Ordinance 2008–1 modified Chapter 38 of the City Code to prohibit City officials, including police officers, from inquiring into City residents' immigration statuses unless the officials are assisting federal law enforcement investigate criminal offenses, including both felonies and misdemeanors. New Haven's Police Department General Order 06–2 prohibits both the inquiry into and the disclosure of immigration status information, unless probing criminal activity. Additionally, New Haven police will not make arrests based on ICE immigration warrants. New Haven's policy is more detailed than Hamtramck's, perhaps because it came as a direct response to local police raids and had wide support from both residents and local politicians (Bass 2006). Robustness aside, the two policies share a sharp distinction between civil and criminal offenses, only the first of which is protected by sanctuary legislation.

Initially, these policies appear quite clear in their stipulations. Hamtramck's local law enforcement is prohibited from asking for

immigration status information unless working on a criminal offense, and New Haven police cannot ask about or disclose immigration status information and will not work with ICE unless investigating criminal activity. Yet, as Laura Sullivan (2009) points out, police officers are generally not trained in how to uphold sanctuary legislation. The routine practice of searching for a person in the National Crime Information Center (NCIC) database, for instance, can rapidly involve federal authorities if an immigration violation is registered. Sullivan opines that such a situation decreases the authority of local police to use their discretion when deciding whether or not to investigate immigration status or violations. She consequently suggests that training in how to bear out sanctuary legislation could help dramatically reduce migrants' particular vulnerabilities when interacting with law enforcement.

Furthermore, while the terms "criminal" and "civil" each conjure drastically different images in the public imagination, the legal distinction between criminal and civil immigration law violations lacks clarity (ACLU 2010; National Immigration Forum 2007). The designation "criminal" often depends upon the government's ability to prove a migrant's intent for moving across borders or staying in a place (National Immigration Forum 2007, 1). Since the term "criminal" in both Hamtramck and New Haven's sanctuary policies is not tied to a direct referent, any migrant can rhetorically become criminalized and, therefore, marked for exclusion from declarations of sanctuary. This ambiguity is especially perilous for unauthorized migrants. Being in the United States without authorization represents a civil immigration offense, although this "transgression against the sovereign authority of the nation-state" (De Genova 2004, 175) frequently is criminalized in discourse and action, so the lack of definition within the sanctuary policy affords space for stereotypes of presumed criminal migrants to overdetermine actions taken by local law enforcement. As such, even though these Resolutions in Hamtramck and New Haven, among many other places, endeavor to ameliorate discriminatory actions expressed against all migrants, the vacuum of clarity around language obscures seemingly progressive intentions and contributes to migrants' experiences of precarity.

We recognize that much of the discursive maneuvering in sanctuary legislation about criminal activity has to do with crafting local legislation that can legally counter federal policy, so provisions about criminal violations may be a strategy for getting a policy on the books. In other words, drawing out a distinction between criminal and noncriminal migrants offers a way in which to legally author a departure from federal immigration policies. However, we think this tactic of identifying

and policing criminality also represents another trend. Sanctuary is afforded to those who ostensibly deserve it, those who fulfill expectations for particular moral behavior. Such language draws a clear distinction between people who merit assistance and those who do not. Not coincidentally, the migrants who "deserve" sanctuary are not only law abiding, but also economically productive. Put differently, they are valuable neoliberal subjects who conform to the pressures of neoliberalism as a political-economic system. The "deserving" migrants represent the model migrant figure, targeted recipient of most provisions in sanctuary legislation.

Economics of the model migrant

The model migrant figure embodies economic productivity and exists as the antithesis of the migrant "criminal." Sanctuary legislation frequently stresses migrants' value to society, outlining their economic contributions—through performing menial labor and paying taxes—to a place. Based on these rationales, legislation describes the need to offer access to social services, freedom from racial profiling and inclusion within local governance for authorized and unauthorized migrants. The benevolent statement of sanctuary reads as inclusive while actually dictating a particular type of migrant, namely the "hard-working, tax paying" (Calling for Comprehensive 2008, 3), "productive and valuable" (Resolution Regarding Action 2005, 1) contributor to the community, who is welcome.

This language and rationale for offering sanctuary directly draws upon the neoliberal script. The profit motives of neoliberalism lead to a casting of the model migrant as the embodiment of use-value, evidenced by their employment in specific, often service sector, jobs and their payment of taxes. The assignation of use-value as a tool for inclusion holds up the model, economically profitable, migrant as "deserving" while casting the "undeserving" counterpart, a presumed societal drain, for exclusion. Importantly, the model migrant not only is economically viable and productive, but also embodies so-called "quality morals" as a law-abiding proto-citizen. The confounding between—and presumptions about—the deserving, law-abiding, economically valuable migrant and the criminal, undeserving migrant arise in revealing form in the sanctuary legislation from Oakland and Watsonville, CA.

Oakland is situated in the greater San Francisco Bay Area. Similar to other places with current sanctuary policies, Oakland was involved in the Sanctuary Movement for Central Americans. Building on this history, in 2007, the City Council adopted Resolution 80584 and reaffirmed Oakland

as a "City of Refuge." The document acknowledges that migrants have economically contributed to the Oakland community, and California more generally, through their labor and have led to the "revitalization" of Oakland neighborhoods through their investments (Resolution (1) 2007, 1). The Resolution articulates the need for substantive immigration reform at the federal level and mentions the possibilities for local legislation to lead the way in prompting widespread policy restructuring. The Resolution engages with the criminal/civil dichotomy by stipulating that the Oakland Police Department (OPD) will not enforce federal civil immigration law, but will cooperate on criminal matters.

In 2008, the City Council adopted Resolution 81310, which denounces ICE raids near school campuses in Oakland. The Resolution describes these raids as "criminalizing young children, parents, and families" who, like the majority of Oakland's migrant population, are "productive members of the community" (Resolution Denouncing 2008, 1). The Resolution closes with a request for federal immigration reform that recognizes "the economic and cultural contributions of immigrants" (Resolution Denouncing 2008, 2). While this Resolution incisively condemns the intrusions into local spaces by federal immigration enforcement and speaks to the destabilization of communities caused by ICE raids (see also MacDonald 2007), it mostly employs the language and figure of the morally virtuous, productive migrant. It rationalizes concern about the ICE raids through the frame of migrant contributions. This approach sidesteps a critique of the inequality instantiated through such raids and instead draws upon the logics of neoliberalism in the assignation of value to individual migrants.

Oakland's sanctuary legislation advocates for including the "deserving" model migrant who culturally enriches the community, contributes economically, and abides the law. The unstated, but just as present, foil is the "undeserving," migrant criminal. Oakland's invocation of the "deserving" and law-abiding model migrant as an ideal neoliberal subject works to create its opposite from the existing cultural imaginary and, thus, clouds the policy's progressive intentions. Receiving sanctuary, therefore, becomes premised upon the external evaluation of an individual and/or group as upholding the model migrant figure. The threat of the "undeserving" migrant criminal is ever present, haunting expressions of and marking the boundaries of inclusion. Moreover, the parsing of the "deserving"/"undeserving" migrant creates ruptures between and within migrant groups, a key neoliberal strategy. This splintering diminishes solidarity and reduces the likelihood of broad-based social organizing calling for systemic overhauls of structures of inequality.

Oakland is far from alone in its public support for the economically productive model migrant. Watsonville, CA, offers another example of sanctuary legislation that seems inclusionary and politically progressive at first glance. Yet, deconstructing the legislation reveals the values of neoliberalism and the tempered extent of sanctuary offered through the policy as a result. Watsonville is situated in the Parajo Valley, which gives it excellent access to arable land. In 2007, Watsonville City Council adopted Resolution 98–07 on a narrow 4–3 vote. The Resolution declares Watsonville a sanctuary city for all migrants who live and work in the city, condemns ICE detentions and arrests that both promote fear within the Latino/a community and frequently rely upon racial and ethnic profiling and requests the suspension of such federal activity within the city. Unlike the Oakland Resolutions, in Watsonville the declaration of sanctuary includes an explicit acknowledgment of unauthorized migrants residing within city limits. This kind of sanctuary legislation usually provokes the most controversy as anxiety about defying federal immigration law, shifting resources away from native-born populations and supporting people who are seen as parasitic drains to US society takes center stage.

In light of such perceptions and vitriol, the Watsonville Resolution argues that unauthorized migrants pay taxes, add to Watsonville's "ethnic, cultural, and linguistic diversity" and are important contributors to the local economy in the Pajaro Valley since they constitute a large portion of the local food production labor force (A Resolution 2007, 1). Addressing the significance of migrant workers in the food industry, Navarrette (2014) writes in partial jest, "Like to consume milk or cheese, or eat fruits and vegetables? Go to California and hug an illegal immigrant." The Watsonville Resolution indicates that "all" City residents, or at least those "who contribute to their community and live in peace with their neighbors" (A Resolution 2007, 2), should be free of harassment, intimidation and discrimination by law enforcement officials. In offering protection to authorized and unauthorized migrants, the Resolution draws rhetorically upon neoliberal logics as it focuses on the law-abiding, neighborly and economically productive model migrant. The implicit assertion, of course, is that those who fall outside of this purview—or who are not seen as fitting within this category of "deservingness"—do not warrant protection. As Yukich (2013a) makes plain, upholding migrant attributes as rationales for inclusion produces exclusions along the way. We further contend that the distinctions drawn about deservingness stem directly from neoliberal logics of individualism, use-value and profitability.

A textual analysis cannot thoroughly speculate about the impact of these resolutions on the daily lives of all migrants irrespective of contributions and metrics of deservingness. It can, however, provide a resource with which to identify patterns and point to the incorporation of neoliberal logics in sanctuary legislation in the form of a celebrated, law-abiding, neighborly and economically valuable migrant, a figure held in sharp contrast to the presumed "undeserving," migrant "criminal." The discursive articulation of the model migrant figure in sanctuary legislation helps produce another line of justification for sanctuary. When migrants emerge as valuable economic contributors, the need to protect them as resources becomes more pressing. Offering sanctuary is one way in which to safeguard these assets.

Safeguarding assets

The literal work of the productive model migrant is valuable for adding to "US global competitiveness" (Welcome to Dayton 2011, 6) and bolstering the country's "economic prosperity" (Resolution Declaring 2001, 1). Given such contributions, migrant labor is an important asset to safeguard. On this note, a corollary to the support offered for the model migrant and the implicit rescinding of sanctuary for the presumed criminal counterpoint is a committed interest in fostering trust and cooperation between local migrant communities and local law enforcement as a way to create safer communities for all residents. Arguably, if workers are safer in their homes and workplaces then they can be more productive. In our view, this call within sanctuary legislation for producing safety speaks to the neoliberal drive for efficiency and profit maximization. In other words, concerns about safety, as expressed through relationships between migrants and local law enforcement, are compelled by desires to insure uninterrupted migrant productivity. With this in mind, we analyze the language of trust and cooperation in the sanctuary legislation of Cook County, IL, and Baltimore, MD, to show how particular kinds of care and concern are extended to model migrants given their valuableness as laborers and taxpayers.

Cook County, IL, is one of the state's northeastern most counties and includes the greater Chicago area. In 2007, the County Board of Commissioners adopted Resolution 07-R-240, declaring Cook County a "Fair and Equal County for Immigrants" (Resolution Declaring 2007). The Resolution prohibits police inquiry into immigration status for the sole purpose of determining whether there is an immigration violation, stipulates that as a "Fair and Equal County" no public services shall be

conditioned on citizenship and demarcates foreign passports and drivers licenses as acceptable ID. It further states that the County Sheriff's Office will only assist federal officials in investigating individuals' immigration statuses when there is a suspicion of criminal activity. Not sharing the immigration statuses of Cook County residents with federal immigration enforcement is a "matter of public safety" because this protection will "engender trust and cooperation" between local police and migrant communities, supposedly contributing to more effective "crime prevention and solving" (Resolution Declaring 2007, 1). The Resolution further suggests that greater amounts of trust between law enforcement and migrant communities will "discourage the threat of immigrant and racial profiling and harassment" (Resolution Declaring 2007, 2–3).

The Board of Commissioners adopted Ordinance 11–0–73 in 2011 to clarify the Cook County Police Department's policy for responding to ICE detainers. In this Ordinance, Cook County notes that "ICE detainers encourage racial profiling and harassment" (Policy for Responding 2011, 1), which is antithetical to the County's declaration as a "Fair and Equal County." The Ordinance again stresses the importance of fostering trust between the Sheriff's Department and the local migrant community. In acknowledgment of how collaboration with ICE would shatter trust, the document states that ICE detainer holds shall be refused unless ICE officials have a criminal warrant.

On the one hand, the language about the need to foster trust and cooperation between law enforcement and migrant communities aligns with community policing mandates and notions of best practices for public safety procedures (Tramonte 2011). Yet, on the other hand, we also see this as a mechanism for managing "low-risk" model migrants who are valuable economic commodities. Safeguarding their wellbeing through encouraging the reporting of violent crime helps law enforcement identify the "high-risk" criminal migrants while also protecting the laborers who keep enterprises throughout Cook County in operation. The request for trust and cooperation is moderated by notable patterns in the United States of law enforcement targeting people of color for harassment, intimidation and violence (Weitzer and Tuch 2006). While migrant communities are certainly not exclusively communities of color, there is reasonable reluctance to offer trust and cooperation given the ways in which law enforcement has generally interfaced with people of color in this country. To put it bluntly, the power relations between police and migrant communities are far from equal. The mere designation of Cook County as "Fair and Equal" does not undo dominant systems or readily transform prevailing patterns of interaction. Thus,

without deeper assessments of and calls for changing dominant norms, we see the trust and cooperation language in these policies as ultimately working to protect migrants as useful workers rather than as individuals with inherent rights.

Baltimore, MD, provides another example of how sanctuary legislation attempts to safeguard assets, with a slightly different accent than Cook County's policies. Baltimore City Council Bill 11–0298R opposes the federal Secure Communities program because it "discourage[s] trust…and free communication between citizens and law enforcement" (A Council Resolution 2011, 1). The Bill states that this trust is important for "promoting public safety" (Ibid.). Underneath this explicit reasoning, Baltimore's policy also indicates a desire to protect the model migrant asset. The Bill states that migrants have made important "religious, cultural, and economic" contributions to Baltimore, and, therefore, the City wants to afford them "rights" and "protections" from unjust policing (Ibid.). Baltimore's condemnation of Secure Communities can, thus, be read and understood as an attempt to insure that migrants can seamlessly continue to contribute to Baltimore's economic vitality and cultural richness.

The Bill further notes that Secure Communities has been ineffective at its stated job of "targeting serious criminals" (Ibid.). Not only does this language harken back to the model/criminal migrant distinction, but also this critique of Secure Communities focuses concern on the application of the program in Baltimore. Rather than pursuing the "undeserving" migrant criminal, Secure Communities in Baltimore has targeted *all* migrants. The Bill implies that this is problematic because such actions impede migrants' ability to trust law enforcement and fully participate in the local Baltimore community. In other words, such extensive deployment of Secure Communities has interrupted some of the neoliberal mandates of profitability and individual productivity. Excessive policing activities, the logic suggests, should focus on "criminal" migrants while the economically useful model migrants need to be protected and encouraged to trust and cooperate with law enforcement in order to maximize economic output.

The delineation (and blurring) of criminal and civil immigration violations, the emphasis on migrants' economic contributions and the attempt to protect the migrant resource through the language of trust and cooperation collectively construct the model migrant figure within sanctuary legislation. The focus on the worthiness of particular "deserving" migrant bodies helps perpetuate the narrative of American success achieved through sheer hard work and upstanding morals. This myth overlooks

the injustices embedded throughout society and minimizes deep critiques of persistent inequalities. Instead, the recapitulation of neoliberal logics through sanctuary legislation affirms the intense demand for compliant neoliberal bodies and capital. These are local policies that, despite their critiques of neoliberalism and the rollback of the state, frame and justify the offering of safety and inclusion within the values of neoliberalism.

The influences of neoliberalism surface in other ways within sanctuary legislation as well. For instance, while the figure of the model migrant speaks to the economic mandates associated with neoliberalism as an ideology, set of policies and form of governmentality, neoliberal multiculturalism, the theme we next examine, indicates the exchanges made regarding cultural rights in light of the extension of market logics throughout everyday life.

Neoliberal multiculturalism

Charles Hale (2005, 11–14, 24–26) argues that the granting of some collective rights to Indigenous groups through neoliberal economic and political reforms has ushered in a chapter of "neoliberal multiculturalism." The provision of limited cultural rights through neoliberal multiculturalism has produced an outcome whereby Indigenous groups, the communities under study by Hale, trade explicit challenges to the neoliberal order for a particular slice of autonomy. Hale argues that these orchestrated exchanges, which include articulating the importance of cultural difference and particularity, the strengthening of civil society through this diversity and emphasizing the salience of equality, eventuate docile neoliberal subjects who do not contest the overarching status quo because of realizing some cultural rights. This situation reveals how offering, for instance, a modicum of cultural recognition, such as granting collective land and property rights to Indigenous peoples in an effort to produce the image of a modern state (Hale, 2005, 14–16), enables the broader political, economic and social practices of neoliberalism to persist.

Jodi Melamed (2006, 14) also examines neoliberal multiculturalism, which she describes as a tying together of "official antiracism to state policy in a manner that hinders the calling into question of global capitalism," the production of differently privileged and stigmatized groups of people and the deployment of a normative interpretation of race as a "discourse to justify inequality for some as fair or natural." While the justification of inequality as fair or natural connects with our profile of the model migrant figure, here we build upon Melamed's interpretation of encompassing cultural rights and race discourses within neoliberal

expressions to demonstrate how sanctuary legislation, even with thoughtful power analyses of processes that cause migration, does not challenge the overarching neoliberal order that produces inequities. This very tension in sanctuary legislation between offering astute analyses of disparities and remaining silent about complicity in the systems that maintain and reproduce inequalities makes plain the work of neoliberal multiculturalism. To analyze these patterns, we turn to sanctuary legislation from Takoma Park, MD; Evanston, IL; and Oakland, CA.

Takoma Park Ordinance 2007–58, which reaffirms and strengthens the city's sanctuary law, amends Takoma Park Code to prohibit City employees from assisting ICE with investigations and from inquiring into, or disseminating to ICE, information regarding an individual's immigration status. The Ordinance also acknowledges that charging local police with the task of immigration enforcement may "lead to racial profiling" (Ibid.), which is contrary to the city's 1985 declaration as a "City of Refuge." This decreases opportunities for community policing, a mechanism through which trust and cooperation between migrants and law enforcement officials is purportedly brokered. The Ordinance speaks of individuals who migrate to "provide for their families" and who have experienced discrimination at the hands of immigration raids and the work of ICE more generally (An Ordinance 2007, 1). This language corresponds to the terms used to describe the model migrant figure. What is different about the Takoma Park Ordinance as compared to other sanctuary legislation is the acknowledgment of the "gross human rights violations and severe economic conditions in many of the home countries of immigrants in Takoma Park" (Ibid.) that generate migration flows in the first place. The explicit attention paid to multiculturalism, exhibited through the "racially and ethnically diverse individuals" who create a "rich community which prides itself on welcoming persons . . . of all backgrounds and nationalities" (Ibid.), emerges as a notable aspect of this legislation as well.

At first glance, the acknowledgment of poverty as a compelling force for migration and the noted concern about racial profiling within a place that honors its diversity seems like a nuanced rationale for providing sanctuary. The Ordinance's focus suggests attention to human rights claims rather than a sole emphasis upon the model migrant. Yet, the silence regarding any concrete attempt to change the systemic production of poverty through neoliberal practices alongside the celebration of migrants' cultural diversity indicates how this Ordinance performs neoliberal multiculturalism. Specifically, the overt attention given to racial profiling and the negative impacts of ICE raids illustrate the

granting of a cultural right, in a sense, to the local immigrant community. The Ordinance makes a public declaration of the wrongs committed and asserts the need for comprehensive reform and a different code of local conduct. These shifts, framed within the language of recognized racial and ethnic diversity, mark some advances made.

Yet, the Ordinance overlooks the ways in which neoliberalism supports and sustains the very experiences under critique, and does little to offer concrete ideas about how to alter these patterns, thereby bearing out neoliberal multiculturalism. The legislation keeps the neoliberal order—and neoliberal subjects—in place while simultaneously acknowledging discrimination. In an interesting twist, or perhaps an expected characterization, Takoma Park is described by popular press as "on the cutting edge of liberalism" (Editorial 2013). This casting of Takoma Park as liberal and inclusive further works to obfuscate the neoliberal underpinnings of its sanctuary legislation. The concerns about poverty and racial profiling—a public recognition of cultural rights—circulate as empty signifiers since no substantive action or tangible plans accompany the articulation of injustices.

Evanston, IL, marks another example of a place that offers an analysis of prevailing global power relations and inequalities alongside celebrated multiculturalism within its sanctuary legislation. Resolution 11-R-08 reaffirms Evanston's commitment to the continued treatment of migrants and their families on a humane and just basis and calls for comprehensive immigration reform so as to produce greater equity for migrants. The Evanston Resolution underscores the "uneven development…resulting in the concentration of significant wealth" in the US while leaving "impoverish[ed]…the majority of the world's people" and notes how such distributions of wealth and power shape migration patterns (Calling for Comprehensive 2008, 1). It acknowledges the violation of human rights around the world and the production of fear through ICE raids in the United States. Concurrent to this articulation of global inequalities relating to migration is the invocation of the United States as a country of immigrants and Evanston as a place that values and promotes diversity. Importantly, these discursive moves are largely symbolic. As Evanston aldermen note, the Resolution was meant to signal a political stance rather than create meaningful change (Horan 2008a, 2008b).

This is an instance of acknowledging inequities while also not offering specific pathways for amending the situation. Put differently, a public statement of injustices and a celebration of diversity are presented as notable expressions of support. Yet, the plans for enacting transformation—at any spatial scale—are absent from the legislation. This is how

neoliberal multiculturalism works; the hierarchical and exploitative systems of neoliberalism are left intact while critiques of connected power relations come to the fore. While this Resolution was not necessarily intended to substantively challenge global capitalism or underscore the reproduction of institutional racism, we dwell upon this example to highlight the heralding of diversity without a concurrent commitment to structural change. In such discursive work, diversity becomes another commodifiable asset. It is utilized to project an image of Evanston as socially just, aware and on the frontlines of liberal change. More insidiously, symbolic moves that delineate a consciousness of social inequality and global capitalism's harms have a pacifying effect. They diminish, and possibly corrupt, the potential for inspiring concrete and sustained social action to combat inequality because they placate concerns and represent some progress. Gestures of progress or small and gradual steps toward a "better world" are key instruments in neoliberal multiculturalism's arsenal.

We return to Oakland, CA to investigate another example of neoliberal multiculturalism in sanctuary legislation. In addition to parsing out the model migrant figure, Oakland's 2007 Resolution also makes note of the cultural, racial and ethnic diversity that create Oakland's "highly cosmopolitan community" (Resolution Denouncing 2008, 1). Layered onto the expressed separations between groups of migrants ("deserving"/"undeserving" and law-abiding/criminal) within Oakland's sanctuary legislation are prevailing race relations. This is interesting to note because it signals implicit assumptions about who belongs to the category of "deserving" migrants. Oakland's Resolutions assert migrant residents' right to belong in Oakland due to their cultural distinctiveness, a collective right that federal immigration policy threatens and curtails. Yet, Oakland's declaration of the collective right of belonging for ("deserving" and law-abiding) migrants occurred approximately two years before the well-publicized shooting of Oscar Grant, a young black man, by a Bay Area Rapid Transit police officer.

The Oakland Police Department (OPD) has a long history of corruption, racial profiling and anti-black brutality (Harris 2011), and this embedded racism—specifically anti-blackness—within policing practices is certainly not limited to OPD. However, the ways in which the granting of collective rights to one marginalized group, unauthorized migrants, allows for the continued exclusion of and violence perpetrated against another group, black people, demand attention (i.e., Carbado 2005). While Oakland has legally recognized migrants' right to belong in the city, particularly the law-abiding and productive model migrants, black life (a group often

assumed to be mutually exclusive with the category migrant) not only lacks this police protection but also is constantly endangered, and often terminated, by it. Once again, the separations formulated through sanctuary legislation in the name of inclusion make us consider the multiple layers of inequities. We cannot help but wonder how sanctuaries might work in practice if the logics of neoliberalism and its overshadowing of race and racism were not so deeply embedded.

Multicultural neoliberalism is often covert in that it publicly affords some measure of cultural, and often racial, autonomy and applauds diversity while simultaneously pushing forward neoliberalism. It disguises itself with progressive language and analysis as a strategy to further neoliberal logics and ends. The sanctuary legislation that invokes neoliberal multiculturalism neither provides means for substantive implementation of policy changes nor speaks to how to alter the neoliberal circumstances producing the contexts of migration and reception. Cloaked in a progressive recognition of collective cultural rights, sanctuary legislation that exhibits neoliberal multiculturalism at best obscures the structural forces generating the problems it seeks to address and at worse contributes to further marginalization.

Conclusions

Our initial hope with this textual foray into sanctuary legislation was that we would see local-scale political action as holding tremendous possibilities for change, given the federal immigration system's lack of efficacy and the sheer trauma caused by exclusionary policies. While we are unable to assess the conditions of migrants' daily lives in the places we have profiled without substantial fieldwork, the discursive trends in sanctuary legislation are disheartening. We are struck by the assorted ways in which neoliberal logics wend through sanctuary legislation even though a strident critique of neoliberal actions is often what sets such policies in motion. Through profiling the figure of the model migrant with its associated shadow "criminal" counterpart and the expressions of neoliberal multiculturalism, we have shown how the incorporation of neoliberal rationales within sanctuary legislation truncates the possibilities for radical social change or even the creation of safe spaces. We offer this critique of current sanctuary legislation as a rallying call for future policies to move away from seeking grounding in neoliberal logics that all too often reproduce the harms that sanctuary legislation attempts to resolve.

Even with such a critique and conclusion, we would be remiss if we did not note that aspects of neoliberal multiculturalism and the figure of the

model migrant can be leveraged in short-term beneficial ways. As Yukich (2013a, 307) points out, some migrants are "happy to be lifted up as models" because it offers them some privileges of inclusion. To a certain extent, Yukich's point illustrates exactly our critique—that lifting up the model migrant creates tensions within and between migrant groups, mitigating solidarity or the potential for progressive change. Yet, it is also important for us to acknowledge that in some instances, these policies can make a tremendous amount of difference in migrants' daily lives. Smith (2011), for instance, describes how Evanston "is taking more steps than any other north shore suburb to address the needs of immigrants." We do not know how much, if at all, sanctuary legislation impacts such assessments, but we can guess that it makes some difference. In Takoma Park, residents note that sanctuary legislation offers purpose and direction because it is "central to the town's reputation as a hub of social and political activism" (Hendrix 2007). These statements suggest that sanctuary legislation, even if it entails being upheld as a model migrant and acknowledged as embodying diversity, can be a welcomed shift away from extensive demonization.

This recognition further reminds us that we need to persistently uncover the production of migrant exclusion. We also need to better understand efforts to produce inclusionary spaces for migrants beyond and in spite of neoliberalism. In the spirit of imagining possibilities for reclaiming the potential work of sanctuary legislation and envisioning alternative ways forward, we turn to Nancy Fraser who reminds us that scholars and scholarship "need both deconstruction *and* reconstruction, destabilization of meaning *and* projection of utopian hope" (Fraser 1995, 71). We have illustrated how sanctuary legislation falls short given the inculcation of neoliberal logics and associated reified renderings of migrants, so now we consider the process of reconstruction.

To begin with, we wonder how sanctuary initiatives would unfold if equity and justice concerns were positioned at the forefront of policy creation. Centering equity, rather than hoping that disparities will be resolved through other means, can invoke a different set of assumptions and parameters for legislation and signal possibilities for producing sustained justice. Equity-oriented policies are beginning to inform city governance in a variety of settings, such as Seattle, WA, and Madison, WI, so there are examples of how to situate equity as the primary consideration in policy generation (City of Madison 2014; City of Seattle 2014).

Part of producing more equitable policies requires, to our mind, intentional and sustained collaboration between policymakers, grassroots community organizations and residents who are directly affected

by sanctuary legislation or the lack thereof. Currently, it is reasonably rare for migrants to participate in the creation of sanctuary legislation. Without this collaboration, it is hard for policies to be responsive to the actual needs and concerns of migrants and easier for policymakers to allow neoliberal assumptions to shape legislation. Collaboration of this kind would also help shift the balance so sanctuary is not just mandated from above, but instead is collectively articulated and institutionalized through concrete practices that attend to inequities. Such a strategy strikes us as more responsive and agile than most current sanctuary legislation and thus stands the chance of evolving alongside changes in resident populations and federal legislation. Moreover, rather than justifying sanctuary through the figure of the model migrant or through a tokenized celebration of diversity, practices for cultivating sanctuary that take into account many voices and emerge through collaboration intimate greater possibilities for genuine migrant inclusion and wellbeing.

A collaborative and equity-based approach to policy generation implies that legislation would also attend more directly to the particularities of places. Accounting for geographic specificities would undoubtedly sharpen the relevance and applicability of sanctuary legislation. Clearly, sanctuary sites are not homogeneous, so the legislation should reflect these differences. Foregrounding the nuances of a local place indicates a significant way to address such local-scale factors and encourage shared decision making. While we recommend attending to local-scale dimensions, we also suggest that embedding policies within larger struggles and conversations—within and beyond sanctuary cities themselves—would help sanctuary legislation have more depth and substance as a mode of social change. Indeed, countering federal immigration policy in a meaningful manner requires networks of connection and solidarity among both local and national activists and organizations. Intentionally tying together place-specific sanctuary legislation with larger-scale mobilizations would likely strengthen both the policies and the social movements.

Sanctuary legislation is an instructive artifact of the ongoing debates about immigration in the United States. It offers an avenue for examining the ways that neoliberalism currently threads through local policies and informs migration processes at multiple spatial scales. Sanctuary legislation also provides a reminder of the long road ahead with immigration reform and makes us wonder what the United States would look like if there were committed and sustained structural change so the need for immigrant sanctuaries was eliminated.

Notes

1. We prefer the term unauthorized migrant over the wide range of common phrases used to describe people who have migrated to the United States and who do not have legal status because we find it most accurately and, still imperfectly, describes the situation. The term illegal suggests that people's existence is somehow against the law, while the term undocumented overlooks the fact that many people migrate with a host of documents. Unauthorized strikes us as an effective discursive representation of migration through irregular channels. The designation of someone as an immigrant reflects assumptions about rights to territory and histories in a place. In an effort to disrupt such linkages, we join other scholars in our use of the term migrant rather than immigrant.
2. While sanctuary legislation is emerging across the country, it is also important to note that its creation has not been seamless or without opposition. Indeed, vocal stalwart opponents to sanctuary legislation are evident in many settings (i.e., Mueller 2008).

References

A Council Resolution Concerning the Promotion of Community Safety and Trust Between Baltimore City Residents and Local Law Enforcement Agencies, Res 11–0298R, Baltimore City Council. 2011.

A Resolution of the City Council of the City of Watsonville Requesting Suspension of Random Detentions and Arrests of Residents in the City of Watsonville by the U.S. Immigration and Customs Enforcement and Directing the Mayor to Send Copies of Resolution to State and Federal Representatives and to U.S. Immigration and Customs Enforcement, Res 98–07, Watsonville City Council. 2007.

A Resolution Opposing Federal Legislation that Encourages Local Enforcement of Civil Immigration Laws, Res 30672, Seattle City Council. 2004.

Administrative Code Chapter 12H: Immigration Status, San Francisco City Council, § 12H.2. 1993.

American Civil Liberties Union (ACLU). 2010. "Criminalizing Undocumented Immigrants." Accessed December 14, 2014. aclu.org/files/assets/FINAL_criminalizing_undocumented_immigrants_issue_brief_PUBLIC_VERSION.pdf.

An Ordinance Reaffirming and Strengthening the City of Takoma Park's Immigration Sanctuary Law, Ord 2007–58, Takoma Park City Council. 2007.

Bass, Paul. 2006. "DeStefano to Immigrants: We're Not The Feds." New Haven Independent. Accessed December 14, 2014. newhavenindependent.org/index.php/archives/entry/destefano_to_immigrants_were_not_the_feds/.

Calling for Comprehensive Immigration Reform and for Reaffirmation of the City's Commitment to Humane and Just Treatment of Immigrants and Their Families, Res 11-R-08, Evanston City Council. 2008.

Carbado, Devon. 2005. "Racial Naturalization." *American Quarterly* 57(3): 633–658.

Carlsen, Laura. 2007. "Return to Sender." CounterPunch. Accessed December 14, 2014. counterpunch.org/2007/03/01/return-to-sender/.

City of Madison, WI. 2014. "Racial Equity and Social Justice Initiative." Accessed December 14, 2014. http://www.cityofmadison.com/mayor/priorities/racialequity.cfm.

City of Seattle, WA. 2014. "Race and Social Justice Initiative." Accessed December 14, 2014. http://www.seattle.gov/rsji.

Code of Ordinances Chapter 44, St. Paul City Council, § 44.03. 2004.

Community Participation in Local Government and Local Law Enforcement, Hamtramck City Council, § 38.005–38.006. 2008.

De Genova, Nicholas. 2004. "The Legal Production of Mexican/Migrant 'Illegality'." *Latino Studies* 2(2): 160–185.

Disclosure of Status Information: Policies and Procedures, General Order 06–2, New Haven Police Department. 2006.

Editorial. 2013. "A Voice for the Goose: Life is Hard in the Shadow of the District." Accessed December 14, 2014. washingtontimes.com/news/2013/may/21/a-voice-for-the-goose/.

Federation for American Immigration Reform (FAIR). 2013. *Sanctuary Policies Across the US*. Washington, DC: FAIR.

Fraser, Nancy. 1995. "False Antitheses." In *Feminist Contentions: A Philosophical Exchange,* edited by Seyla Benhabib, Judith Butler, Drucilla Cornell and Nancy Fraser, 59–74. New York: Routledge.

Hale, Charles R. 2005. "Neoliberal Multiculturalism: The Remaking of Cultural Rights and Racial Dominance in Central America." *PoLAR* 28(1): 10–28.

Harris, Paul. 2011. "Oakland Police: Controversial History Sets Tone for City's Discord." *The Guardian*. Accessed December 14, 2014. theguardian.com/world/blog/2011/oct/26/oakland-police-department-black-community.

Hendrix, Steve. 2007. "Takoma Park Stays Immigrant 'Sanctuary'." *The Washington Post*. Accessed December 14, 2014. washingtonpost.com/wp-dyn/content/article/2007/10/29/AR2007102902241.html.

Horan, Deborah. 2008a. "Probes of Legal Status a No-No?" *Chicago Tribune*. Accessed December 14, 2014. articles.chicagotribune.com/2008–01–11/news/0801110039_1_immigration-status-immigration-reduction-illegal.

Horan, Deborah. 2008b. "Immigration Controversy Roils Evanston City Council." *Chicago Tribune*. Accessed December 14, 2014. articles.chicagotribune.com/2008–03–15/news/0803140512_1_immigration-status-illegal-immigration-immigration-advocates.

Houston, Serin and Charlotte Morse. 2015. "Framing Immigrant Sanctuaries in the US: Encounters with the Ordinary and Extraordinary." Unpublished manuscript. Available upon request.

Inquiries into Immigration Status, Directive D02–45, Seattle Police Department. 2002.

Kanstroom, Daniel. 2007. *Deportation Nation: Outsiders in American History*. Cambridge, MA: Harvard University Press.

Larner, Wendy. 2000. "Neoliberalism: Policy, Ideology, Governmentality." *Studies in Political Economy* 63: 5–25.

MacDonald, Heather. 2007. "Oakland to Remain Immigrant Sanctuary." *Oakland Tribune*. Accessed December 14, 2014. origin.insidebayarea.com/timesstar/localnews/ci_5754706.

Melamed, Jodi. 2006. "The Spirit of Neoliberalism: From Racial Liberalism to Neoliberal Multiculturalism." *Social Text* 24(4_89): 1–24.

Mitchell, Katharyne. 2004. "Geographies of Identity: Multiculturalism Unplugged." *Progress in Human Geography* 28(5): 641–651.

Mueller, Dawn. 2008. "Opposition to Evanston 'Sanctuary City' Resolution." Accessed December 14, 2014. evanstonnow.com/government/dawn-mueller/blog-entry/2008/02/18/opposition-to-evanston-sanctuary-city-resolution.

National Immigration Forum. 2007. "Immigration Law Enforcement by State and Local Police." Accessed December 14, 2014. observatoriocolef.org/_admin/documentos/Backgrounder-StateLocalEnforcement.pdf.

National Immigration Forum. 2014. "Secure Communities." Accessed September 28, 2014. weareoneamerica.org/sites/weareoneamerica.org/files/NIF%20Fact%20Sheet%20Secure_Communities.pdf.

Navarrette, Ruben. 2014. "Minds Need to be Open on Immigration." Accessed December 14, 2014. recordnet.com/article/20140904/News/140909844.

Nicholls, Walter. 2014. "Between Punishment and Discipline: Comparing Strategies to Control Unauthorized Immigration in the United States." *Citizenship Studies* 18(6/7): 579–599.

O-16 Original Order of May 8, 2006, Cambridge City Council. 2006.

Pirie, Sophie. 1990. "The Origins of a Political Trial: The Sanctuary Movement and Political Justice." *Yale Journal of Law and the Humanities* 2(2): 381–416.

Policy for Responding to ICE Detainers, Ord 11-O-73, Cook County Board of Commissioners. 2011.

Purcell, Eileen (ed.). 2007. *The Public Sanctuary Movement, A Historical Basis of Hope: Oral Histories, Book I*. San Francisco, CA: Sanctuary Oral History Project.

Reaffirming Berkeley as a City of Refuge, Res 63,711 N.S., Berkeley City Council. 2007.

Resolution (1) Calling on the Federal Government to Impose a Moratorium on Federal Immigration Raids and to Adopt Fair Comprehensive and Humane Federal Immigration Reforms, (2) Affirming that Oakland is a City of Refuge for Immigrants and (3) Declaring the City's Policy against Local Enforcement of Civil Immigration Laws while Permitting Cooperation with Federal Agents in Situations Involving Public and Serious Crimes, Res 80584, Oakland City Council. 2007.

Resolution Declaring Cook County a "Fair and Equal County for Immigrants," Res 07-R-240, Cook County Board of Commissioners. 2007.

Resolution Declaring the City of Albuquerque an Immigrant-Friendly City; Establishing City of Albuquerque Policies Regarding Immigrants and Their Families, Regardless of Immigration Status; Establishing a City of Albuquerque Immigrant Resource Program; and Providing an Appropriation, Council Bill F/S R-151, Albuquerque City Council. 2001.

Resolution Denouncing Tactics Used by the Immigration and Customs Enforcement Agency to Intimidate Oakland Residents Including Placement of Field Agents, Vehicles and Conducting Surveillance at or Near School Campuses and Re-affirming the City's Declaration as a City of Refuge, Res 81310, Oakland City Council. 2008.

Resolution from Alderpersons Castro, James, M. Smith, Colon, Bauer, Santiago, K. Jones, Rodriguez and Perez Calling Upon the Administration of Connecticut Governor Dannel Malloy to Refuse to Honor Administrative Detainers Issued Under the Secure Communities Program Except in the Case of a Person who has been Identified as a Confirmed Match in the FBI's Terrorist Screening Database or Convicted of a Serious Violent Criminal Offense and Requesting the Assistance

of the Connecticut Congressional Delegation and the Mayor in Reviewing and Educating Residents about the Impact of the Program, Res LM-2011–0330, New Haven City Council. 2012.

Resolution Reaffirming the City of Davis as a City of Sanctuary, Res 07–162, Davis City Council. 2007.

Resolution Regarding Actions within Hightstown Borough by the United States Bureau of Immigration and Customs Enforcement, Res 2005–66, Hightstown Borough Council. 2005.

Ridgley, Jennifer. 2008. "Cities of Refuge: Immigration Enforcement, Police, and the Insurgent Genealogies of Citizenship in U.S. Sanctuary Cities." *Urban Geography* 29(1): 53–77.

Ridgley, Jennifer. 2012. "The City as a Sanctuary in the United States." In *Sanctuary Practices in International Perspectives: Migration, Citizenship, and Social Movements,* edited by Randy K. Lippert and Sean Rehaag, 219–231. New York: Routledge.

Smith, Bill. 2011. "Group Rates Evanston Tops in Addressing Immigrant Issues." Accessed September 28, 2014. evanstonnow.com/story/government/bill-smith/2011–01–31/group-rates-evanston-tops-in-addressing-immigrant-issues.

Sullivan, Laura. 2009. "Enforcing Nonenforcement: Countering the Threat Posed to Sanctuary Laws by the Inclusion of Immigration Records in the National Crime Information Center Database." *California Law Review* 97(567): 567–600.

Tramonte, Lynn. 2011. *Debunking the Myth of 'Sanctuary Cities': Community Policing Policies Protect American Communities*. Washington, DC: Immigration Policy Center.

Walsh, James. 2005. "Sanctuary Cities, States Undermining the American Republic." *The Social Contract* Spring: 192–197.

Weitzer, Ronald and Steven Tuch. 2006. *Race and Policing in America: Conflict and Reform*. Cambridge: Cambridge University Press.

Welcome to Dayton: Immigrant Friendly City. 2011. Accessed December 14, 2014. welcomedayton.org/wp-content/uploads/2012/01/Welcome-Dayton-immigrant-friendly-report-final.pdf.

Wheelwright, Tess. 2006. "Immigrants Flee Raid Meant To Help Them." *New Haven Independent*. Accessed December 14, 2014. newhavenindependent.org/index.php/archives/entry/immigrants_flee_raid_meant_to_help_them/.

Yukich, Grace. 2013a. "Constructing the Model Immigrant: Movement Strategy and Immigrant Deservingness in the New Sanctuary Movement." *Social Problems* 60(3): 302–320.

Yukich, Grace. 2013b. "'I Didn't Know if this was Sanctuary': Strategic Adaptation in the US New Sanctuary Movement." In *Sanctuary Practices in International Perspectives: Migration, Citizenship, and Social Movement*s, edited by Randy Lippert and Sean Rehaag, 106–118. New York: Routledge.

6

Nature, Place and the Politics of Migration

John Hultgren

Introduction

The ruptures of globalization have given rise to a resurgent politics of place, localism and rootedness. Renewed attention to place is particularly apparent among Western environmentalists, for whom urban gardens, farmers markets, "buy local" campaigns and an emphasis on saving local rivers, forests and open lands have become perhaps the primary forms of resistance to neoliberal globalization. For many greens, cultivating rootedness—that is, building deep connections to a community and its surrounding environment—is the progressive environmentalism *par excellence*; it represents a potentially radical practice in which visible progress can be made against the inroads of capital.

But place also poses a quandary for environmentalists. The attachments between nature, place and community have long, and not always rosy, histories. In their most horrifying forms, they justified connections between "blood and soil" that drove intense violence. American eugenicists coupled their attempts to purify the nation with attempts to purify natural places (Stern 2005, 119–20), and the Nazis frequently emphasized rootedness in place as a way to protect the *Heimat* from both ideological and racial contamination (Bramwell 1989, 195–208; Olsen 1999, 53–84). In contemporary iterations, this violence is more subdued but persists nonetheless: the desire of Western conservationists to protect wild places has displaced Indigenous inhabitants from their means of subsistence (Hartmann 2004; Neumann 1998; Peluso and Watts 2001); the efforts of local greens to protect their own backyards have inadvertently pushed environmental hazards to poor, racial minority and immigrant communities (Park and Pellow 2004; Pulido 2000); and the communal imaginaries of environmentalists in the United States, Canada and Australia have resulted in narratives in which

"wild places" are purportedly threatened by population growth caused by immigration (Cafaro 2010; Chapman 2006; Daly 2006). "Acting local," in these cases, has actually foreclosed the ability of greens to "think global."

Given this tension, how might greens engage with place in a socially just and sustainable manner? And how could this project influence policy debates? The remainder of this chapter considers the relationship between nature, place and migration. I review environmental engagements with place, asserting that the dominant conception of place that continues to drive Western environmental thought is insular and potentially insidious, often resulting in the marginalization and exclusion of immigrant communities. I then engage with efforts to rethink place coming from border studies, political geography, environmental political theory and postcolonial theory. I argue that attention to migration and to the *translocal* forms of place cultivated by migrants could usefully inform environmental theory and activism, as well as public policy. I make the case that a migratory conception of place could draw social justice concerns into local- and national-level environmental debates, as well as call attention to the socioecological implications of immigration policies aiming to "secure the border."

Environmentalism, place, rootedness

Place—specifically the "wild place"—has long been central to Western environmental imaginaries. Steeped in romanticism, early greens viewed wilderness akin to Plato's soul—a privileged locus where our fleeting realities had access to the divine. For the poet Wordsworth, a trip through the mountains was a religious experience (1936, as cited by Cronon 1996); for Thoreau, the swamp in the woods around Concord represented a *sanctum sanctorum* (Thoreau 1947, 613); and for Sierra Club founder, John Muir, the landscapes of Yosemite were similarly sacred, and those wanting to flood Hetch Hetchy Valley were "temple destroyers" (Muir 1912, 261–262). As environmental historian William Cronon notes:

> God was on the mountaintop, in the chasm, in the waterfall, in the thunder-cloud, in the rainbow, in the sunset. One has only to think of the sites that Americans chose for their first national parks—Yellowstone, Yosemite, Grand Canyon, Rainier, Zion – to realize that virtually all of them fit one or more of these categories. (Cronon 1996, 11)

Similar sentiments were echoed in the writings of influential romantics, like Rousseau and Emerson, and in many respects served to form the

environmental imaginaries that early greens like Muir, George Perkins Marsh and Aldo Leopold would bring to their writing and activism. Today, encountering, experiencing and meditating on wild places—mountains, forests, rivers and streams—remains a vital part of environmentalism, comprising a normatively beneficial source of identity formation, a privileged locus of knowledge and a motivating force for political action. In a very real sense, environmental ontologies, epistemologies, strategies and ethics are tightly linked around the "wild place."

This wild place, it should be noted, is often constructed as simultaneously local and national. Put differently, the experience of god and self converges in a particular local wilderness and produces a better *national* citizen. Leopold, for instance, framed his project to protect "wilderness" in explicitly nationalist terms. Experiencing wilderness, he asserted:

> reminds us of our distinctive national origin and evolution, that is, it stimulates awareness of history. Such awareness is 'nationalism' in its best sense. For example: a boy scout has tanned a coonskin cap, and goes Daniel Booneing in the willow thicket below the tracks, he is reenacting American history. He is, to that extent, culturally prepared to face the dark and bloody realities of the present. (Leopold 1970 [1949], 211; quoted by Kosek 2006, 162)

The relationship between the wild place and the national race was even more pronounced in the writings of Perkins Marsh. Contemporary environmental scholar, Jake Kosek, writes:

> Marsh believed that the American government was the product of this mixing of a potent strain of Germanic-Anglo tradition with the wilds of America. In 1868 he wrote: "The Goths are the noblest branch of the Caucasian race. We are their children. It was the spirit of the Goth that guided the May Flower across the trackless ocean; the blood of the Goth that flowed at Bunker Hill." For Marsh, nature—both human and environmental—was something that could be controlled and that needed protection and proper management. It followed, then, that a love of liberty and effective governance were exclusive attributes of the Germanic people. (Kosek 2006, 159; quoting Marsh 1843, 13–14)

Through these passages, it becomes clear that the nationalized nature of romanticism was founded upon an ontological exclusion that lay in a sharp distinction between "civilization" and "savagery." The roots of this romantic binary can be traced to Rousseau's "noble savage"—a

theoretical figure who he modeled, at points, on the American Indian. The "noble savage" remained in an ahistorical state of nature, absent the selfish tendencies of "civilization," but also without its capacity for advancement. As a consequence, both in theory and practice, discourses of romanticism were dependent upon shared imaginaries of some primitive Other in opposition to which the development of civil society was framed. As "savage" populations encountered "civilization" they met great wrath; their voice was silenced in the apparently radical democratic bearings of a "general will"—erased from the "national public" of which Rousseau spoke. The obvious irony of all this is that the "pristine" locales that early greens praised often necessitated the forced removal of Native American and Hispano peoples (Kosek 2006, 156; Spence 1999, 55–70). Muir, for instance, applauded the Army's presence in Yosemite, particularly insofar as it kept out "Hispanos and Native American grazers" (Jacoby 2001; Kosek ibid). Historian Karl Jacoby writes that Muir "rejoiced at seeing Yellowstone 'efficiently managed by small troops of United States cavalry'" (2001, 99; citing Muir 1901, 40).

In recent years, while academics have dedicated enormous attention to how nature is socially constructed, these overtly racialized connections have been largely forgotten among the general public; the wild place has been declared "America's best idea" (Burns 2009), and embraced by radical and reformist greens alike as a core cultural value that is threatened by "our" appetite for growth. "Environmental activists," Philip Cafaro writes, "typically work to protect the places they know and love, whether it is open space threatened by sprawl or a downtown threatened by a new Super Wal-Mart" (2010, 192). Cafaro's conception of place, in this passage, moves beyond wilderness, but his overarching goal is to link patriotism with the environmental project—a project in which the wild place remains prominent:

> There is ample scope for exercising such patriotism in planting trees, working to create new parks, or teaching children the names of the trees towering above them and the flowers at their feet. Most important, perhaps, is learning the stories of the places we inhabit and meeting the many 'original settlers' (other species) with whom we still share this country. (2010, 205)

For Cafaro, protecting wild places and cultivating patriotic citizens are mutually reinforcing projects.

Viewing the wild place as a source of national pride is certainly genuine for many environmentalists, but it also reflects a political strategy; greens

believe that by experiencing these pristine places, the national public will become motivated for environmental action. As environmentalism became a mass movement in the mid-twentieth century, an assumed relationship between wilderness, knowledge and political action was woven into the strategies of environmental organizations. The Sierra Club, for instance, emphasized that it was by hiking and trekking through the Sierras, the Grand Canyon and the wonders of Yellowstone that the public would gain an interest in protecting the wild place. It was through encountering—and thus *knowing*—the place at a deep, intimate level that one could work to protect it. As David Brower put it, "People who know it can save it…No one else" (1968; cited by Devall and Sessions 1985, 114).

This epistemological stance has continued to inform both the *deep ecological* and *agrarian* traditions of the environmental movement. Deep ecology is a continuation of the romantic tradition, where pristine places are to be safeguarded as loci for divine meditations. The wild place is the site against which the diseases of civilization can be fought. As Alan Gussow writes, "We are homesick for places, we are reminded of places, it is the sound and smells and sights of places which haunts us and against which we often measure our present" (Gussow 1971; cited by Devall and Sessions 1985, 111). The place, for deep ecologists, is where self-actualization occurs; in a manner similar to eastern philosophy, knowledge of self and nature join together to stimulate ecological consciousness (see, for instance, Fox 1995). To be clear, deep ecologists draw on numerous sources of knowledge—romanticism, Zen Buddhism, Indigenous origin stories—but "what is common among all of them is a deep sense of engagement with the landscape" and a concomitant assertion that this engagement will lead to self-actualization (Shepard 1969, as cited by Devall and Sessions 1985, 79). In its more political variants, this self-actualization is linked to political emancipation. Bioregionalism—the development of modes of governance that mesh with ecosystems and the communities they sustain (human and nonhuman)—is precisely this attempt to link deep knowledge of local places to liberating political institutions (Sale 2000). "A bioregion," according to Michael Vincent McGinnis, "represents the intersection of vernacular culture, place-based behavior, and community. Bioregionalists believe that we should return to the place 'there is', the landscape itself, the place we inhabit and the communal region we depend on" (1999, 3).

With shared roots in romanticism, it is perhaps not surprising that the place of the agrarian tradition shares certain commonalities with that of deep ecology. Contemporary agrarianism, perhaps best expressed by

the American writer and "mad farmer" Wendell Berry, also emphasizes rootedness in place as a precondition for the knowledge that can lead to meaningful environmental action. Grounding in place, for Berry, provides a privileged perspective through which one is "abruptly and forcibly removed from easy access to the abstractions of regionalism, politics, economics and the academic life" (2003, 10). The crux of his argument is that a tendency to "stay put" vacillates against the competing tendencies of imperialism, capitalism and racism. "We can understand a great deal of our history," Berry writes, "by thinking of ourselves as divided into conquerors and victims" (2003, 39). The conquerors are those whose thirst for material gain propels them into movement; the victims are those place-based peoples who are uprooted from tradition and forced off the land.

Berry's conception of place is not merely embraced by the new "back-to-the-land" movement, but finds resonance among radical ecologists and leftists alike. In a defense of radical ecology, Peter Hay asserts: "To fight for home and community is thus to fight the debilitating and degrading alienation that, so many contemporary prophets have rightly informed us, is the modern condition, there can be few more urgent tasks" (1994, 11, as cited in 2002, 164; see also Sagoff 1992). Similarly, leftist journalist and activist, Naomi Klein has recently drawn on Berry in emphasizing the cultivation of place as a fundamental piece of the radical struggle against climate change:

> After listening to the great farmer-poet Wendell Berry deliver a lecture on how we each have a duty to love our "homeplace" more than any other, I asked him if he had any advice for rootless people like me and my friends, who live in our computers and always seem to be shopping from home. "Stop somewhere," he replied. "And begin the thousand-year-long process of knowing that place." (Klein 2014)

The lesson here is that resistance to environmental devastation—and to the political economic structures and sociocultural norms producing this devastation—begins at home—in cultivating deep ties to the natural places that compose "our" roots.

Natural places, national identities, reactionary politics

There is something very attractive about this romanticized ideal of place. Capitalism and imperialism do frequently force migration as they convert

nature into exchange value and local populations into paupers. Leaving a place to which one has formed an attachment can be painful and is often something done with great reluctance. Further, when one leaves a place, it can be more difficult to work to protect it. Since moving to Arizona, for instance, I have been less active in environmental struggles in my former home of Northern Colorado. What concerns me is how appeals to the "natural place," in many of their expressions, rely upon representations of an Other—the deterritorialized, placeless migrant—that are anchored more in nationalist lore than contemporary reality. For some greens, like deep ecologists and new agrarians, the supposed relations between place, nature and rootedness render migrants a threat to wild places. For others, like many environmental justice advocates, a more complex relationship between nature and migration is recognized, but this insular conception of place that I have outlined continues to have real pull—as evidenced by its location in the projects of leftists like Klein. Struggles over place, in this regard, have far-reaching implications on the prospect for political inclusion and environmental justice for migrant communities.

The construction of the migrant as an ecological problem occurs through two interrelated logics. First, if rootedness in place is a precondition for environmental action, then movement through space is a potential barrier to sustainability. As a consequence of the deep connections between place and nature, it is perhaps not surprising that through the history of American environmentalism, immigrants have been treated with suspicion. National identities rooted in the wild place are, for many environmentalists, markers of *truly* advanced civilizations (see, for instance, Nash 2001, xiv). Migratory populations have, therefore, long been considered uncivilized threats to the nation's nature: during the late nineteenth and early twentieth century, eastern European immigrants were called "pothunters," and deemed threats to bird populations (Allen 2012; Rome 2008); during the 1960s and 1970s, prominent greens like Garrett Hardin advanced a notion of "life boat ethics" that would save American natures from third world savagery (Hardin 1968); and in the 1980s, Edward Abbey and Earth First! feared that uncivilized Latin Americans were incapable of respecting the high cultural values of wilderness (Abbey 1988; see also Foreman 1987). In order to save wilderness, Abbey opined:

> [I]t might be wise for us as American citizens to consider calling a halt to the mass influx of even more millions of hungry, ignorant, unskilled, and culturally-morally-genetically impoverished people. At least until we have brought our own affairs into order. Especially

> when these uninvited millions bring with them an alien mode of life which—let us be honest about this—is not appealing to the majority of Americans. Why not? Because we prefer democratic government, for one thing; because we still hope for an open, spacious, uncrowded, and beautiful—yes, beautiful!—society, for another. The alternative, in the squalor, cruelty, and corruption of Latin America, is plain for all to see. (1988, 42–43)

The contentious debates over the environmental impacts of immigration that have occupied greens for the past 40 years have largely moved away from overtly racist constructions of savagery, but they remain driven, in no small part, by this discursive opposition between migration and the wild place. For instance, in a recent article in *Ecological Economics*, Robert Chapman (2006) constructs a binary opposition between place and space, locating environmental sustainability with the former and migration with the latter. Chapman refers to place as "a deep attachment to specific geographies fashioned by repeated interactions that provide both the context and content for the construction of personal and cultural identity," whereas space represents a "mere spatial extension that lacks the capacity to uniquely influence what it contains" (2006, 215–216). Globalization, he goes on to argue, produces labor mobility that threatens the very "cultural cohesion" that enables "us" to protect place. Herman Daly similarly views migration as a threat to the solidarity that an ecologically progressive community requires (2006, 188–189), while fellow ecological economist William Rees argues against immigration on the grounds of *cultural carrying capacity*—the notion that, as land and resource scarcity intensify, "social discord and civil strife is almost certain to erupt among self-identifying group within larger (e.g. national) populations" (2006, 223–224). In short, unbridled migration is complicit with the ecological destruction of neoliberal capitalism and therefore ought to be restricted. The turn to protecting the wild place has largely supplanted previous discursive strategies aimed at excluding migrants; it is a softer, gentler, but potentially more insidious brand of "environmental restrictionism" (Hultgren 2014).

Second, insular attachments to place can serve to *displace* the broader temporal and spatial connections that drive both immigration and environmental degradation. For example, environmental justice scholars Lisa Sun-Hee Park and David Pellow detail how: "immigrants and people of color bear the costs of both environmental destruction…and environmental protection (when white, affluent communities discover that an industry is toxic, they then protect themselves by shifting the burden

onto lower income neighborhoods and communities of color)" (2004, 416, parentheses in original). Environmental journalist Jenny Price contends that efforts to protect wild places in and around "progressive" towns like Boulder, Madison, and Flagstaff fail to confront the chains of production that enable the supposedly green lifestyles their inhabitants pursue:

> [H]ow much easier is it to keep your air clean when the factories that manufacture your SUVs and Gore-Tex jackets lie in other, distant towns? And you can minimize racial and class confrontations when your own population is white and affluent, while the poor and nonwhite labor force that sustains your city's material life resides safely far away. . . . Boulder couldn't be the town Boulder adores without LA. (2006)

Because of their ability to displace environmental harms, environmental advocates not only neglect the structural sources of degradation, their actions often perpetuate them, albeit unintentionally. As such, the environmental injustices—the asymmetric exposure to air and water pollution, pesticides and occupational hazards—plaguing migrant communities in areas, like LA, continue to proliferate.

The cruel irony is that at the same time these environmental injustices continue unabated, environmental logics—driven by chains of equivalence between place, nature and rootedness—are being deployed to legitimate them. Although I have focused on the American context here, environmental restrictionism is being advanced by individuals and organizations in many countries, including Australia (Sustainable Population Party), Canada (Centre for Immigration Policy Reform) and England (Population Matters). Within these projects, the supposed connections between nature, place and rootedness frequently slide into a politics of resentment, where mostly white, progressive and radical environmentalists equate their struggles with Indigenous communities in place and against a sweeping, destructive, de-territorializing, pro-growth project within which migrants are located. Abbey, for instance, justified his own opposition to immigration by appealing to Native Americans: "Yes, I know if the American Indians had enforced such a policy none of us pale-faced honkies would be there. But the Indians were foolish and divided, and failed to keep our WASP ancestors out. They've regretted it ever since" (1988, 43).

This discursive move enables an erasure of history, context and positionality, and it results in the reentrenchment of "environmental privilege"

(Park and Pellow 2011). In their more sophisticated iterations, environmental arguments in favor of place draw on Marxist or phenomenological approaches that locate place within a broader array of social relations (see, for instance, Harvey 1990). However, the loudest calls for protecting place continue to be animated by chains of equivalence that juxtapose an inherently radical attachment to wild, localized places against an inherently destructive tendency toward space, detachment and migration.

It is only in recent years that environmentalists have begun to challenge the ways in which conceptions of place are embedded in these binary modes of thinking. The impetus for such a reconceptualization has, not surprisingly, come from environmental justice advocates, for whom place is grounded in a socioecology in which sacred places are located not solely in pristine wildernesses but in areas where people "live, work and play" (Bullard 1996). Building upon the environmental justice approach, environmental political theorist John Meyer calls for a rethinking of place: "Environmental politics consists of our struggle over the creation, use, preservation, alteration and degradation of place. This struggle is defined by our relationships to these places and our experiences in them, in all their complexity and diversity" (Meyer 2001, 138).

The remainder of this chapter expands upon these interventions, seeking to sketch out how the realities of contemporary migration could inform and guide this reconceptualization of place. As Arturo Escobar reminds us, there exist "cases where a progressive cultural politics of place making is based on democratic, pluralistic and non-exclusionary goals" (Escobar 2001, 150). My wager is that attention to migration can help guide activists and policymakers alike toward this type of inclusive and sustainable place.

Rethinking the natural place through migration

In reviewing scholarly literature on the relationship between migration and place, three themes become apparent: (1) places are shot through with global processes; (2) migrants are not placeless, but themselves occupy unique vantage points into the politics of place making; and (3) places, including "wild places," contain forces and flows that exceed humanity, but are not "natural." The following section draws on ethnographic and theoretical engagements with migration from a variety of disciplines, fleshing out recent advances in understanding how migration relates to place. I make the case that attention to migration can work to provide what Doreen Massey calls a "global sense of place," and can help scholars and activists alike "reimagine place in a way that is not bounded, not

defined in terms of exclusivity, not defined in terms of an inside and an outside, and not dependent on false notions of an internally-generated authenticity" (Silvey 2004, 8; citing Massey 1999, 40). Such a reconceptualization could work to unhinge the natural place from the restrictive local and national imaginaries in which it is so firmly embedded among many environmental activists and policymakers.

Migratory places and global processes

To begin, places are not simply local; they are constituted through a whole range of interscalar processes (local, regional, transnational and global). Chapters 3 and 5 have already illustrated how urban places are shaped by local, national, and global processes and practices. In the context of my argument, the threats to forests, open space, air quality (and so on) in a particular locale are rooted in historical encounters, global chains of production, decisions made in national and international political institutions, and the myriad claims to identity through which these places acquire differential meanings. An excellent example of this is widely publicized struggle on Clayoquot Sound, where, in the early 1990s, logging companies and the state provoked intense protests when they attempted to fell old growth forests on Indigenous land. While the place of Clayoquot might initially seem definitively local or Canadian, political theorist Warren Magnusson suggests otherwise:

> To tourists, it might seem like a white place, although it is home to the Nuu-chah-nulth people and its shores are dotted with the remnants of Japanese fishing settlements. It is an intensely local community in which commercial production has been oriented toward the global market for over two-hundred years…It is a small place in British Columbia, a Canadian province, and yet the politics of land use there has been played out in Frankfurt, Germany, San Francisco, California, and many other places across the Atlantic and the Pacific. To 'map' Clayoquot realistically—that is, to specify a location for it that is politically meaningful and to relate the different scales of Clayoquot politics to one another—actually means to discard the image of mapping altogether. (2002, 6)

Magnuson asserts that "the politics of places such as Clayoquot puts traditional distinctions between local and global, small and large, domestic and international—and much else—into serious question" (Ibid., 1). The suggestion here is that places are not static but are produced through "ongoing

negotiation" (Massey 2005, 353). Places, as Hugh Raffles puts it, are "spatial moments that come into being and continue being made at the meeting points of history, representation and material practice" (Raffles 2002, 7–8; as cited by Massey 2005, 353). Places are constructed through a range of institutions, structures and forces that cut across scales, and through the struggles over identity that these institutions, structures and forces bring about.

Take, for example, the Colorado River. As the river flows from place to place, particular stretches are considered definitively local; they comprise vital parts of the communal imaginary of Grand Junction, or Moab or *San Luis Rio Colorado*. At the same time, the river is widely considered both a national and global aquatic treasure. The river's flows through particular places—the amount of water and fish and sediment, levels of salinity and pollution, etc.—are impacted by the consumptive practice of communities throughout the American southwest, the cultural and political economic histories that gave rise to these communities, and the juridical rules that constitute the Colorado River Compact. In recent years, the lack of flows to the Delta have resulted in immigration to the United States (Yang 2008), at the same time as local and national attachments to places are being deployed to restrict immigration. Whereas environmental restrictionists frequently assert that the primary threat to the Colorado comes from population growth driven by immigration (see, for instance, Parker 2010), the reality is far more complex. Those who wish to preserve and restore the Colorado need a migratory perspective that calls attention to the flows—local, national and global—that both constitute and threaten its myriad places.

Moving toward a migratory conception of place, then, does not mean altogether abandoning the local. As Arturo Escobar argues, "To make visible practices of cultural and ecological difference which could serve as the basis for alternatives, it is necessary to acknowledge that these goals are inextricably linked to conceptions of locality, place and place-based consciousness" (2001, 155). Contra what Gibson-Graham calls "the globalization script"—where "only capitalism has the ability to spread and invade" (1996, 125)—migrants are not completely defined by their relationship to global capital, and are certainly not allies of capital as environmental restrictionists often frame them (Escobar 2001, 158). In fact, they frequently resist and reconfigure capitalism in more sustainable directions through strategies that are anchored in local places, but that, at times, reverberate nationally and even globally. The following section reviews these strategies, suggesting how attention to migration can provide a more politically astute and environmentally sustainable vision of socially inclusive place making.

Social reproduction and resistance

Just as "little places like Clayoquot burst out of their containers and impose themselves on the world" (Magnusson 2002, 3), so too do migrants fight back against the normative and juridical mechanisms that are conventionally understood to confine and coerce them. Migrants are not placeless wanderers amid the forces of global capitalism; despite the influence of capital on the lives of many transnational migrants, their lives continually exceed and resist its grasp. For example, political geographers Barbara Ellen Smith and Jamie Winders detail how capital's drive to render labor more flexible has begun to brush up against the requirements of social reproduction; requirements that are rooted in place. To riff on Marx, not quite all that is solid melts into thin air; rather the need to make a home, to forge a community, to raise families and to form daily routines stubbornly resist neoliberalism's desire for foot-loose labor:

> If the logic of flexible accumulation under neoliberal globalization produces a highly labile space-time most fully achieved through the spatially and temporally unmoored laboring body of the unauthorized immigrant, countervailing requirements of social reproduction, potentiated by neoliberal withdrawals of state support, lead immigrant and native-born workers alike to create and defend bounded, routinized space-times symbolized through and materialized in *place*. (2008, 61, emphasis in original)

Smith and Winders observe that, in the southern United States, post-Fordist production requires low-wage immigrant workers who can come in at a moment's notice, stay late and leave the employer and community when they are no longer needed. And yet, immigrant families are laying down roots; "lingering in grocery stores, playgrounds, health clinics and other public—but nonetheless, domestic—spaces" (2008, 66). And, in some cases, they are demanding better treatment from employers and communities alike (Ibid; see also Price 2012, 805).

It is perhaps not surprising that these struggles increasingly extend into relationships with the more-than-human world. Insofar as potable water, adequate food and air that isn't suffocating are requirements for social reproduction, struggles for these environmental goods simultaneously provide subsistence and impose a roadblock on capital accumulation. With this in mind, the strategies of environmental restrictionists—who deploy the local place to exclude migrants in their efforts to oppose neoliberal capitalism—are self-defeating. By fomenting a social environment in

which immigrants live in fear of deportation, are unwelcome in public space, are subject to constant racial stereotyping and have little recourse to state authorities, restrictionists create the conditions of existence for the expendable labor that capital so desires.

In his analysis of disciplinary power, Michel Foucault asserts that "the prison has succeeded extremely well in producing delinquency, a specific type, a politically or economically less dangerous—and, on occasion, usable—form of illegality" (1979, 277). As I argue in more detail elsewhere, immigration restrictionists produce a form of delinquency that serves the purposes of the neoliberal state perfectly—facilitating the development of a mass of surplus labor that can be inserted into the production apparatus, but that also demands intense scrutiny and surveillance from society at large (Hultgren 2015). The effect of the environmental restrictionism that I reviewed in the last section is to insure that these racialized modes of surveillance emerge from across the political spectrum rather than remaining an ineffective figment of the fringe-Right.

In spite of these barriers, marginalized communities (migrant and nonmigrant) are seeking to protect communal places through what Escobar terms, "subaltern strategies of localization." Some examples include rainforest activism in the Amazon, the Navajo resisting land grabs backed by the state and coal companies, and immigrant farm-workers struggling against pesticide exposure and for "fair foods" and environmental justice (see, for instance, Environmental Health Coalition 2012). In addition to these strategies of localization, the political struggles of migrants are increasingly *translocal*, drawing the realities of one place into activism in another, and fostering collective action between them. Laura Minkoff-Zern, for instance, describes how immigrant farmers from Oahaxa have formed a local children's garden in California, translating the knowledge of farming that they had gained in Mexico to environmental action in the United States (2014, 1198). Similarly, in Flagstaff, Arizona, the *Mercado de los Sueños*—a project formed in the largely immigrant Sunnyside community—works to advance sustainability in a local place, but also bands together with coffee growers from Chiapas to provide beans for a neighborhood café (Zacarias 2014). These strategies draw on a variety of communal imaginaries, from the local to the transnational, that functionally expand the public sphere outward beyond the narrow bounds of racialized nationalism and, in doing so, draw places together in novel modes of coalition building (see De Genova 2005; Walia 2013). While these translocal networks—what Giovanna Di Chiro refers to as "transcommunal alliances" (2008, 279)—are currently thin and sporadic, they contain within them the scalar seeds for resistance against global

capital. They further demonstrate that migrants are not placeless, but are of multiple places, and frequently possess the capacity to see how one place connects to another. As I detail in the following section, these places are not purely natural but *socionatural*.

Socionatures and cyborgs

A migratory perspective on place necessitates breaking down the sharp dichotomy between nature and culture that continues to animate much of environmental thought. This dichotomy, I have argued, constrains the strategies and ethics of contemporary environmentalism: some greens appeal to "wild places" in order to naturalize "cultural" boundaries through the exclusion of immigrants, while others embrace a "cultural" politics of social justice, at the same time as they continue to rely upon "natural" commitments to place in which migration is viewed as a barrier to sustainability. Attempting to deconstruct this dichotomy is not to imply a social constructivist view of nature, which—as Bruno Latour has persuasively argued—merely shifts enunciatory power from the natural to the social scientist (2004). The aim, instead, is to transgress the borders between nature and culture by reinforcing the socionatural perspective that is already evident in the struggles of many environmental justice groups and the so-called environmentalism of the poor (Martinez-Alier 2002). Such a perspective is also prefigured in postcolonial and posthumanist theory.

With regard to postcolonialism, the work of Martinican scholar and activist, Edouard Glissant, is instructive. Nature—animals, mountains, volcanoes and oceans—figures prominently in Glissant's philosophical and fictional works. However, his is not an essential nature—a pristine wilderness outside of human relations—but a natural place that is resolutely social; that reveals colonial histories, cultural values and political potentialities. Glissant's *Poetics of Relation* (1997) attempts to understand the continual devastation wrought by colonialism while also unleashing the creative potential of intercultural encounter. In order to do so, he relies heavily on the natural place as a site through which to consider "the texture of the weave"—the intimately entwined cultural encounters forged through spatial and temporal interconnections. "The politics of ecology," Glissant argues, "has implications for populations that are decimated or threatened with disappearance as a people . . . For, far from consenting to sacred intolerance, it is a driving force for the relational interdependence of all lands, of the whole earth" (1997, 145). In pursuit of this project, Glissant calls for "an aesthetics of the earth" that would

avoid the intolerant drive to transform nature into a rooted territory, and instead forge a "rhizomed land" (Ibid., 145–147). The natural place, in this philosophy, is not reduced to a purely political construct; it retains an *opacity*: "Lands and landscapes 'prevail' and 'change us' even as 'the words we use divert their materiality'" (Mardorossian 2013, 991; citing Glissant 2006, 29).

This notion that the materiality of the more-than-human realm changes us is also found throughout posthumanist theory. Posthumanism attempts to break down the distinction between human and nonhuman by revealing the indelible ways that the putatively "non-human"—water, pesticides, chemical processes, viruses, technologies—is embedded within all "humans," and conversely, how "human" logics and processes continually impact the "non-human" world. For example, Donna Haraway's famous "cyborg" is a border figure who defies the boundaries between human and animal, organism and machine, and physical and nonphysical. The cyborg is a subject created through "transgressed boundaries, potent fusions and dangerous possibilities" (Haraway 1991, 295). According to political theorist Thom Kuehls:

> Haraway can be read as suggesting that contemporary politics exists on border lines. Not just the border lines between machines and organisms, or humans and nature, but the border lines that divide sovereign territorial states…The cyborg exists on the border line between the United States and Mexico, where cross-border corporations, pollution, illegal immigrants, and an increasing 'feminization of work'' disrupt the certainty of what counts as American and what counts as Mexican. (1996, 107)

The overarching goal here is to migrate across the rigid, binary categories of thought—nature/culture, human/nonhuman and domestic/foreign—that constrain Western environmental theory and practice, and, in doing so, to call attention to the co-constitutive ontological relations—the "nature-cultures" or "socio-natures"—that animate contemporary political struggles (Castree and Nash 2006).

From a migratory perspective, protection of the "wild place" is no longer the progressive environmentalism *par excellence*; rather, attention shifts to the socionatural place. This does not imply that Yosemite, the Grand Tetons and the Boundary Waters are abandoned as places that warrant protection and praise, but that they are opened up to new historical and cultural understandings. At the same time, our environmental imaginaries are enriched by moving beyond these prototypical natural places

to places that may not be as "pure," but are arguably just as important in terms of their socioecological impact—like agricultural fields, urban blocks, suburban shopping centers and even border walls.

Migratory places and public policies

The migratory conception of place that I have outlined: (1) highlights the multiscalar structures and processes through which places are constituted; (2) reveals emergent forms of place-based resistance against unsustainable and unjust structures and processes and (3) expands environmentalist conceptions of place beyond the natural to the socionatural. In addition to informing environmental movements, this conception of place could influence policy debates surrounding both immigration and environmental degradation. With regard to the former, environmental conceptions of local and national places have often served to naturalize self-interested, spatially bounded and anthropocentric logics of the "sovereign nation-state" that produce environmentally destructive and socially unjust outcomes. In 1999, for instance, the town of Aspen, Colorado, passed a resolution urging the US government to restrict immigration based, in part, on concerns that immigrants were overburdening the area's pristine places (Park and Pellow 2011). A migratory perspective on place would contest this insular conception by focusing on the structures, institutions and forces that produce both immigration and environmental degradation, and forging policies that sought to address these underlying causes. Employing this perspective, the town of Aspen might instead pass a resolution urging the government to abandon the North American Free Trade Agreement or to renegotiate the Colorado River Compact.

With regard to the latter, a migratory conception of place would inform environmental policymaking in two respects. First, attention to migration would encourage local- and national-level environmental policymakers to consider how particular socionatural places—rivers, factories, neighborhoods, etc.—are bound up in transnational processes. Such a focus would require policymakers to consider the forms of social connection—the chains of production and consumption, the international institutions (like the International Monetary Fund and World Bank) and the transnational ecosystems—that conjoin a "local" river or the "local" economy to populations near and far. A local discussion of emissions reduction in Boulder, Colorado, for instance, would consider how the community's information technology economy is dependent upon ecologically intensive manufacturing processes abroad and would make reductions

in recognition of this ecological debt. Ultimately, dialogues over how to best protect these prized places would require an expanded group of stakeholders; environmental activists and policymakers alike would begin to communicate and deliberate with the populations that they are connected to through chains of production or ecosystems.

Second, this revamped conception of place would also require analysis of how attempts to protect "natural" or "wild" places impact social equity. A local-level discussion on expanding open space in Boulder would need to consider how the "progressive" nature of this measure is impacted by its embeddedness in a broader neoliberal political economy. Since the protection of open space often leads to rising housing costs, dialogues over protecting natural places might be coupled with attempts to impose rent control, or to provide housing subsidies to low- and fixed-income populations. This attention to socionatural justice could similarly inform national- and international-level environmental debates, and could work to forge alliances between environmentalists and a variety of social activists—like labor unions, feminists and immigrants' rights organizations.

Conclusion

In emphasizing migratory processes, my aim in this chapter was to dislocate the facile chains of equivalence that greens continue to rely on between nature, place and rootedness—assumed relationships that perpetuate environmental injustice and exclusion for migrant populations. I have suggested that, in a period of neoliberal globalization, there are several persuasive reasons to adopt a migratory conception of place when analyzing immigration policies and practices; such a shift in focus will enable greens to more accurately identify the structures producing unsustainable outcomes, to consider how places are connected to one another, to forge alliances aimed at combating unsustainable structures and to formulate policies that would further the end of socioecological justice. To reiterate, such a shift in perspective does not imply giving up on place (and reifying the world of flows, flux and de-territorialization); rather, it implies a careful consideration of how specific places are routed in migratory processes, and an attention to how one place connects to others. These migratory processes are multifaceted and are not intrinsically beneficial *or* problematic—from rivers carrying fish downstream; to people moving for new jobs or to be close to family; to capital seeking to lower production costs; to pollution seeping across borders and into bodies—migratory processes simply *are*. Environmentalists and policymakers alike would do well to dwell on them. I believe that doing so

might help us—that is, those who wish to diminish the suffering of a wide range of Others and to encourage sustainable communities and economies—to cultivate a more refined "glocalism," a relational understanding of place that will enable a transformative environmental politics anchored in socioecological justice.

References

Abbey, Edward. 1988. "Immigration and Liberal Taboos". In *One Life at a Time, Please*, 41–44. New York: Henry Holt.

Allen, Garland. 2012. "'Culling the Herd': Eugenics and the Conservation Movement in the United States, 1900–1940." *Journal of the History of Biology* March 2012: 31–72.

Berry, Wendell. 2003. "The Art of the Commonplace: The Agrarian Essays of Wendell Berry." Counterpoint Press.

Bramwell, Anna. 1989. *Ecology in the Twentieth Century: A History*. New Haven, CT: Yale University Press.

Brower, David (ed.). 1968. *Gentle Wilderness*. San Francisco, CA: Sierra Club Books.

Bullard, Robert (ed.). 1996. *Environmental Justice and Communities of Color*. San Francisco, CA: Sierra Club Books.

Burns, Ken. 2009. "The National Parks: America's Best Idea." Public Broadcasting Service. http://www.pbs.org/nationalparks/.

Cafaro, Philip. 2010. "Patriotism as an Environmental Virtue." *Journal of Agricultural and Environmental Ethics* 23: 185–206.

Chapman, Robert. 2006. "Confessions of a Malthusian Restrictionist." *Ecological Economics* 59(2): 214–219.

Cronon, William. 1996. "The Trouble with Wilderness: Or, Getting Back to the Wrong Nature." *Environmental History* 1(1): 7–28.

Daly, Herman. 2006. "Population, Migration, and Globalization." *Ecological Economics* 59(2): 187–190.

Devall, Bill and George Sessions. 1985. *Deep Ecology: Living as if Nature Mattered*. Layton, UT: Gibbs M. Smith.

Di Chiro, Giovanna. 2008. "Living Environmentalisms: Coalition Politics, Social Reproduction and Environmental Justice." *Environmental Politics* 17(2): 276–298.

De Genova, Nicholas. 2005. "Working the Boundaries: Race, Place and 'Illegality' in Mexican *Chicago*." Durham, NC: Duke University Press.

Environmental Health Coalition. 2012. "Border Environmental Justice Campaign." http://www.environmentalhealth.org/BorderEHC/index.html (April 12, 2012).

Escobar, Arturo. 2001. "Culture Sits in Places: Reflections on Globalism and Subaltern Strategies of Localization." *Political Geography* 20: 139–174.

Foreman, Dave. 1987. "Is Sanctuary the Answer?" *Earth First!* 8(1) (November): 21–2.

Foucault, Michel. 1979. *Discipline and Punish: The Birth of the Prison*. New York: Vintage Books.

Fox, Warwick. 1995. *Toward a Transpersonal Ecology: Developing New Foundations for Environmentalism*. Albany: State University of New York.

Glissant, Edouard. 1997 [1990]. *Poetics of Relation*, translated by Betsy Wing. Ann Arbor: University of Michigan Press.
Glissant, Edouard. 2006. *Une Nouvelle Region du Monde*. Paris: Editions Gallimard.
Gibson-Graham, J. K. 1996. *The End of Capitalism (As We Knew It)*. Oxford: Basil Blackwell.
Gussow, Alan. 1971. *A Sense of Place: The Artist and the American Land*. San Francisco, CA: Friends of the Earth.
Hardin, Garrett. 1968. "The Tragedy of the Commons." *Science* 13: 1243–1248.
Hartmann, Betsy. 2004. "Conserving Racism: The Greening of Hate at Home and Abroad." *Different Takes* 27: 1–4.
Haraway, Donna. 1991. *Simians, Cyborgs and Women: The Reinvention of Nature*. New York: Routledge.
Harvey, David. 1990. *The Condition of Postmodernity: An Enquiry into the Origins of Cultural Change*. Cambridge, MA and Oxford, UK: Blackwell.
Hay, Peter. 2002. *Main Currents in Western Environmental Thought*. Bloomington and Indianapolis: Indiana University Press.
Hultgren, John. 2014. "The 'Nature' of American Immigration Restrictionism." *New Political Science* 36(1): 52–75.
Hultgren, John. 2015. *Border Walls Gone Green: Nature and Anti-immigrant Politics in America*. Minneapolis and London: University of Minnesota Press.
Jacoby, Karl. 2001. *Crimes against Nature: Squatters, Poachers, Thieves, and the Hidden History of American Conservation*. Berkeley and Los Angeles: University of California Press.
Klein, Naomi. 2014. "The Change Within: The Obstacles We Face Are Not Just External." *The Nation*, May 12. http://www.thenation.com/article/179460/change-within-obstacles-we-face-are-not-just-external#.
Kosek, Jake. 2006. *Understories: The Political Life of Forests in Northern New Mexico*. Durham: Duke University Press.
Kuehls, Thom. 1996. *Beyond Sovereign Territory: The Space of Ecopolitics*. Minneapolis: University of Minnesota Press.
Latour, Bruno. 2004. *The Politics of Nature*: *How to Bring the Sciences into Democracy*. Cambridge: Harvard University Press.
Leopold, Aldo. 1970 [1949]. *A Sand County Almanac: With Essays on Conservation from Round River*. New York: Ballantine Books.
Magnusson, Warren. 2002. "Introduction." In *A Political Space: Reading the Global through Clayoquot Sound*, edited by Warren Magnusson and Karena Shaw. Minneapolis: University of Minnesota Press.
Mardorossian, Carine. 2013. "Poetics of Landscape: Edouard Glissant's Creolized Ecologies." *Callaloo* 36(4): 983–994.
Marsh, George Perkins. 1843. "The Goths in New-England: A Discourse Delivered at the Anniversary of the Philomathesian Society of Middlebury College, August 15, 1843." Middlebury, VT., 13–14.
Martinez-Alier, Juan. 2002. *The Environmentalism of the Poor: A Study of Ecological Conflicts and Valuation*. Northampton, MA: Edgar Elgar.
Massey, Doreen. 1994. *Space, Place and Gender*. Minneapolis: University of Minnesota Press.
Massey, Doreen. 1999. Power-geometries and the politics of space-time. Hettner Lecture, Department of Geography, University of Heidelberg.
Massey, Doreen. 2005. "Negotiating Nonhuman/Human Place." *Antipode* 37(2): 353–357.

Meyer, John. 2001. *Political Nature: Environmentalism and the Interpretation of Western Thought*. Cambridge, MA: MIT Press.
Minkoff-Zern, Laura. 2014. "Knowing 'Good Food': Immigrant Knowledge and the Racial Politics of Farmworker Food Insecurity." *Antipode* 46(5): 1190–1204.
Muir, John. 1902. *Our National Parks*. Boston and New York: Houghton Mifflin.
Muir, John. 1912. *The Yosemite*. New York: Century Company.
McGinnis, Michael Vincent. 1999. *Bioregionalism*. New York: Routledge.
Nash, Roderick. 2001 [1967]. *Wilderness and the American Mind*. New Haven, CT: Yale University.
Noel Castree and Catherine Nash. 2006. "Posthuman Geographies." *Social and Cultural Geography* 7(4): 501–504.
Neumann, Roderick. 1998. Imposing Wilderness: Struggles over Livelihood and Nature Preservation in Africa. Berkeley and Los Angeles: University of California Press.
Olsen, Jonathan. 1999. *Nature and Nationalism: Right Wing Ecology and the Politics of Identity in Contemporary Germany*. New York: St. Martin's Press.
Park, Lisa Sun-Hee and David Pellow. 2004. "Racial Formation, Environmental Racism and the Emergence of Silicon Valley." *Ethnicities* 4(3): 403–424.
Park, Lisa Sun-Hee and David Pellow. 2011. *The Slums of Aspen: Immigrants vs. the Environment in America's Eden*. New York: NYU Press.
Parker, Kathleen. 2010. "Population, Immigration and the Drying of the American Southwest. The Center for Immigration Studies," November. http://cis.org/southwest-water-population-growth.
Peluso, Nancy and Michael Watts. 2001. *Violent Environments*. Ithaca, NY: Cornell University Press.
Price, Jennifer. 2006. "Thirteen Ways of Seeing Nature in L.A." *The Believer*, April/May. http://www.believermag.com/issues/200604/?read=article_price.
Price, Patricia. 2012. "Race and Ethnicity: Latino/a Immigrants and Emerging Geographies of Race and Place in the USA." *Progress in Human Geography* 36(6): 800–809.
Pulido, Laura. 2000. "Rethinking Environmental Racism: White Privilege and Urban Development in Southern California." *Annals of the Association of American Geographers* 90(1): 12–40.
Raffles, Hugh. 2002. *In Amazonia: A Natural History*. Princeton, NJ: Princeton University Press.
Rees, William. 2006. "Globalization, Trade and Migration: Undermining Sustainability." *Ecological Economics* 59: 220–225.
Rome, Adam. 2008. "Nature Wars, Culture Wars: Immigration and Environmental Reform in the Progressive Era." *Environmental History* 13: 432–453.
Sagoff, Mark. 1992. "Settling America: The Concept of Place in Environmental Ethics." *Journal of Energy, Natural Resources and Environmental Law* 12: 351–418.
Sale, Kirkpatrick. 2000 [1991]. *Dwellers in the Land: The Bioregional Vision*. Athens, GA: UGA Press.
Shepard, Paul. 1969. *The Subversive Science: Essays Toward an Ecology of Man*. New York: Houghton Mifflin.
Silvey, Rachel. 2004. "Power, Difference and Mobility: Feminist Advances in Migration Studies." *Progress in Human Geography* 28(4): 1–17.
Smith, Barbara Ellen and Jamie Winders. 2008. "'We're Here to Stay': Economic Restructuring, Latino Migration and Place-Making in the US South." *Transactions of the Institute of British Geographers* 33(1): 60–72.

Spence, Mark. 1999. *Dispossessing the Wilderness: Indian Removal and the Making of the National Parks*. Oxford: Oxford University Press.
Stern, Alexandra Minna. 2005. *Eugenic Nation: Faults and Frontiers of Better Breeding in Modern America*. Berkeley and Los Angeles: University of California Press.
Thoreau, Henry David. 1947. "Walking." In *The Portable Thoreau*, edited by Carl Bode, 592–630. New York: Penguin Books.
Walia, Harsha. 2013. *Undoing Border Imperialism*. Oakland, CA: AK Press/Institute for Anarchist Studies.
Wordsworth, William. 1936. "The Prelude." In *The Poetical Works of Wordsworth*, edited by Thomas Hutchinson, 536, bk. 6. London, England: Oxford University Press.
Yang, JoShing. 2008. "Illegal Mexican Immigrants or Water Refugees?" Truthout. http://truth-out.org/archive/component/k2/item/81071:illegal-mexican-immigrants-or-water-refugees.
Zacarias, Andrew. 2014. *El Mercado de Suenos: A Glimpse into Flagstaff's Flourishing Rhizome*. Northern Arizona University, Unpublished thesis.

7

State-Based Immigration Efforts and Internally Displaced Persons (IDPs): An Experiment in Alabama

Eli C. S. Jamison

Introduction

Being *recognized* as an immigrant has become a strange, and increasingly dangerous, identity cocktail in the US South in the twenty-first century. Current American federal immigration policy is built upon a legacy system that has systematically constructed a racialized, transnational, exploitative and dangerous migration system for those immigrating to the United States—concerns well established and explored from a variety of perspectives in the relevant academic literature (Massey 2008; Ngai 2004; Odem and Lacy 2009; Sadowski-Smith 2009; Weise 2009a, 2009b; Winders 2011). The most recent twist in the nation's immigration policy has been the emergence of state-level, state-initiated policies of "enforcement by attrition," more commonly known as "self-deportation" (McWhorter 2012). These self-deportation policies are characterized by their intentional creation of a set of conditions collectively mandating surveillance of a community, by that same community, resulting in living conditions characterized by a perpetual threat of persecution. This threat of detainment and/or deportation is intended to be so pervasive that unauthorized immigrants will choose to "self-deport" to another state to escape the omnipresent risk for persecution. One policy approach that states used to accomplish these ends was to require documentation proving authorized presence for virtually all aspects of community life (e.g., contracts, schools, traffic stops, etc.). This particular policy approach was first popularized in Arizona, and later approved by the US Supreme Court, and became known as the "show me your papers" laws (Glionna 2012). Though additional state-initiated immigration efforts have recently

abated while the US Congress struggles to address this issue, self-deportation indeed served as a core principle for several so-called state-level immigration reform initiatives, as well as a plank in Mitt Romney's 2012 republican presidential campaign, and its implementation left important marks on the affected populaces.

Several states have passed legislation to combat the perceived threat of "illegal"[1] immigration. Arizona emerged as an early and recognized leader within that group by adopting unprecedentedly tough anti-immigration legislation, but by the end of 2011, six state legislatures also had approved immigration laws targeted at "illegal aliens." These statutes became flashpoints for the debate concerning federal (national) versus state regulation of immigration. In this context of multistate adoption of strict immigration laws, Alabama's legislature passed the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, commonly referred to as the Alabama Immigration Law (or H.B.56) and is widely regarded as the most restrictive, detailed, and some say "mean-spirited," immigration law in the United States (2011b, 2011a; Berry 2011a; Fausset 2011; Lyman 2011; Robertson 2011). The Law is "mean-spirited" in the sense that Alabama's immigration law had one goal: to make life completely untenable for undocumented people living in the state and equally difficult for Alabama's citizens to support such individuals (Constable 2011; Hollis 2011). This policy conception became discursively recognized by public officials at both the state and national level, as a policy of "self-deportation" and is an example of one recent legal process through which individuals became illegalized (Bauder 2014; Editorial Board 2012; Fahrenthold 2012; Llorente 2011). Implementation of this law reportedly coerced tens of thousands of Latino[2] people, undocumented and documented alike, to leave their Alabama homes in the days following its adoption (Addy 2012; Bailey 2011; Elliot 2011, 2011b; Green 2011; Reeves and Caldwell 2011, Reid 2011; Robertson 2011; WHNT News 19 Staff Reports 2011).

Though implementation of this law was for the most part steadily enjoined by the courts and finally settled out of court in October 2013 (Associated Press 2013a; Sarlin 2013), the Alabama Immigration Law represents another example in a long line of racialized policies in the history of US immigration law. Further, I argue the resultant coerced movement of Alabama's Latino *legal* residents met the international legal standard of internally displaced persons (IDPs). IDPs are often the casualties of intranational political conflict by being situated at the confluence of competing political and (increasingly) global interests within a country and/or as a consequence of environmental disasters. In recent years, the number of IDPs globally has steadily increased,

and as with other migrants, their reception in new destinations can be unpredictable (Okeke and Nafziger 2006). As of 2010, the Internal Displacement Monitoring Centre estimated that there were 27.5 million IDPs worldwide (UNHCR: The UN Refugee Agency 2013). IDPs occupy an area of international law considered to be *lex ferend*, or future law that is still emerging, and the international community's ability (read UNHCR's capacity) to enforce human rights protections for people residing within their home nations is extremely limited by sovereignty concerns (Okeke and Nafziger 2006). In this chapter, I argue that when implemented, Alabama's immigration law violated the existing international legal framework protecting IDPs, particularly in the area of international human rights law, as described by the United Nations High Commissioner for Refugees (UNHCR) and detailed in the *Handbook for the Protection of Internally Displaced Persons* developed by the Global Protection Cluster Working Group of UNHCR.

Implementation of the Alabama Immigration Law resulted in empty homes, businesses and schools when both documented and unauthorized residents left the state en masse. This statute, and others like it, resulted in the targeted displacement of particular, visually identifiable Alabama residents: Latinos. This criterion of visual recognition racialized the law via profiling practiced by state law enforcement officials and by means of self-deportation by immigrants themselves—individuals who relocated as publicly racialized "others" for purposes of self-preservation. I argue that according to the UNHCR criteria, Alabama's immigration law systematically created IDPs within the United States who lacked adequate protection from their nation's government. This case offers a recent example from which to more carefully scrutinize local, state and federal immigration policies and perspectives that create IDPs through administrative loopholes. As a result, I conclude that policymakers and government agencies must effectively close these loopholes or else risk both internal contradictions between federal and state laws, domestically, as well as violations of human rights laws, internationally.

Below, I first present the current legal constructs guiding intervention on behalf of IDPs according to the UNHCR. Following from that framework, I investigate *why* and *how* a cadre of state legislators developed Alabama's law in light of the impact of that state's historic, cultural and political role as a new immigrant destination in the US South. I then compare and contrast Alabama's implementation of "self-deportation" to the circumstances IDPs often encounter by viewing both scenarios to be *border projects* by their home nations. Finally, I consider the implications of a reality where the United States creates IDPs.

Global, legal loopholes: The definition and protection of IDPs

> Internally displaced persons, or IDPs, are among the world's most vulnerable people. Unlike refugees, IDPs have not crossed an international border to find sanctuary but have remained inside their home countries. Even if they have fled for similar reasons as refugees . . . , IDPs legally remain under the protection of their own government—even though that government might be the cause of their flight. As citizens, they retain all of their rights and protection under both human rights and international humanitarian law. (UNHCR: The UN Refugee Agency 2013)

UNHCR has a 30-year history of engagement with IDPs, which has led to the above statement concerning their rights and protections. However, IDPs are not addressed explicitly by any law or treaty dedicated singularly to the issues confronted by IDPs. Rather, an IDP falls within an intersecting grid of law that is argued to provide "a comprehensive legal framework for protection in all situations of internal displacement" (UNHCR Global Protection Cluster 2010, 23). This legal framework includes international human rights, humanitarian and criminal law. Within the realm of international human rights law, UNHCR references multiple legal instruments including regional human rights instruments and international customary laws that supplement the rights guaranteed by the Universal Declaration on Human Rights (UDHR) of 1948 and later transformed into the legal binding commitments of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR).

Taken together, UDHR, ICESCR and ICCPR are regarded to be the "International Bill of Rights" covering legal protection for IDPs. However, IDPs are not specifically identified within international law because of their status as "citizens" or "habitual residents"[3] of a sovereign nation (2010, 23–24). Despite this well-intended legal framework, IDPs remain a vulnerable population because they occupy this tenuous legal category on the global stage. In consequence, their legal protection is frequently *inactionable* due to complications arising from both national sovereignty and agency resources issues (UNHCR 2007) The United Nations is not authorized to intercede on behalf of a citizen located within a sovereign nation-state border, and even if it could, the enormity of the global IDP issue outpaces United Nations' capacity to respond. Despite these limitations, some political latitude and legal guidance do exist.

Two instruments guide legal expectations for IDP treatment, and both are "rooted in the law of human rights, humanitarian law, and refugee law . . . the Guiding Principles on Internal Displacement (Guiding Principles) . . . and the London Declaration of International Law Principles on Internally Displaced Persons (London Declaration)" (Okeke and Nafziger 2006, 536). The London Declaration—the product of eight years of negotiation by 750 lawyers from 63 countries—resulted in the articulation and acceptance of 18 principles now serving as international guidance for the humane treatment and protection of the human rights of IDPs (Lee 2001). The Declaration also provided an official, internationally recognized definition of IDPs: "Persons or groups of persons who have been forced to flee or leave their homes or places of habitual residence as a result of armed conflicts, internal strife, or systematic violations of human rights, and who have not crossed an internationally recognized State border" (Lee 2001, 72). Despite this enunciation of a definition and principles, this agreement is fraught with gaps between the highlighted challenges and actionable solutions for IDPs. Here, for example, is Section 2. Article 2.1: "Internally displaced persons shall be protected and assisted in accordance with all *generally accepted* and, *where appropriate, regionally agreed upon*, human rights, refugee and humanitarian law" (Lee 2001) [my emphasis].

The emphasized passages in the above quote suggest why enforcement of this Declaration is problematic. While "generally accepted" carries legal import, that provision is further conditioned by "where appropriate" and "regionally agreed upon." Accordingly, in most IDP scenarios, the likelihood of this Article resulting in improved living conditions for such populations is questionable. The questions of which member states in the "region" must agree, and who decides when action is appropriate, are obvious impediments to action.

Put differently, the London Declaration's capacity to protect IDPs is both enabled and limited by the structure of existing nation-state geopolitical relationships. The language in the London document's preamble illustrates how complicated protection of human rights for IDPs can be. The Preamble acknowledges that signatories:

- Express concerns over the growing number of IDPs globally;
- Note a legal gap exists between IDPs and recognized refugees with "guaranteed" rights and protections under international law;
- Recognize the need for greater protection;
- Stress IDP's right to be free from arbitrary displacement from home;
- Emphasize no impact on previously existing agreements between recognized nation-states;

- Take into account previously established guiding principles regarding IDPs;
- Urge all parties to review their internal policies toward refugees and IDPs; and finally
- Declare the 18 articles as applicable for the legal status of IDPs (Lee 2001).

The Declaration's language reveals that responsibility for IDP protection effectively remains at the discretion of nation-states. The agreement's preamble highlights the challenge noted in the UNHCR statement above: "IDPs legally remain under the protection of their own government – even though that government might be the cause of their flight" (UNHCR: The UN Refugee Agency 2013). In the absence of extraordinary circumstances, the international community is unlikely to force a recalcitrant government to address an IDP crisis within its boundaries when enforcement would require usurping nation-state sovereignty. Essentially, those agents concerned with persecution of IDPs only have the moral weight of the Declaration at their disposal to encourage governments to appropriate protections for IDPs. The inconsistencies within this legal framework leave IDPs as highly vulnerable populations with little political recourse for global protection. Ultimately, this legal loophole must be closed if improvements in IDP protection are to be made.

Despite its lack of enforcement provisions, the London Declaration represents international acknowledgment of the plight of these vulnerable populations whose numbers have steadily increased since the end of the Cold War (Lee 1996; Okeke and Nafziger 2006; UNHCR 2007). As stated earlier, it also establishes an internationally recognized definition for IDPs. Finally, the agreement articulated IDPs' rights to claim a *home* as a fundamental human right and responsibility of humanitarian law. The Preamble acknowledged "the right of any person to freedom of movement, including the right not to be arbitrarily displaced from that person's home or place of habitual residence." The wording concerning this right in Section II, Article 4.2 is particularly relevant:

> No one shall be compelled to leave his or her home or place of habitual residence due to persecution or discrimination based on race, color, sex, gender, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or any other similar criteria, or subject to such persecution or discrimination subsequent to displacement. (Lee 2001, 74)

This international legal groundwork does establish a framework through which the conditions of displaced people can be investigated. Using this framework, I will consider Alabama's particular implementation of "self-deportation," followed by the possible ramifications of this policy legacy, and its potential role in shaping the federal immigration debate. This case offers a recent example from which to more carefully scrutinize local, state and federal immigration policies and perspectives in the United States that create IDPs through administrative loopholes. As a result, I recommend that policymakers and government agencies close these loopholes or else risk both internal contradictions between federal and state laws, domestically, and violations of human rights laws, internationally.

Underpinning recent state-initiated "reforms" is a long US history of racialized immigration law: a legal ontology providing the foundation for discriminatory, state-based immigration policies ultimately normalized by state residents. This legacy of legal exclusions normalizes racialized immigration policies, such as self-deportation, that target particular, legal US residents (i.e., Latinos in Alabama). The Alabama immigration law is presented here as the most recent example of a long racialized history concerning immigration in the United States.

Constructing the Alabama immigration law

In the time following the September 11, 2001 (9–11) terrorist attacks, a well-documented political movement emerged within states to implement state-level immigration "reform." Alabama's legislation arose directly out of that movement (Coleman 2007; Winders 2007). Alabama's law was regarded as *the most* restrictive in the United States and was designed to be the model for a (then) new immigration regime of self-deportation. While more recent national debate has taken a different rhetorical trajectory, Alabama battled in the courts for more than two years for full implementation of its statute. Even after much of the law was enjoined by federal courts, many Alabama politicians continued to laud their initiative's success by citing the unprecedented number of Latinos who left the state, or "self-deported" in the days following the law's enactment (Beyerle 2012).

The Alabama immigration law is typical of the model used by several states across the US South. A critical similarity among the state-initiated immigration bills is their reliance on enforcement methods that racialize immigrant populations by requiring visual *recognition* of suspected "illegal aliens" where law enforcement and other citizens use judgments of

phenotypical characteristics (e.g., skin color or spoken language) to determine national status, and therefore enforcement. Also, these efforts share a focus on the "interiorization" of enforcement in the name of national security; that is, the protection of boundaries in locations physically distant from the nation's border (Coleman 2007). This statute's language was designed to be specific enough to address the legal challenges that had blocked implementation of the Arizona legislation, yet broad enough to make "life harsher and less hospitable for illegal immigrants" (Jacoby 2011). Passage of this law mirrored trends across the southern United States where changing regional demographics were conflated with concerns of national border security to make claims concerning the need to protect state borders (Winders 2007). Using this justification of insuring state border security, Alabama's legislators then targeted Alabama's undocumented immigrant community with this statute. However, Alabama's Republican Grand Old Party (GOP) supermajority demonstrated little awareness or concern regarding the simultaneous implications for its documented, immigrant residents who were swept into this new regime of border security because of the reliance of enforcement via visual recognition. The affected Alabama population was almost exclusively Latino, and the Alabama law served as a social construction formalizing the racialization of the state's growing Hispanic community while declaring immigration a social issue of grave importance.

Collectively, twentieth-century US immigration law creates a moving target for legal citizenship and residency, all the while guided by increasingly racialized immigration processes. Significant federal immigration reform last occurred in 1986, and state lawmakers often expressed widespread frustration with the inaction of federal officials to address issues of increasing populations of Latino immigrants in new destinations across the US South (Berry 2011b). However, state-level racialization of Latino immigrants is not simply a post 9–11 phenomenon. In Alabama, it also harkens to the nineteenth- and twentieth-century legacy of taking extremist positions on virtually all state's rights debates, and most particularly when federal incursions have intersected with issues of race (Tullos 2011). Alabama's immigration law can be framed as another reaction within a US immigration legal history that increasingly focused on the racialized "othering" of the immigrant body—a trend intensifying across the South since the 1990s. Much of this reaction has come from states, like Alabama, whose populations have confronted a relatively sudden influx of Latino immigrants in spaces that have been previously defined by the narrative of a black/white binary (Winders 2005). The cumulative racialization and criminalization of the Latino immigrant, both undocumented

and documented, is in part what made self-deportation a viable political strategy for Alabama's state GOP candidates in 2010, and enabled the systematic, unquestioned internal displacement of these Latino immigrants within the United States.

A brief history of US immigration policy

A series of legislative and regulatory changes have shaped the (in)ability of undocumented immigrants to exercise agency in a system that increasingly depends upon the racial markings legally ascribed to an immigrant body and enforced through legal systems of racial profiling (Sadowski-Smith 2009). Claudia Sadowski-Smith is one of several authors who have offered historical analysis of the North American immigration policies and legal actions that resulted in the racialized identity of the Mexican undocumented, or "illegal," immigrant. A particular contribution of her work is her meticulous chronicling of the evolution of US immigration policy as an "illegality spiral" presenting legal and enforcement structures that have resulted in the construction of an immigration landscape in the United States that leaves all undocumented immigrants, but particularly Mexican immigrants, in untenable, even cruel, circumstances that are a byproduct of the collision of documentation, race and ethnicity.

Other scholars also have analyzed this phenomenon and identified particular racializing "pivot points" in legal history. Systematic US immigration law began in 1819 with the Steerage Act targeting primarily Eastern European immigrants, and in 1875, the Page Law targeted Chinese migrants. The United States continued to pass increasingly restrictive legislation addressing Chinese would-be settlers during the next decade representing the United States' initial foray into official racializing of certain migrant groups, though early legislation was equally motivated by concerns about low-skilled transnational labor as by race (Sadowski-Smith 2009). Mae Ngai argues that the 1924 passage of the Johnson-Reed Act (Emergency Quota Act) was a watershed moment when "immigration policy realigned and hardened racial categories in law" through targeted quotas and a national "border patrol" (2004, 7). Importantly, the legislation explicitly linked categories of "whiteness" to immigration quotas. For example, Eastern Europeans, though still regarded undesirable migrants, were assigned the color category "white" on immigration paperwork thereby permitted the possibility of future citizen status, while Asians were barred from naturalization altogether based on "racial ineligibility" (see chapter 2 by José Jorge Mendoza for a discussion on whiteness and the quota system in the context of social trust). Although

the law did not assign a quota to the number of Mexicans who could enter the country, it did foster increased regulation of border crossings and a separate racial category in the census labeled 'Mexican' (Ngai 2004; Sadowski-Smith 2009). Ngai argues that this law legally constructed Asian and Mexican immigrants as "alien citizens": people born in the United States yet "unassimilable to the nation" (2004, 8).

The impact of Jim Crow laws on immigrants to the US South in the early part of the twentieth century was another important piece of the contextual puzzle of migrant racialization. The 1920s was still the era of "separate but equal" policies across the South, and Latino immigrants violated the socially sanctioned dichotomy of white/black relations that characterized the period as they infiltrated workplaces (Ngai 2004; Odem and Lacy 2009; Sadowski-Smith 2009; Weise 2009a, 2009b). While the Southwest immediately imposed harsh separation on their Latino immigrants, reactions in the Southeast varied. New Orleans, for instance, explicitly designated Mexicans as "whites" in their racial categorization schema for law enforcement and broader social purposes until the designation of "Mexican" as a racial category returned in the 1940 census. As critical race scholars have demonstrated, a "white" designation for many Latinos was a double-edged sword. "White" as a legal, racial designation prevented Mexican immigrants from claiming protections from Jim Crow laws despite their widespread treatment as "non-white" persons within their US communities (Gross 2003; Martinez 1997; Snipp 2003). Sadowski-Smith contends that in practice, if not always in law, to be a "Mexican-American" by the early twentieth century was to be a member of an "ethnicized" group and therefore to face the additional burdens of being "nonwhite" during the Jim Crow era when such standing brought little but opprobrium and discrimination (2009). Taken together, these authors articulate a historical legacy of social attitudes across the South that reflected a racialized view of Latinos as nonwhite.

Another turning point in the nation's evolving legal framework concerning immigration came in the 1960s. In 1965, the Hart-Cellar Act was passed, which essentially repealed the national-origin quotas. The legislators backing the bill expected limited increases in immigration flows, primarily from Europe. Contrary to that expectation, the next three decades saw record levels of immigrants arrive in the United States, hailing primarily from Asia and Latin America (Hirschman and Massey 2008). One year prior, Congress had ended the Bracero Accord with Mexico, and together with the elimination of nation-based immigration quotas, unprecedented increases in legal and undocumented

migration flowed into the United States from Latin America (especially from Mexico) to meet US employers' labor demand. Notably, employers were actively recruiting undocumented workers to come to the United States (Hirschman and Massey 2008; Sadowski-Smith 2009). Since the 1970s, Mexicans constituted the largest percentage of a growing flow of immigrants (legal and not) until 2005. The Pew Hispanic Center reports that net Mexican migration flows to the United States dramatically, and suddenly, stopped in 2005 (Passel, Cohn and Gonzalez-Barrera 2013). Though no one has yet pinpointed the reason, speculation for the cessation is likely connected to a variety of economic and social factors occurring on both sides of Mexican–US border (Preston 2012).

Latinos in the US South—a recent phenomenon

A growing body of cross-disciplinary literature examines the changing understanding of immigrants in southern communities, labeled the *Nuevo South*, that have experienced strong in-migration primarily by Latinos. Much of this work has focused on the increased connection between the changed racial demographics of many southern communities and the corresponding rise in concern with national border security (Winders 2007). Significant immigration to the US South from Latin America is a relatively recent phenomenon with dramatic increases beginning in the 1990s. Scholars have linked this late-developing increase to two key factors. First, massive industrialization occurred relatively late in the US South, and second, the region already had many individuals willing to work in low-wage jobs in the early decades of the twentieth century reducing opportunities for job-seeking immigrants. However, by the last decades of the twentieth century, the US South experienced significant economic, industrial growth and increased demand for agricultural labor; meanwhile anti-immigrant sentiment and saturated job markets characterized the western and northern regions of the US that had absorbed earlier migrant waves in the 1980s. As structural conditions changed in the South, a confluence of geopolitical and economic shifts on both sides of the US–Mexico border (e.g., NAFTA, devaluation of the Mexican peso) fundamentally changed the push–pull dynamics for potential labor-seeking Latino migrants and immigrants in the last decade of the twentieth century (Johnson 1993; Massey, Durand and Malone 2003; Odem and Lacy 2009; Winders 2005). As Latinos migrated to southern states, they located in new kinds of geographies by often settling in rural communities as new sites of reception (Massey 2008; Winders 2011, 2007, 2005). The restrictive immigration legislation emanating from several southern

states, including Alabama, appears to be in reaction to the sudden changes in their rural, ethnic demographic composition.

Another reaction by southern legislatures has been the conflation of immigration with issues of national security and the militarization of the border. The national political discourse of a "war on terror" supported the impulse to protect borders, identify alien citizens and use laws that "normalizes and naturalizes social relations and helps to 'structure the most routine practices of social life'" (Ngai 2004, 12). Several southern states, including Alabama, developed new mechanisms to routinely identify *the Latino Other* in their midst—a practice that opponents have called profiling. This legal practice is possible today because of the normalized racialized history of immigration legislation that constructs citizenship criteria according to shades of whiteness and blackness (Johnson 2011). Alabama is a Nuevo South state, and its restrictive immigration law is founded on the premise that those who belong (i.e., within US and Alabama borders) can be identified through the racialized lens of those *who look like they belong here*. This premise stands in stark opposition to domicile citizenship that is delinked from birthplace and origin promoted by Harald Bauder in chapter 4.

Alabama immigration law and self-deportation

There are virtually no aspects of daily life that the Alabama immigration law does not infiltrate. The overarching goal of the law was to redefine particular economic (i.e., most market transactions) and civic actions as explicitly criminal acts. To this end, the statute expanded the requirements for Alabama residence and services to include items such as requiring proof of citizenship to receive any government benefits and during law enforcement interactions (including traffic stops), preventing all economic activity with undocumented persons and using the federal e-Verify program for all businesses receiving government incentives to validate all employees legal employment status. Collectively, the Alabama legislation was designed to make life so onerous for undocumented immigrants as to encourage self-deportation (McWhorter 2012).

Though virtually the entirety of the law was enjoined in court in October 2013, much of the law saw some period of implementation at one time or another since October 2011 (Associated Press 2013a ; Lawson 2013). State-wide repercussions of the law's enactment were felt immediately with the December 2011 arrest and detainment of German and Japanese businessmen working in Alabama at a Mercedes-Benz and Honda plant, respectively (Associated Press 2011). Republican lawmakers' 2012

response, with the support of GOP Governor Robert Bentley, was to revise the law to reverse the negative impacts on Alabama's business climate, respond to a federal court's injunction of multiple sections of the law and to "make it easier on our law-abiding citizens" (Beyerle 2012; Rawls 2011. In the revised statute, Alabama essentially sought to reaffirm recognition of "legality" by identifying Alabama's resident bodies according to who appeared coded as "Latino," while insuring that immigrants who appear coded "white" (i.e., European and Asian) would not be removed from their workplaces. Despite the evidence of disproportionate impact on Alabama's Latino community, Alabama officials denied any ethnically or racially based motivation for the law. Alabama politicians dismissed accusations of racial profiling because the law lacks explicit language identifying the Latino immigrant as the target. In response to allegations of the bill's intent to racially profile, GOP State Representative Kerry Rich said, "[It] clearly says they can't profile…Police can't stop somebody just because they don't like their looks" (as quoted in Haven 2011a). The statute instead calls for action against the "illegals"—ignoring the rights violations experienced by legal Latino residents swept up by the law's indiscriminant, visual application. Some Alabama politicians argued that it was a necessary border protection project not adequately addressed by the federal government (Haven 2011b).

This connection of visual identification, illegalization and border protection exemplifies the explicit concerns voiced by transnational feminists regarding the international politics of internally displaced people. Policies insuring the protection of IDPs are frequently rendered impotent by "the often paradoxical nature" of human rights law when it collides with national security concerns and subsequent military interventions: "The intersecting nature of security and human rights depend for their currency on the complex dynamics of visibility" (Hesford and Kozol 2005, 4). Establishing *visibility* was a key part of the border project of Alabama's immigration law. The reification of whiteness through legislative action essentially demanded racial profiling by other Alabama citizens and law enforcement officers (as the equivalent of military intervention) and creates a domestic intrastate circumstance that mirrors transnational circumstances of displacement and disempowerment of marginalized people. In Alabama, media reports citing local elected officials were particularly explicit about the connections between immigrants and US border protection. Albertville Councilman Chuck Ellis reportedly connected illegalized immigration, Alabama's immigration law and terrorism. As stated in the *SandMountainReporter*, "In fact, he [Ellis] said terrorism, as seen on Sept. 11, 2001, and the recent death threats from Iran of Audi

Prince Turki al Faisal on American soil could become more common the longer American borders go unimpeded." Ellis was then quoted as saying, "Bottom line, it's the government's job to protect the people" (as quoted in Haven 2011b). Local rhetoric mattered in the Alabama immigration law debate because local- and state-level Albertville politicians were instrumental in the law's creation and passage. Further, the law's passage reflects the broader trend in the southern US to conflate concerns about regional demographic changes with national border security to make legal claims aimed at securitizing state borders (Winders 2007).

Constructing the Latino IDP in Alabama

Implementation of the immigration law effectively coerced legally documented Latinos (to include legal residents and US citizens) into relocating from Alabama to neighboring US states whose laws posed lesser threats to their individual and community wellbeing. In so doing, these individuals met the international criteria established for IDPs. Though accurate estimates are notoriously difficult to track, one reports indicated 40,000–80,000 people fled Alabama in the days immediately following the law's implementation including 6 percent of Alabama's Latino schoolchildren who were absent from school, presumably as they fled with their families and community groups (Addy 2012; Constable 2011; Fausset 2011). School systems were perhaps the best indicator of who was leaving and why. As *The Washington Post* reported on October 8, 2011, "William Lawrence, the principal of Foley Elementary School, said frightened immigrant families withdrew 25 students last week, even though all the children were U.S. citizens. He said the Hispanic community was swept by rumors that parents would be arrested when they came to collect their children" (Constable 2011). This story echoed comments made by school administrators across Alabama (Llorente 2011). Some of the children who remained in Alabama voiced their sentiments, such as one middle-schooler who said, "I think they're gonna come in our house and come kick the door, and they're gonna take my mom and dad" (Carsen 2011). In the wake the law's implementation, Mary Bauer, then legal director of the Southern Poverty Law Center, testified before the Alabama State legislature about the fear and physical displacement experienced by immigrant children, as well as hardship on the larger immigrant community. Bauer described it as a "humanitarian crisis; a crisis that hearkens this state back to the bleakest days of our racial history…it would be hard for me to overstate the human tragedy that has been unleashed upon Alabama by HB56" (2011).

When analyzed in accordance with the London Declaration, Alabama's Latinos were "forced to flee or leave their homes or places of habitual residence as a result of…systematic violations of human rights" and "have not crossed an internationally recognized State border." Furthermore, the Alabama immigration law created conditions that violated Section II, Article 4.2, of the Declaration that states, "No one shall be compelled to leave his or her home or place of habitual residence due to persecution or discrimination based on race, color, sex, gender, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status…" (Lee 2001). Per these legal instruments, Alabama's Latinos clearly became internal displaced persons in 2011 when they fled to neighboring states to avoid imminent persecution resulting from the law's reliance on racial profiling for enforcement. The law was designed to insure that racialized enforcement would supersede an individual's actual legal status, and this mechanism for enforcement compelled many Latinos to leave their Alabama homes.

The 2011 Alabama immigration law was a border project that continued the racialized history of US immigration legislation through a policy of self-deportation to create a new regime of border enforcement without explicit discriminatory racial reference. Jamie Winders explains that border projects are "racialized debates about borders from the body to the local community to the international border, despite an overall avoidance of racialized language" (Winders 2007). The language of this law reflects intention of forced displacement of certain residents from their homes to other states. Once enacted, the law created conditions that met the IDP criterion of leaving, but not crossing, internationally recognized state borders. Alabama politicians unapologetically advocated for internal displacement of Latinos from Alabama. For example, Alabama Representative Mickey Hammon (GOP), a principal supporter of the policy, lauded the success of the law in achieving self-deportation by immigrants to less restrictive states. He rallied efforts to tighten the law in 2012 because, "people may not know it," Hammon said, "(but) some illegal immigrants are starting to return to Alabama…I'm convinced if we don't make these changes, the illegal immigrants will continue to come back" (Beyerle 2012). By publicly homogenizing all Latinos into the category "illegal immigrants," Hammon, among others, effectively included Latino residents with legal status as targets for internal displacement. The law's standard of visual recognition implicates entire Latino communities within the enforcement regime, regardless of individual legal status. As McKanders observed, "These laws are…directed at all Latinos who are perceived as unwilling to assimilate to American

cultural values. These laws encourage and lend legitimacy to the exclusion of "'the other' – the Latino other" (2010, 4). Alabama politicians supporting the law often cited the rapid growth of the Hispanic population in Alabama as one of the factors driving the law's necessity (Liorente 2011; Mears 2011). However, the Pew Hispanic Center (2011) reports that Alabama possesses only a small "unauthorized resident" Hispanic population as compared to other US states, and the US Census reports that the Hispanic population in Alabama in 1990 was a scant 0.6 percent, growing to 3.9 percent in 2010 (US Census Bureau 2010). Though the population growth in Alabama is rapid, total Hispanic population is still quite small. However, growth of the state's Hispanic population has tended to cluster in small, rural towns, where the changing demographics have been visually recognizable to its residents, and cultural shocks are social, racial disruptions that were translated into calls for political action to their state representatives.

By escalating certain rhetoric that equates undocumented residents with criminality as well as national border protection, Alabama's legislators were able to create an environment that became increasingly hostile to the state's Latino population. This, in turn, generated the social and cultural support necessary for the legal strategy of self-deportation to be adopted. This discursive landscape did not distinguish between the impact on illegalized versus legal residents who "self-deport" out of fear for their friends or family, or simply because of the hostile environment they confront daily. Alabama politicians assert that the law serves important civic requirements like job creation and citizenry protection, and these political narratives collectively create a framework through which other, unnamed, social and cultural boundaries can be reinforced. The discursive framework that legitimated this state-based immigration reform protects real and imagined borders—borders of whiteness, borders of economic precariousness, borders of rural, southern identity as well as constructed legal and supposed national borders. This creation and enforcement of real and imagined borders is critical to creation of the Alabamian IDPs. Geographically, Alabama is not a border state; yet, the rhetoric of national border protection permeated the state's immigration debate (2011a).

Another of these border claims is of an Alabama community historically defined by the exclusive dichotomy of whiteness and blackness where the racialization specific to the Latino in the US South is difficult to reconcile. Scholars researching whiteness comment on the "elimination" of Latinos with adoption of bipolar (i.e., black/white) constructions of race, and its reflection in social norms and legal applications (López 2000a, 200b;

Martinez 1997; Wildman 1997, 2005). Latinos are not socially or racially positioned with whites, and neither are they positioned with blacks, and as a result they fall into a strange, unrecognized borderland governed by white privilege (Wildman 1997, 2005). The "Latino Other" has become an ethnic or racial notion against which Alabama citizenship is framed. One is either a recognizable citizen based on the color of one's skin, or one is "other," requiring new level of scrutiny and enforcement. The requirement of recognition and its implicit use of the Latino body as a discursive text is a unique and effective feature of the new Alabama law; it is effective because of the visual recognizability of Latinos in a state that is 67 percent white, 26.2 percent black and 3.9 percent Hispanic (U.S. Census Bureau 2012).

National discursive streams about self-deportation, law and immigrants emerged in tandem with the rise of state-based legislation. These streams created knowledge and power structures that shaped state behavior through discourse, as reflected in the law (Kark and Waismel-Manor 2005). This reframing can be seen in the discursive shifts from "undocumented worker/resident" to "illegal alien" since the early 1990s. These linguistic shifts steadily gained traction since the 1990s when Latino immigration, specifically to the US South, begins its rapid increase (Ngai 2004; Sadowski-Smith 2009). There is a presumption in the rhetoric in Alabama that a "good" immigrant completely assimilates into white Alabama. This is, of course, impossible as Latino immigrants are fully racialized as an "other" by physical, cultural, linguistic and now legal, characteristics. These laws elide ethnicity by masking it in the rhetoric of "legal" versus "illegal" and, for purposes of enforcement in Alabama, essentialize all Latinos as potential "illegals." Recognizing the racialized consequences of state-based illegalization initiatives is critical because the federal-level immigration debate continues to rage, creating an opportunity for another iteration of US immigration law. This iteration either can explicitly recognize and stop the historic progression of racialized injustice for immigrants of color in the United States, or can silently perpetuate the legacy of this racialized immigration regime.

Conclusions

In summary, this analysis reveals pragmatic and philosophical reasons why national and international policymakers need to consider the implications of IDP creation in Alabama as it pertains to the protection of IDPs and immigrant rights in the United States and abroad. First, this case reveals the consequences of tolerating the existing international, legal

loopholes that leave IDPs vulnerable on the world stage. Further, the existence of IDPs in a developed, powerful nation, like the United States, highlights the extreme, potential precarity of this population. In a case such as Alabama's, no sanctions are likely to be leveled against the United States by the United Nations, since such action would require agreement from the UN Security Council, and the United States would likely veto. And, of course, the United States did not take this action: Alabama did, and Alabama has no standing in the United Nations. This layered power structure further marginalizes and invisibilizes human rights abuses against IDPs on the world stage. As this evidence makes clear, there is an urgent need for global policymakers to bring heightened attention to the legal loopholes surrounding IDPs, and then seek creative possibilities that close these protection gaps. Possibilities could include the creation of multilateral agreements or UN Conventions like those created to address climate change, or perhaps follow the model of the Montreal Protocol that is designed to address Ozone depletion, by enlisting and growing a coalition of nations willing to comply with specified human rights standards within sovereign borders.

Second, though the US political landscape for immigration reform is quite different than it was in 2011, the topic of immigration reform remains unresolved at the federal level. Further, with the issuance of the *Immigration Accountability Executive Action* in November 2014, immigration policy will take center stage in the toxic theater of discord that defines the current relationship between President Obama and the US Congress. Within this culture of extreme partisanship politics, Congressional GOP threats of political retaliation, potentially at the expense of an immigrant reform law, emerged immediately (Calamur 2014). In this context of political retaliation (rather than negotiation), it is even more important that US policymakers consider the legacy of international human rights abuses inflicted on legal US residents under the recently enacted, racialized framework of self-deportation in Alabama. Self-deportation erased the explicit role of race while nevertheless privileging the border of whiteness and perpetuated the racialized history of US immigration law resulting in violation of international human rights law. Without debate of these repercussions, the epistemic assumption that "race no longer matters" will influence policymakers' next action toward US immigration policy by encouraging stakeholders to imagine falsely that we reside in a postracial nation as it pertains to immigration. Given the political stakes, one pragmatic intervention is the designation of a civil rights position within the Office of the Attorney General's office dedicated to the protection of immigrant rights by reconciling domestic policy actions with

international protections for IDPs. This position would also address the next issue revealed by the Alabama case.

Third, and related to the second point above, as a "border project," Alabama's immigration law masks US racial tensions through the imposition of a racialized criterion veiled in a language of enforcement, and this has implications for all immigrants as vulnerable suppliers of labor (Winders 2007). Failure to recognize Alabama's immigration strategy as a continuation of the racialized legacy of US immigration law increases the precariousness for immigrant workers. For example, a primary issue facing recent Congressional immigration reform efforts is the partisan political debate over the issue of full militarization of the US–Mexico border prior to establishing any paths to citizenship for undocumented immigrants. In particular, some members of the US Congress first demanded measurable outcomes proving full securitization of the border through enforcement using measures such as "apprehension rates" or arrests (Alexander 2013; Associated Press 2013c; Mortensen 2013) or by setting goals "designed to achieve 100 percent surveillance of the border with Mexico and ensure that 90 percent of would-be crossers are caught or turned back" (Associated Press 2013b). Though a specific amendment requiring "enforcement first" was defeated in committee, the rhetoric of the primarily Republican opposition (both elected officials and pundits) continues to highlight border enforcement concerns. Immigrant employees, under an enforcement-first regime, whether officially legal or unofficially socially mandated, bear the extra burden of providing perpetual proof of legal "belonging" and the disproportionate risk of being asked to provide this proof based on visual recognition. The analytic point is that the ethnic impact of its policy is explicitly unexplored in Alabama's current discourse in favor of obeisance to abstract claims concerning the need to securitize "citizenship," "border security," and "enforcement." Furthermore, though the Alabama law is now largely inoperable because of subsequent court action, the continued impasse regarding federal-level immigration reform makes its consideration salient. Without policy action at the federal level, the conditions that motivated state-based action remain in place. Many state legislators remain poised and committed to act should the congressional stalemate on immigration become clearly intractable for the foreseeable future, and the recent executive action may serve as additional provocation (Sarlin 2013).

Fourth, the presence of IDPs in even one state in the United States raises significant concerns connected to national identity. The United States operationalizes notions of human rights and humanitarian consideration by means of a global narrative of its role as "liberator."

This is problematic for seeking solutions for global refugees and IDPs if we, the United States, fail to turn inward and consider the implications of perpetuating our own racialized immigration policy, when it enables US states to take action independent of the country. As connected to questions of national identity on the world stage, tolerating the creation of IDPs within the borders of the nation via state-based immigration reform suggests an identity that is not aligned with that of "liberator." Furthermore, what are the implications when US national identity can be defined by the independent actions of US states on the global stage? The Alabama case is representative of other (at least six) state-based efforts to implement versions of immigration reform. What are the implications for civil society if we enable the construction of IDPs within the US border? How do racialized borders construct a national identity on the global stage for the world's "liberator?" These questions of national and international identity must be raised and explored by US policymakers in recognition that in the twenty-first century, immigration policy is foreign policy.

Finally, the creation of US IDPs raises important questions of justice by evoking the question of: Justice for whom? The United States has a complex immigrant history that is interwoven with myriad identity narratives (e.g., the land of immigrants). However, there is increasing political recognition of the long-standing fact that the United States is not a monolithic "melting pot" but is rather a constituency of multiple publics. Immigration is an issue that directly asks a nation to consider how rights within each public might be preserved, without the perpetuation of inequalities, such as those resulting from a legacy of racialized immigration legislation. These questions are also tied to those of national identity, raised above. However, the focus here is how national identity claims influence conceptions of *justice* for a populace of multiple publics. When "self-deportation," and other regimes of legal enforcement, creates human rights violations, and these violations expressly impact immigrant groups who consist of both legal and undocumented US residents, how does a civil society achieve unifying rules over multiple publics while defining and insuring social justice for all? Are US IDPs simply unintended consequences of poorly thought-out state statutes that are only reflective of regional interests and local racial politics? Or, do these state efforts actually reflect a national sensibility that the United States owes a duty to protect only certain legal residents and not others? In addition to openly considering these questions, one discursive policy opportunity is to remove "illegal alien" from all future federal policy parlance. This suggestion aligns with recent recommendations by the

National Association of Hispanic Journalists to the nation's news media to change the vernacular of "illegal" and "illegal alien" in reference to immigrants because of its dehumanizing effects (Torres and Montalvo 2014). By disconnecting the language of criminality from the identity of an immigrant, perhaps a space is created for more open discussion of questions of justice and national identity.

Perhaps self-deportation was an explicit statement of a nationalist sensibility, as reflected in racialized legal history, that legal US residents are only those who *look like* they belong here. If not, Alabama's self-deportation policy, and the other state policies like it, suggests a profound need for a national discussion and action with regard to *whose* justice does the United States have a duty to protect? Further exploration of these questions by domestic and international policymakers is urgently needed in order to generate options in response to the repercussions of the "world's liberator" creating IDPs within sovereign, US borders.

Notes

1. Terminology referring to residents without legal status in the United States as "illegal" is highly contested, as documented by Harald Bauder (2014). In this chapter, residents without legal status will be referred to as "unauthorized," "undocumented," and "illegalized." "Illegal" references are in quotes to denote a still common, though outdated, nomenclature for this group of people.
2. In keeping with the Spanish language convention, "Latino" in the plural addresses male and female members of this community.
3. This chapter focuses on the violation of human rights of immigrant residents with legal status in Alabama. However, the phrasing "habitual resident" creates viable consideration for those residents with undocumented status as IDPs given the nonmigratory, residential patterns of undocumented residents in Alabama. However, this argument will not be explored here.

References

"Alabama Immigration Law" (PL 2011–535, June 2, 2011). HB 56. Text From: *State of Alabama Office of the Attorney General*. http://www.ago.state.al.us/Page-Immigration-Act-No-2011-535-Text Accessed November 30, 2011.

2011a. "Alabama Governor Signs Tough Immigration Law." *The Capital*, June 10, 2011. Accessed Novemer 13, 2011. http://www.lexisnexis.com.ezproxy.lib.vt.edu:8080/hottopics/lnacademic/.

2011b. Alabama Immigration Law Takes Effect; Supporters Rejoice, but Farmers Worry About Harvest Labor. *The Rural Blog*. Accessed October 18, 2011.

Addy, Samuel. January 2012. "A Cost-Benefit Analysis of the New Alabama Immigration Law (Report)." University of Alabama. Center for Business and Economic Research.

Alexander, Lamar. 2013. "Immigration Enforcement First." *Politico.com*, April 12, 2013. Accessed May 13, 2013. http://www.politico.com/story/2013/04/lamar-smith-opinion-immigration-enforcement-first-89956.html.

Associated Press. 2011. "Japanese Honda Employee Ticketed under New Immigration Law." *AL.com*, November 30, 2011. Accessed December 10, 2011. http://blog.al.com/wire/2011/11/honda_employee_arrested_in_tal.html.

Associated Press. 2013a. "Alabama Immigration Law Settlement Is Reached." *Huffington Post*, October 29, 2013. Accessed November 22, 2013. http://www.huffingtonpost.com/2013/10/29/alabama-immigration-law_n_4175496.html.

Associated Press. 2013b. "Immigration Bill Summary." *Politico*, June 28, 2013. Accessed February 2014. http://www.politico.com/story/2013/06/immigration-bill-summary-93557.html.

Associated Press. 2013c. "Immigration Bill Survives Early Tests as Senators Defeat Gop Amendments on Border Security." *The Washington Post*, May 9, 2013, Congress. Accessed May 13, 2013. http://articles.washingtonpost.com/2013-05-09/politics/39124859_1_immigration-laws-illegal-immigration-immigration-activists.

Bailey, Mary. 2011. "123 Hispanics Withdraw from Albertville Schools." *SandMountainReporter.com*, October 3, 2011, 2. Accessed November 15, 2011. http://www.sandmountainreporter.com/news/local/article_0d0a3ee8-ee05-11-e0-95c3-001cc4c03286.html?mode=jqm.

Bauder, Harald. 2014. "Why We Should Use the Term 'Illegalized' refugee or Immigrant: A Commentary." *International Journal of Refugee Law* 26(3): 327–332.

Bauer, Mary. 2011. "Testimony Given to Legislative Body." *Testimony before Congressional Ad Hoc H.B. 56 Hearing*. Ad Hoc Hearing. November 21, 2011.

Berry, Deborah Barfield. 2011a. "Alabama Immigration Law Called Nation's 'Meanest'." *The Christian Century*, October 10, 2011. http://www.lexisnexis.com/legalnewsroom/immigration/b/outsidenews/archive/2011/10/10/congress-inaction-on-immigration-reform-fuels-states-actions.aspx.

Berry, Deborah Barfield. 2011b. "Congress' Inaction on Immigration Reform Fuels States' Actions." *Montgomery Advertiser*, October 10, 2011. http://www.montgomeryadvertiser.com/article/20111010/NEWS02/110100302/Congress-inaction-immigration-reform-fuels-states-actions?odyssey=mod%7Cnewswell%7Ctext%7CFrontpage%7Cs.

Beyerle, D. 2012. "House Passes Immigration Law Revisions." *The Gadsden Times*, April 19, 2012. Accessed April 22, 2012. http://www.gadsdentimes.com/article/20120419/NEWS/120419763/-1/news01?Title=House-passes-immigration-law-revisions.

Calamur, Krishnadev. 2014. "Republicans Warn Obama Ahead of Planned Immigration Action." *NPR*. Accessed November 20, 2014. http://www.npr.org/blogs/thetwo-way/2014/11/20/365428970/republicans-warn-obama-ahead-of-planned-immigration-action.

Carsen, Dan. 2011. "A Rush to Calm Alabama's Frightened Families." October 9, 2011. Accessed November 13, 2011. http://www.npr.org/2011/10/09/141189351/push-to-inform-ease-fear-of-ala-immigration-law.

Coleman, Mathew. 2007. "Immigration Geopolitics beyond the Mexico–US Border." *Antipode* 39(1): 54–76.

Constable, Pamela. 2011. "Alabama Immigration Law Sends Hispanic Families Fleeing." *The Washington Post*, October 8, 2011. Accessed May 12, 2013. http://www.washingtonpost.com/local/a-tough-new-alabama-law-targets-illegal-immigrants-and-sends-families-fleeing/2011/10/07/gIQAtZuPWL_story.html?hpid=z2.

Editorial Board. 2012. "The 'Self-Deportation' Fantasy." *The Washington Post*, January 28, 2012. Accessed March 4, 2014. http://www.washingtonpost.com/opinions/the-self-deportation-fantasy/2012/01/25/gIQAmDbWYQ_story.html.

Elliot, Debbie. 2011. "Labor Worries Rise as Planting Season Nears in Alabama." *NPR*, 10–24–2011. Accessed July 3, 2014. http://www.npr.org/2011/10/24/141638999/labor-worries-rise-as-planting-season-nears-in-ala.

Fahrenthold, David A. 2012. "Self-Deportation Proponents Kris Kobach, Michael Hethmon Facing Time of Trial." *The Washington Post*, April 24, 2012. Accessed March 3, 2013. http://www.washingtonpost.com/politics/time-of-trial-for-proponents-of-self-deportation/2012/04/24/gIQAe6lheT_print.html.

Fausset, Richard. 2011. "Alabama's Immigration Law Prompt Alarm." *Los Angeles Times*, October 8. Accessed November 14, 2011. http://articles.latimes.com/2011/oct/08/nation/la-na-alabama-immigration-20111009.

Glionna, John. 2012. "Arizona Immigration: 'Show Me Your Papers' Enforcement to Begin." *LA Times*, September 18, 2012. Accessed November 3, 2014. http://articles.latimes.com/2012/sep/18/nation/la-na-nn-arizona-immigration-20120918.

Green, Lionel. 2011. "Garcia's Casualty of Immigration Law, Owner Says." *SandMountainReporter.com*, October 15. Accessed October 21, 2011. http://www.sandmountainreporter.com/news/local/article_34fba280-fc23-11e0-a455-001cc4c03286.html.

Gross, Ariela J. 2003. "Texas Mexicans and the Politics of Whiteness." *Law and History Review* 21(1): 195–205.

Haven, Malarie. 2011a. "House Passes Immigration Bill." *SandMountainReporter.com*, April 6, 2011. Accessed October 21, 2011. http://www.sandmountainreporter.com/news/local/article_e97cde92-6095-11e0-afab-001cc4c03286.html.

Haven, Malarie. 2011b. "'Illegal Is Illegal'." *SandMountainReporter.com*, October 21.

Hesford, Wendy S. and Wendy Kozol. 2005. "Introduction." In *Just Advocacy?: Women's Human Rights, Transnational Feminisms, and the Politics of Representation*, edited by Wendy S. Hesford and Wendy Kozol, 1–28. Piscataway: Rutgers University Press.

Hirschman, C. and D. Massey. 2008. "Places and Peoples: The New American Mosaic." In *New Faces in New Places: The Changing Geography of American Immigration*, edited by Douglas S. Massey, 1–24. New York: Russell Sage Foundation Publications.

Hollis, Paul. 2011. "Alabama Immigration Law Called America's Toughest." *Western Farm Press*, December 7, 2011. Accessed October 15, 2012. https://global-factiva-com.ezproxy.lib.vt.edu:2443/ha/default.aspx#./!?&_suid=141194022385700239 18257050661085.

Jacoby, Tamar. 2011. "Even State Immigration Laws Have to Face Reality." *CNN.com*, October 17. Accessed October 21, 2011. http://www.cnn.com/2011/10/17/opinion/jacoby-immigration/.

Johnson, Bob. 2011. "Alabama Oks Immigration Law." *Tulsa World*, June 10, 2011.

Johnson, Kevin R. 1993. "Free Trade and Closed Borders: Nafta and Mexican Immigration to the United States." *UC Davis Law Review* 27: 937.

Kark, Ronit and Ronit Waismel-Manor. 2005. "Organizational Citizenship Behavior: What's Gender Got to Do with It?" *Organization* 12(6): 889–917.

Lawson, Brian. 2013. "Plaintiffs Want Alabama Immigration Law Challenge to Move Forward, Alabama Wants to Wait for the U.S. Supreme Court." *AL.com*, January 2. Accessed March 5, 2013. http://blog.al.com/breaking/2013/01/plaintiffs_want_alabama_immigr.html.

Lee, Luke T. 1996. "Internally Displaced Persons and Refugees: Toward a Legal Synthesis?" *Journal of Refugee Studies* 9(1): 27–42. doi: 10.1093/jrs/9.1.27.

Lee, Luke T. 2001. "The London Declaration of International Law Principles on Internally Displaced Persons: Its Significance and Implications." *Journal of Refugee Studies* 14(1): 70–78. doi: 10.1093/jrs/14.1.70.

Liorente, Elizabeth. 2011. "Alabama Official: Self-Deportation Is What We Want." Accessed October 10, 2011.

Llorente, Elizabeth. 2011. "Alabama Official: Self-Deportation Is What We Want." *Fox News Latino*, October 6. Accessed October 10, 2011. http://latino.foxnews.com/latino/politics/2011/10/06/alabama-official-lauds-exodus-undocumented-from-schools-and-jobs-in-his-town/.

López, Ian F. Haney. 2000a. "Race and Erasure: The Salience of Race to Latinos/As." In *Critical Race Theory: The Cutting Edge*, edited by Richard Delgado and Jean Stefanic, 369–378. Temple: Temple University Press.

López, Ian F. Haney. 2000b. "The Social Construction of Race." In *Critical Race Theory: The Cutting Edge*, edited by Richard Delgado and Jean Stefanic, 163–175. Temple: Temple University Press.

Lyman, Brian. 2011. "Court: No Immigration Checks at Alabama Schools." *US News and World Report*, October 14, 2011. Accessed October 14, 2011. http://www.usnews.com/news/articles/2011/10/14/federal-appeals-court-blocks-alabama-immigration-law?PageNr=1.

Martinez, George A. 1997. "The Legal Construction of Race: Mexican-Americans and Whiteness." *Harvard Latino Law Review* 2: 321.

Massey, Douglas S. (ed.). 2008. *New Faces in New Places: The Changing Geography of American Immigration*. New York: Russell Sage Foundation Publications.

Massey, Douglas S, Jorge Durand and Nolan J Malone. 2003. *Beyond Smoke and Mirrors: Mexican Immigration in an Era of Economic Integration*. New York: Russell Sage Foundation Publications.

McKanders, K. M. 2010. "Sustaining Tiered Personhood: Jim Crow and Anti-Immigrant Laws." *Harvard Journal Racial and Ethnic Justice* 26: 163.

McWhorter, Diane. 2012. "The Strange Career of Juan Crow." *New York Times*, June 16, 2012. Accessed June 19, 2012. http://www.nytimes.com/2012/06/17/opinion/sunday/no-sweet-home-alabama.html.

Mears, Bill. 2011. "Federal Appeals Court Blocks Parts of Alabama Immigration Law." October 14. Accessed November 15, 2011. http://articles.cnn.com/2011-10-14/us/us_alabama-immigration-law_1_immigration-status-immigration-law-illegal-immigration?_s=PM:US.

Ngai, Mae M. 2004. *Impossible Subjects: Illegal Aliens and the Making of Modern America*. Princeton: Princeton University Press.

Odem, M. E. and E. C. Lacy. 2009. "Popular Attitudes and Public Policies: Southern Responses to Latino Immigration." In *Latino Immigrants and the Transformation of*

the US South, edited by M. E. Odem and E. C. Lacy, 143–163. Athens: University of Georgia Press.

Okeke, Chris Nwachukwu and James A. R. Nafziger. 2006. "United States Migration Law: Essentials for Comparison." *The American Journal of Comparative Law* 54: 531–552. doi: 10.2307/20454552.

Passel, Jeffrey, D.Vera Cohn and Ana Gonzalez-Barrera. "Population Decline of Unauthorized Immigrants Stalls, May Have Reversed."September 23, 2013. Pew Research Center.

Preston, Julia. 2012. "Mexican Immigration to U.S. Slowed Significantly, Report Says." *The New York Times*, April 23, 2012. Accessed May 3, 2012. http://www.nytimes.com/2012/04/24/us/mexican-immigration-to-united-states-slows.html.

Rawls, Phillip. 2011. "Alabama Immigration Law: Republican Leaders Having Second Thoughts." *Huffington Post*, December 10. Accessed December 10, 2011. http://www.huffingtonpost.com/2011/12/08/alabama-immigration-law-republicans_n_1137335.html?ref=latino-voices&ir=Latino Voices.

Reeves, Jay and Alicia A. Caldwell. 2011. "Few Americans Take Immigrants' Jobs in Alabama." *The Peninsula Clarion: The Newspaper of Alaska's Kenai Peninsula*, October 20. Accessed November 15, 2011. http://ap.peninsulaclarion.com/pstories/us/20111020/902484527.shtml.

Reid, Tim. 2011. "Chicken Plant in Albertville Holds Job Fair." *waaytv.com*, October 4, 2011. Accessed December 10, 2011.

Robertson, Campbell. 2011. "After Ruling, Hispanics Flee an Alabama Town." *The New York Times*, October 3. Accessed October 12, 2011. http://www.nytimes.com/2011/10/04/us/after-ruling-hispanics-flee-an-alabama-town.html?pagewanted=all&_r=0.

Ronald Mortensen's Blog. "Schumer-Rubio Immigration Reform—Border Security Focuses on Inputs, Not Results." May 10, 2013. http://cis.org/mortensen/schumer-rubio-immigration-reform-border-security-focuses-inputs-not-results.

Sadowski-Smith, Claudia. 2009. "Unskilled Labor Migration and the Illegality Spiral: Chinese, European, and Mexican Indocumentados in the United States, 1882–2007." In *Nation and Migration, Past and Future*, edited by David G. Gutiérrez and Pierette Hondagneu-Sotelo, 277–302. Baltimore, MD: The Johns Hopkins University Press.

Sarlin, Benjy. 2013. "How America's Harshest Immigration Law Failed." *MSNBC*, December 16, 2013. http://www.acij.net/msnbc-how-americas-harshest-immigration-law-failed/.

Snipp, C. Matthew. 2003. "Racial Measurement in the American Census: Past Practices and Implications for the Future." *Annual Review of Sociology* 29: 563–588. doi: 10.2307/30036980.

Torres, Joseph and Daniela Montalvo. 2014. "Nahj Urges News Media to Stop Using Dehumanizing Terms When Covering Immigration." [Press Release]. Accessed November 21, 2014. Retreived from http://www.nahj.org/nahjnews/articles/2006/march/immigrationcoverage.shtml.

Tullos, Allen. 2011. *Alabama Getaway the Political Imaginary and the Heart of Dixie*. Athens, GA: University of Georgia Press. http://site.ebrary.com/lib/berkeley/Doc?id=10457041.

UNHCR. 2007. *The Protection of Internally Displaced Persons and the Role of U.N.H.C.R.* Text from: UNHCR. Accessed April 26, 2013. http://www.unhcr.org/50f951df9.html.

UNHCR Global Protection Cluster. 2010. *Handbook for the Protection of Internally Displaced Persons*. Text from: UNHCR. Accessed March 6, 2014. http://www.unhcr.org/50f94dcc9.html.

UNHCR: The UN Refugee Agency. 2013. *Internally Displaced People*. Text from: UNHCR. Accessed April 26, 2013. http://www.unhcr.org/pages/49c3646c146.html.

U.S. Census Bureau. 2010. *Albertville (City) from the U.S. Census Bureau*. Text from: U.S. Census Bureau: State and County QuickFacts. Accessed November 15, 2011. http://quickfacts.census.gov/qfd/states/01/0100988.html.

U.S. Census Bureau. 2012. *Albertville (City) Quickfacts from the U.S. Census Bureau*. Text from: U.S. Census Bureau. Accessed January 9, 2013. http://quickfacts.census.gov/qfd/states/01/0100988.html.

Weise, J. M. 2009a. *Fighting for Their Place: Mexicans and Mexican Americans in the US South, 1910–2008*. PhD dissertation. American Studies, Yale University, ProQuest (3361623).

Weise, Julie. 2009b. "Mexican Nationalisms, Southern Racisms: Mexicans and Mexican Americans in the U.S. South, 1908–1939." In *Nation and Migration, Past and Future*, edited by David G. Gutiérrez and Pierette Hondagneu-Sotelo, 247–275. Baltimore, MD: The Johns Hopkins University Press.

WHNT News 19 Staff Reports. 2011. "Albertville Schools See Several Hispanic Students Return to Class." *WHNT-TV*, October 17, 2011. Accessed November 15, 2011. http://whnt.com/news/sandmountain/whnt-albertville-schools-see-several-hispanic-students-return-to-class-20111017,0,6968070.story.

Wildman, Stephanie. 1997. "Reflections of Whiteness and Latina/O Theory." *Harvard Latino Law Review* 307(2): 307–316.

Wildman, Stephanie. 2005. "The Persistence of White Privilege." *Journal of Law and Policy* 247(18): 245–265.

Winders, Jamie. 2005. "Changing Politics of Race and Region: Latino Migration to the U.S. South." *Progress in Human Geography* 29(6): 683–699. doi: 10.1191/0309132505ph577oa.

Winders, Jamie. 2007. "Bringing Back the (B)Order: Post-9/11 Politics of Immigration, Borders, and Belonging in the Contemporary U.S. South." *Antipode* 39(5): 920–942.

Winders, Jamie. 2011. "Representing the Immigrant: Social Movements, Political Discourse, and Immigration in the U.S. South." *Southeastern Geographer* 51(4): 596–614.

8

Black, Poor and Jewish: The Ostracism of Ethiopian Jews in Modern Israel

Holly A. Jordan

Introduction

The Beta Israel (House of Israel), who currently number 130,000 citizens within Israel (Flum and Cinamon 2011, 373), are a unique Jewish community with a continuous history of Jewish practice in Ethiopia dating prior to the birth of Christ (for more information on the formation of the Beta Israel, see Santamaria 1993, 405–407). Because the Ethiopian community remained separated from other major Jewish communities in modern-day Israel, Iraq and Iran, the Beta Israel have developed their own traditions of Sabbath observance and legal interpretation. For instance, the Beta Israel have existed without many of the texts and traditions that currently are a part of normative Jewish practice, including a lack of knowledge of the Talmud, the Oral Torah, or law, of Judaism, preserved in written form during the Diaspora[1] (Santamaria 1993, 406). Furthermore, the Beta Israel inherited the Jewish scriptures in Greek from the Egyptian communities in a translation known as the Septuagint, a translation including extra books such as Jubilees not present in the Hebrew canon (Santamaria 1993, 407). Due to this lack of awareness of Jewish practice post-Second Temple, Ethiopian Judaism theoretically is much closer in practice to Biblical and Second Temple Judaism than Rabbinic and Modern Judaism. Because they do not recognize core religious traditions within Judaism, their status as Jews, especially in the legal sense for purposes of Israeli citizenship, has been called into question by many communities within Israel who seek to define Jewishness as Orthodox Judaism.

In spite of naysayers within Israel, the Beta Israel have always self-identified as Jewish and, along with other minority Jewish groups, sought

to make *aliyah* (to immigrate to Israel) after the founding of the State of Israel (Zegeye 2004, 591). Since immigrating to the State of Israel, the Beta Israel find themselves caught between what Uri Ben-Eliezer describes as an older "institutional racism" and a "new racism" he refers to as "everyday" racism (Ben-Eliezer 2008, 938). Ben-Eliezer states:

> The new type of racism that appeared in the second half of the twentieth century was no longer based expressly on the idea of genetic and biological differences. [. . .] In the new racism, the difference between ethnic or religious groups are emphasized and used as a kind of warning sign to prevent the immigrants' integration into the society and to make clear the danger they supposedly represent to the society's unity. (Ben-Eliezer 2008, 938)

This form of racism has become more a part of day-to-day life in Israel after World War II, as a less institutionalized and yet culturally pervasive response to certain fascist European policies (Ben-Eliezer 2008, 938). Israel straddles this line between early- and late-twentieth-century forms of racism in their treatment of the Beta Israel, requiring separate housing areas and different immigration policies from other groups making *aliyah*. And while most states stray away from the goals of their foundational documents, the fact that Israel unapologetically straddles this line and uses this position to discriminate against self-identified Jews in the only Jewish homeland worldwide indicates not just a straying away from ideals but a complete rejection of key passages of Israel's *Declaration* and Basic Laws, which stand in place of a constitution in this constitutionless parliamentary state.

The Beta Israel are unique from other groups not only because they are one of the only Black Jewish populations worldwide but because of the state Israel's heavy involvement in their lives after immigration. Targeted because of their skin color, their unique Jewish practices and their cultural differences, the second generation of Ethiopian Jews finds themselves slipping further and further down the socioeconomic ladder, with many children never finishing high school and a juvenile delinquency and unemployment rate higher than any other community within Israel. While not institutionalized by the state, these "de facto" practices nonetheless have implications for Ethiopian Jews who face widespread stigma and exclusion. Some scholars argue that this rapidly increasing gap between Ethiopian Jews and other Jews within Israel is due to a shift on the part of the Israeli government away from the social welfare state of its earliest days to a "neo-liberal state with diminishing government

intervention, especially in the economy, and with growing privatization" (Ben-Eliezer 2008, 950) through what Nelly Elias and Adriana Kemp refer to as an increasingly "ethnonational regime in Israel," where "religion and race remain central criteria for inclusion in Israel" (Elias and Kemp 2010, 88).

While an understanding of the shifts in governing style and goals within Israel is helpful for understanding *how* institutional and everyday racism has been allowed to increase in Israel, it is important to examine the *site* where this racism occurs—the focal point under scrutiny. From the cleanness of their blood to issues of fertility to the placement of housing, discrimination against the Beta Israel is visited upon their very bodies. Israel's discrimination toward Ethiopians is explained (though not justified) when one puts it within an understanding of the changing biopolitical nature of postmodern states as explained by Michel Foucault in *The History of Sexuality, Volume Two*. In this analysis, I seek not to justify the Beta Israel's status as Jewish; rather, I assume their Jewishness and instead explore why the Beta Israel, recognized as Jews by the Chief Rabbinate, the highest religious authority in Israel, are not treated as full members either of the Jewish community or as equal citizens of Israel. The negative treatment of the Beta Israel stands in stark contrast to the promise of equal treatment for all citizens of Israel (regardless of religious status) presented in Israel's *Declaration of the Establishment of the State of Israel*.

This chapter addresses the overarching issue of the belonging of migrants into the national community, and thereby complements earlier chapters that also tackle the problem of territorial belonging through domicile citizenship (chapter 4), sanctuary (chapter 5), a politics of place (chapter 6) and challenging legal practices of racialization (chapter 7). After a brief history of the Beta Israel, this chapter analyzes the institutional and everyday racism visited upon the Ethiopian community, exploring through a Foucaultian lens both why and how this racism is able to continue and what is at stake for the multicultural future of Israel. While this chapter focuses primarily on the Beta Israel, Ethiopian Jews are one of many Jewish minorities within Israel (not to mention both the Druze and Arab Palestinians) who find the unique voices developed in the Diaspora (and in the case of the Beta Israel, pre-Diaspora) silenced upon immigrating to Israel.

The Beta Israel: Origins, history, traditions

To understand the conditions facing the Beta Israel, it helps to first note some of the main similarities and differences between the Judaism

practiced by Beta Israel and the Orthodox, predominately Western/White Judaism sanctioned by the State of Israel. While the origin stories of the Beta Israel vary from tribe to tribe within Jewish Ethiopian communities, it is generally agreed upon that this Ethiopian community began sometime after the reign of King Solomon. Traditionally, the Beta Israel believe they are the descendants of King Solomon through the Queen of Sheba, whose story is described in 1 Kings 10:1–13.[2] Separated from the Jewish community of Palestine prior to the both canonization of the Hebrew Bible and the writing of the Oral Torah into the Talmud, the Beta Israel consider themselves to be an older, purer form of Judaism. For instance, none of the post-biblical holidays, such as Hanukkah, are practiced within the Ethiopian community, and their Sabbath practices are much more rigorous than even modern-day Orthodox observances (Santamaria 1993, 406–7). The Beta Israel also follow a far shorter canon written in Ge'ez instead of the traditional Hebrew found in most of the Jewish world. Though connected loosely with the historical Elephantine Jewish community of Egypt, they have remained relatively isolated within the upper plateaus Ethiopia for well over 2000 years (Ibid.).

Within Ethiopia, the Beta Israel have maintained their Jewish practice, from the circumcision of boys to their unique dietary and purification practices, even through 1700 years of Christian rule. Yet, even within Ethiopia they faced discrimination. The word for their community according to non-Jewish Ethiopian, *Falasha*, is pejorative, meaning anything from "immigrant" in some of the more positive translations (Chehata 2012, 67) to "pillager" or "stranger" in others (Weingrod and Levy 2006, 698). As "others" within their own homeland, Ethiopian Jews have found themselves caught between two communities: their Ethiopian community, which treats them as a separate tribe from the rest of Ethiopia, and the worldwide Jewish community, which, upon "discovering" them in 1905 by Dr. Jacques Faitlovitch, a Polish-born French Jew, immediately sought ways to "Zionize" and "whiten" them (Haynes 2009, 241).

After the rise of the Mengistu government in the 1970s, the Beta Israel's status as even Jewish was institutionally rejected. Instead, under the Mengistu regime they were referred to as ultra-fundamentalist Christians (for their strict adherence to Mosaic law), regardless of the fact that they had no belief in Christ (Santamaria 1993, 406). With increased violence in Ethiopia, including blatant anti-Semitism fostered by the communist Mengistu administration, beginning in 1974 the Beta Israel began to petition Israel to recognize them officially as a Jewish community allowed to make *aliyah* (immigrate to Israel). From the establishment of the state

of Israel in 1948 through 1975, the Chief Rabbinate did not recognize the Beta Israel as a legitimate Jewish community; thus, immigration was not permitted. Some still attempted the journey through the Sudan to Israel in the 1970s, with approximately 4,000 dying on the way (Chehata 2012, 69).

The Sephardi Chief Rabbi recognized the Beta Israel as truly Jewish in 1975, with the Ashkenazi recognizing them two years later (Haynes 2009, 245). Currently, the official Israeli position on Beta Israelis is that their lineage is traceable through the tribe of Dan, though, as was stated earlier, even this is questionable (Zegeye 2004, 592). In three major operations, named Moses (1984), Joshua (1985) and Solomon (1991), the Israel Defence Forces (IDF) airlifted some 23,000 Beta Israelis to Israel. Once in Israel, the Beta Israel were taken to "absorption centers," where for two years they lived, learning both Modern Hebrew and Israeli culture (Chehata 2012, 70). For most other communities, this assimilation period is a mere six months (Santamaria 1993, 409). Furthermore, the loss of Ethiopian culture happens immediately after they cross the border. Many Beta Israelis are given new names along with their citizenship, Israeli names rather than Ethiopian (Chehata 2012, 71). Currently, 70 percent of first-generation Ethiopian immigrants find themselves unemployed due to their lack of integration (Walsh and Tuval-Mashiach 2012, 51), either not having strong enough Hebrew skills to pass an interview or being rejected for positions when employers realize during their second in-person interview that they are black (Ibid., 64–65). While this discrimination against minority Jewish groups within Israel is not necessarily abnormal, Ethiopian Jews are the only sizeable minority of color within Israel and forms of discrimination against the Beta Israel focus far more heavily on the body and religion than other groups, including the Sephardim and Mizrahim.

Israeli discrimination among minority communities is nothing new or terribly surprising. For instance, Arab Christians and Muslims are consistently underrepresented in the Knesset, the unicameral legislative body of Israeli governance. There are only 12 Arab Christian and Muslim members of the 120-person Knesset, while Arab Christians and Muslims make up nearly 21 percent of the population (Mualem 2013). In other forms of discrimination, regarding marriage, Sephardi and Mizrahi Jews, for whom polygyny was legal before the establishment of the State of Israel, are no longer allowed to enter into legal polygynous relationships. Furthermore, the language used to describe the Sephardi and Mizrahi during the earliest days of the country, by Zionist leaders including David Ben-Gurion and Golda Meir, is that of culture and religion. They are described as

"backwards" and mentally inferior. The early, Ashkenazi Zionists saw it as their responsibility to bring the Sephardim and Mizrahim into the Zionist project, even at the expense of their equally legitimate Jewish and cultural practices. The Sephardim and Mizrahim were treated by the Western, Ashkenazi leadership as a problem to be solved rather than coreligionists with different cultural traditions (Shohat 1988, 5).

In many ways, the Beta Israel have been treated similarly to the Sephardim/Mizrahim, who were described as "backwards" and mentally inferior by the earliest Zionist leaders (including Golda Meir and David Ben-Gurion) with one major difference: while the Sephardim/Mizrahim have managed to assimilate (often at the expense of their public practice), Ethiopian Jews have not. As explained by Ulysses Santamaria, while the Ashkenazim have managed to "de-Orientalize" the Sephardim/Mizrahim, even if the Ethiopians are stripped of their culture, they will still be black (Santamaria 1993, 410). Furthermore, Ethiopian culture is marked by introvertedness, with many conversational cues being relayed by gestures rather than speech. This is markedly different from most Israelis, who are known as being quite extroverted and blunt (Walsh and Tuval-Mashiach 2012, 69). These small differences are used to "explain" the challenge of "Zionizing" the Beta Israel. This need on the part of the ruling Ashkenazim to maintain their cultural hegemony is the direct cause. Rather than embracing the multiculturalism inherent in a country of immigrants, Israel's insistence upon Western cultural hegemony has *led* to the lack of assimilation of Ethiopian Jews, who can never truly "look" like Israelis (Haynes 2009, 248).

Israeli ethnocultural discrimination

Israel has, at least in theory, set up an assimilation process for the Beta Israel that would "nationalize" them effectively (though one could easily argue whether this is necessary or even proper). In the required two-year period at the "absorption centers," the Beta Israel are systematically separated from other citizens, not assimilated into the greater community. As explained by Shira Offer:

> Because they were considered a weak population requiring special care, Ethiopian immigrants were referred upon arrival to absorption centres. Unlike other newcomers who immigrated during the same time period, most notably immigrants from the former Soviet Union, Ethiopian immigrants could not take advantage of the direct absorption policy, according to which immigrants using in-cash grants and

> other benefits are responsible for their own integration. By contrast, in the absorption centres, all the immigrants' basic needs are provided directly by the government. These absorption centres have been criticized for isolating Ethiopian immigrants from Israeli society and creating dependency on governmental support. Indeed, moving out of absorption centres became a great challenge for many families, who continued to reside in these centres for much longer periods than intended by the government. (Offer 2007, 464–465)

Children are sent to private schools (with the cost subsidized by the government) to help bridge the gap in their education. Because of this, Ethiopian students are at a disadvantage educationally entering the Israeli school system (David and Lynn 2007, 470), often at the cost of separation from their families and loss of cultural traditions in favor of a more "orthodox" Judaism (Ben-Eliezer 2008, 942).

A lack of full assimilation into Israeli culture and society has directly led to the socioeconomic gap between Ethiopian Israelis and Israelis of different ethnic groups. With 70 percent of adult Beta Israelis unemployed, parents find themselves less and less able to communicate with and even raise their children, who see their parents as failures and often look to an older sibling for guidance (Walsh and Tuval-Mashiach 2012, 52). In addition to this socioeconomic gap, Beta Israelis find themselves often receiving subpar medical preventative care as compared to other citizens. Because they are not assimilating culturally, nor learning Hebrew, doctors who speak predominately Hebrew, Russian, German or Arabic cannot communicate with Ethiopians, and doctors often fail to recommend preventative screenings for critical medical conditions such as pap smears and mammograms (Ibid., 58).

While much attention has been paid to the institutional and everyday discrimination faced by Ethiopian Jews within Israel, far less attention has been paid to the *strategy* behind this treatment. What follows is an analysis of how Israeli discrimination against the Beta Israel is focused specifically on their very bodies, objectified in order to carry out discriminatory immigration practices.

Foucaultian biopolitics: Beta Israel, bodies and blood

As Foucault explains in *The History of Sexuality, Volume 1*, during the nineteenth century, the right to take life and let live on the part of a state was replaced with the "power to *foster* life or *disallow* it to the point of death" (Foucault 1990, 138). This shift arises in the seventeenth century, when

governments begin using science and statistics to track the health and wellbeing of its political body, including analyzing "propagation, births and mortality, the level of health, life expectancy and longevity, with all the conditions that can cause these to vary" (Ibid., 139). This included the formation of governmental organizations whose goal was to enrich life: schools, public health programs, public housing—all for the "betterment" of society, yet with the same controlling of human bodies that the old sovereign right of the death penalty had previously.[3] Politically, power over citizens shifts from the active terror of never knowing as a subject whether or not you will be killed to living under a new system where your entire life is molded for the betterment of the state.

In an increasingly conservative and orthodox Israel, the Beta Israel with their unique practices are a prime target for cultural discrimination in the realms of religious activities, the positioning of their bodies and even their blood. While Israel did not exist during this major shift in sovereign power and governance described by Foucault, its founding by European Zionists is directly connected to some of these changes in views on the role of the state. Israel retains elements of pre-nineteenth-century definitions of citizenship despite being a modern state. Foucaultian biopolitics offers a relevant method for analyzing the phenomenon of Israeli citizenship, particularly given the emphasis placed on blood. Blood becomes symbolic in the Arab–Israeli conflict time and time again, from the inheritance of citizenship and religion to the donation of blood for the Israeli army. Though providing the Beta Israel an arguably safer home than the cities they fled in Ethiopia, through attacks, both literal and metaphorical, against the bodies, religion and blood of Ethiopian Jews, Israel discriminate against its Jewish brothers and sisters in a way far more intimate and personal than it does with other minority Jewish groups.

The bodies of Beta Israel

The West Bank settlements are some of the most contentious buildings in the world. Yearly, the United Nations General Assembly condemns the building of Israeli settlements in the West Bank; yet yearly, the settlements expand. The answer to the question *why* Israel supports Beta Israel's migration while simultaneously quelling their religious and cultural practices becomes more apparent when one understands where many Ethiopian Jews were relocated upon immigrating to Israel.

As stated earlier, 70 percent of Ethiopian Israelis find themselves unemployed once they have immigrated to Israel. Israel offers many immigrants the opportunity for subsidized housing in the West Bank

settlements. When questioned, most of the Beta Israel were unaware of the severity of the issues surrounding the settlements; they simply were happy to have a place to live (Chehata 2012, 75). Israel is able to use their ignorance of the geopolitical situation to continue expanding their settlement projects while simultaneously fulfilling their humanitarian "duty" to provide for these immigrants fleeing from Ethiopia. As with the discrepancy noted by Christian Matheis in chapter 1, the Israeli state acts on a moral obligation to offer refuge but carries out the process in accord with politically expediency detached from morally principled treatment of immigrants. Placing the Beta Israel in settlements was not the original plan for the integration of Ethiopian Jews. The goal was to place the Beta Israel throughout multiple cities, to help them become members of Israeli society. Instead, when not relocated to the settlements, the Beta Israel are placed in large groups in several cities throughout Israel (Weingrod and Levy 2006, 699). The conditions of these areas have been likened to ghettos, with high instances of crime and low quality of housing (Ibid., 694).

The religion of Beta Israel

It is critical to remember that regardless of their origins, the Beta Israel consider themselves to be Jewish. The Law of Return states, "Every Jew has the right to come to this country as an *oleh* (one who makes *aliyah*)"; yet at the time of founding, this law did not include the Beta Israel. The Law of Return was amended in 1975 to include the Beta Israel, when the Chief Rabbinate of Israel finally considered them Jewish (Weingrod and Levy 2006, 692). However, unlike other groups, Ethiopian Jews have to go through formal conversion ceremonies to Judaism, as if they were not Jewish, because their practice is considered to be non-normative under the dominant orthodoxy. For women, this involves an immersion in a *mikveh*, or purifying bath, which is seen as incredibly offensive to the Beta Israel who pride themselves on their purification ceremonies. Male Ethiopians, who traditionally are circumcised, must go through a ritual recircumsion, done by drawing a symbolic drop of blood from the tip of the penis (Chehata 2012, 75). According to Chehata,

> This was understandably taken as a clear insult, given that many Ethiopians consider themselves to be direct descendants of King Solomon and the Queen of Sheba and, therefore, of a purer bloodline than many of the European Jews who were calling for their 'conversion'. However, under the Law of Return, 'the Ethiopian Jews must

> undergo a process of conversion to Judaism in order to receive all the financial benefits of new immigrants' and, thus, must concede, however degrading the process may be. (Chehata 2012, 75)

In contrast to the conversion ceremonies imposed on Beta Israel, there is no conversion requirement for the *olim* (Haynes 2009, 246–247). As many as 300,000 of the one million Russian immigrants to Israel with nominal connections to Judaism at best and who outright lied about being Jewish to flee Soviet persecution at the worst (Elias and Kemp 2010). Unlike the *olim*, upon immigration to Israel, the Beta Israel are forced to convert to Orthodox Judaism, the official Judaism of the State of Israel (as opposed to Liberal/Reform or Conservative Judaism), and the conversion ceremony itself fails to take into account at all the unique traditions of the Ethiopian community (Weingrod and Levy 2006, 699). In many towns, Ethiopian synagogues are completely absent, and Ethiopian children are not allowed to attend the more orthodox religious schools, most notably those run by the Chabad-Lubavitch, who do not consider the Beta Israel to be Jewish in spite of the rulings from the Chief Rabbinate (Chehata 2012, 75–76).

Additionally, unlike other groups who have been allowed to keep their religious leaders and traditions, Ethiopian Jews find themselves stripped of their religious leadership and ceremonies. The rabbis of the Beta Israel, known as *kesim*, have been defrocked and must serve as laypersons in religious ceremonies (Ben-Eliezer 2008, 944). In fact, most Orthodox rabbis refuse to do Ethiopian-style marriages, and to date (Weingrod and Levy 2006, 699), there is only one Ethiopian *kesim* officially allowed to do ceremonies in Israel (Ben-Eliezer 2008, 944). This had led to a loss of religious roots for second-generation Ethiopian Jews, who speak Hebrew over Amharic and Tigrinya and attend services in Hebrew, not Ge'ez. The private schools second-generation Ethiopians attend teach Orthodox, Ashkenazi Judaism. Some of these second-generation Beta Israel respond with religious indifference, like many of their generation within Israel (Santamaria 1993, 410). Others respond quite passionately, referring to the separation of the Beta Israel from their religion as "apartheid" (Ben-Eliezer 2008, 944). Nevertheless, within one generation of immigration, the Beta Israel are quickly losing their unique traditions and have been homogenized into the Ashkenazim's cultural and religious hegemony within Israel.

The blood of Ethiopian Jews

In perhaps the most troubling form of racism against the Beta Israel, the blood of Ethiopian Jews is treated as inferior to the blood of other citizens.

Beginning in 1993, Ethiopian blood donations for military personnel were systematically frozen and disposed rather than used. This event became known as the "Blood Affair" and caused some of the first major uprisings of Ethiopian Jews regarding their treatment in Israel (Lyons and Seeman 2012, 259–260). Again in 2006, in the wake of the 2006 July War between Israel and Lebanon, blood donations from Ethiopian Jews were systematically frozen and destroyed after being donated. In a testimony by Gadi Yevrakan, at that time a 25-year-old law student and military lieutenant, we learn of an Ethiopian blood donor who "sits, a needle enters his body, a considerable amount of blood is drawn from him, and yet the minute he turns his head they toss his blood to the garbage" (Beit-Or 2006). Ethiopian Jews' sacrifice of their blood is not deemed worthy.

According to the Israeli Health Ministry, officials treat the Beta Israel's blood the same way they would many from sub-Saharan African groups and claim concerns regarding the spread of human immuno-deficiency virus (HIV). Furthermore, they give other examples of other "at risk" groups whose blood is not taken: homosexuals, etc. (Ben-Eliezer 2008, 945). This puts the Beta Israel in the category of "at risk" simply because of their country of origin. The response from the Israeli Health Ministry was that it was simply following generally agreed-upon policies for blood donations originating from individuals who have spent more than a year in central Africa since 1977: "The testing the blood goes through is not enough since some of these diseases have a 'window' in which they are undetectable, like HIV, where even a test cannot discover if the blood is contaminated. These guidelines are not an Israeli invention and they are accepted throughout the entire modern world" (Ibid.). To date, no other immigrant group in Israel is treated writ-large in the same way.

This treatment of blood is worrisome on its own, but when tied in with the concepts of citizenship and religious lineage becomes even more problematic. Israeli citizenship is inherited via a legal process known as *jus sanguinis* (right of blood) along with the Law of Return, rather than by *jus soli* (right of soil; where one is born) (see chapter 4 for a discussion of these citizenship principles in relation of *jus domicile*). You are Israeli because either your parents were (inheritance by blood) or because you are able to prove your Jewish heritage and immigrate under the Law of Return (Flum and Cinamon 2011, 374). Ethiopian Jews, especially the second generation, can prove their citizenship in both ways. And yet, their *blood*, that very essence that carries their citizenship, is tossed away as unworthy compared to that of their fellow citizens.

In contrast to the dismissive practices by Israeli authorities, for the Beta Israel, blood is an important part of their community. For them, "blood is

the soul" (Chehata 2012, 73). It is what makes you Jewish. To have their blood thrown away is to throw away the very thing that makes them Jewish. For the *State* to do it when citizenship is determined by bloodlines is highly insulting to the Beta Israel. But the State has not stopped there. The Israeli government has been inoculating the Ethiopian Jewish population with the dangerous birth control shot Depo-Provera, either unbeknownst to them or through coercion. These individuals are given this shot under false pretenses, either told that the Depo-Provera was an inoculation or that birth control was required to immigrate to Israel (Nesher 2013). As of 2011, 130,000 Jews of Ethiopian descent lived in Israel (Weil 2011), approximately 1.7 percent of the 7.59 million recognized citizens of Israel ("Israel" 2012). In Ethiopia, these communities had had between 4.5 and 6.2 children on average per family (Goldblatt and Rosenblum 2007, 586). Yet, though such a small portion of the country, they make up 57 percent of Depo-Provera users nationwide. In the last decade alone, this has led to a 50 percent reduction in the birth rate of the Beta Israel (Nesher 2013).

Conclusions

Recall the evacuation of thousands of Beta Israel by the Israel Defense Forces. What might Israel stand to gain from its almost Hollywood-like liberation of the long-lost Black Jews of Ethiopia? Surely, the humanitarian side is admirable, especially after 4,000 Jews have died in the Sudan just trying to make *aliyah*. But Israel stands to gain far more by systematically moving Ethiopian Jews to Israel and then carefully controlling where they live and how they organize their families. In a unique blend of institutionalized and everyday racism, Israel is able to relocate Ethiopian families to its settlement projects that are internationally recognized as illegal. By placing poor, black immigrants (nearly refugees) in these places, rather than well-off, white settlers, Israel attempts to justify its highly questionable paternalistic policies by declaring on the international stage that they are providing a "higher quality of life" to the Beta Israel than what they would have had in Ethiopia. This paternalism echoes of the treatment of Sephardi and Mizrahi Jews in the early days of Israel and continues the orientalist policies of the Zionist founders of the State of Israel (Ben-Eliezer 2008, 942).

In an essay written in 1948 entitled "To Save the Jewish Homeland," Hannah Arendt, a cultural Zionist fearful of the hegemony of political Zionism, prophesied the problems of unanimity of thought and silencing of minorities currently present in Israel as seen in the experience of

the Beta Israel. An important part of Arendt's Zionism, and her political thought in general, is the focus on disagreement and proactive discussion and the dangers of unanimity. She has concerns over any formal statement on the part of Israelis or Jews that would pass unanimously. In a 1944 essay entitled "Free and Democratic," just prior to the establishment of the State of Israel, Arendt analyzes the Jewish Congresses of the period, raising concerns about their unilateral decisions over defining Zionism and Jewishness:

> The first evidence of the success of the 'free and democratic Jewish commonwealth' is the suppression of all free and democratic discussion. [...] [A]ll Jewish politics becomes the monopoly of professional politicians who behave like Führers, and finally it means the hardly happy transformation—but one so characteristic of our times—of a people into more or less fanaticized bands of 'believers'. (Arendt 2007a, 232)

In 1948, after the presentation of the United Nations Partition Plan for Britain's Palestinian Mandate, which divided the Mandate into two states—Israel and Palestine—with Jerusalem as an independent city, Arendt was fearful because no significant Zionist party stood against the Plan. Again stating her beliefs on the problems of unanimity, she states in 1948: "[I]t was downright tragic that this most crucial of all moments the loyal opposition of the non-Zionists simply disappeared" (Arendt 2007b, 394). Arendt was concerned even at the founding of the State of Israel that the new Jewish could turn into a hegemonic power, unilaterally defining Judaism and not allowing for any opposition of belief.

Today, on paper, Israel embraces its multiculturalism. In practice, as Israel moves past its social welfare origins toward more neoliberal policies, officials have created a state where, to invoke George Orwell, all Jews are equal, but some Jews are more equal than others. Israel stands as a state where the Beta Israel are now afraid to protest their treatment, fearing deportation back to Ethiopia (Chehata 2012, 75), leading to the lack of multiple voices Arendt cautioned against. As Santamaria noted in 1993, just after the first wave of Ethiopian immigration, Israel had a moment to reevaluate their Zionist project, to move it away from the assimilation of the "other" into an Ashkenazi/Orthodox ideal to a state that truly celebrated its multiculturalism. In the two decades since the first wave of Ethiopian immigration, Beta Israel's culture is becoming diluted. The biopolitical project of the State of Israel has succeeded in fulfilling for the Beta Israel the Passover prayer of "Next

year in Jerusalem" while simultaneously ostracizing them within their own Jewish homeland.

The extensive documentation surrounding the migration and assimilation of the Beta Israel makes it possible to trace systematic discrimination. This certainly tells part of the story. As I have sought to show, the ability to mount more extensive criticism arises when considered in the context of Foucaultian biopolitics. Doing so exposes the depth and complexities of state policies and practices based in judgments neither solely racial or solely biopolitical, but racially biopolitical or biopolitically racialized. The state of Israel enacts geopolitical strategies internal to settlements and externally in international politics by subjugating the Beta Israel biopolitically as members of a lower racial caste. Their bodies count as fodder in a convoluted scheme of domestic and international political strategies more complex than a conventional juridical definition of institutional racism can illustrate. The Israeli state's biopolitical racialization of the Beta Israel calls attention to the indignities and atrocities at this particular site, and presents a case example for what may occur elsewhere in the world. It is unlikely that Israel is the only site where assimilationist migration rests on biopolitics; this insight can help to diagnose and perhaps intervene in similar patterns of biopolitically racialized migration and assimilation carried out by other states.

Notes

1. For the purposes of this chapter, I define Diaspora communities as groups of Jews in dispersion after the destruction of the second Jewish temple in Jerusalem in 70 CE and the subsequent deportation of Jews across the Roman Empire. While there have been other dispersions of Jews both prior to this (for instance, due to the Babylonian exile in 587 BCE), subsequently, for me, the Diaspora is a specific event linked to the Roman destruction of Jerusalem.
2. 1 Kings 10:1–13 (NRSV): "When the queen of Sheba heard of the fame of Solomon (fame due to the name of the Lord), she came to test him with hard questions. She came to Jerusalem with a very great retinue, with camels bearing spices, and very much gold, and precious stones; and when she came to Solomon, she told him all that was on her mind. Solomon answered all her questions; there was nothing hidden from the king that he could not explain to her. When the queen of Sheba had observed all the wisdom of Solomon, the house that he had built, the food of his table, the seating of his officials, and the attendance of his servants, their clothing, his valets, and his burnt offerings that he offered at the house of the Lord, there was no more spirit in her. So she said to the king, 'The report was true that I heard in my own land of your accomplishments and of your wisdom, but I did not believe the reports until I came and my own eyes had seen it. Not even half had been told me; your wisdom and prosperity far surpass the report that I had heard. Happy are your wives! Happy are these your servants, who continually attend you and hear

your wisdom! Blessed be the Lord your God, who has delighted in you and set you on the throne of Israel! Because the Lord loved Israel forever, he has made you king to execute justice and righteousness.' Then she gave the king one hundred twenty talents of gold, a great quantity of spices, and precious stones; never again did spices come in such quantity as that which the queen of Sheba gave to King Solomon. Moreover, the fleet of Hiram, which carried gold from Ophir, brought from Ophir a great quantity of almug wood and precious stones. From the almug wood the king made supports for the house of the Lord, and for the king's house, lyres also and harps for the singers; no such almug wood has come or been seen to this day. Meanwhile King Solomon gave to the queen of Sheba every desire that she expressed, as well as what he gave her out of Solomon's royal bounty. Then she returned to her own land, with her servants." According to the Beta Israel, the Queen of Sheba was understood to have returned home pregnant, bringing with her the Jewish religion, and Sheba and Solomon's children became the rulers of Ethiopia (see Chehata 2012, 68–69).

3. In part five of *The History of Sexuality, Volume One*, Foucault discusses the political changes that occurred in Europe beginning in the nineteenth century that played a role in changing the West's definitions of power and authority. A movement away from political structures of the Middle Ages toward the nation-state created "wars [that were] no longer waged in the name of a sovereign who must be defended; [they were] waged on behalf of the existence of everyone." He explains: "The new procedures of power that were devised during the pre-modern period and employed in the nineteenth century were what caused our societies to go from '*a symbolics of blood* to *an analytics of sexuality*'" (Foucault, 1990, 148, emphasis in original). In premodern Europe, governments had the "right" to "take life and let live," as seen by practices such as the death penalty. As Foucault further explains, as the power of the sovereign over life waned at the end of the seventeenth century, "crimes" such as suicide began being seen less as crimes against the king (who alone had power over life on earth) or God (who condemns suicide as sin) and more as the individual's "right to die." The right to life thus moves from the purview of the sovereign to the right of the individual (see Foucault 1990, 137–139).

References

Arendt, Hannah. 2007a. "Free and Democratic." In *The Jewish Writings*, edited by J. Kohn and Ron H. Feldman, 230–232. New York: Schocken Books.

Arendt, Hannah. 2007b. "To Save the Jewish Homeland." In *The Jewish Writings*, edited by J. Kohn and Ron H. Feldman, 388–401. New York: Schocken Books.

Beit-Or, Meital Yasur. 2006. "Ethiopians Outraged over Blood Disposal." *ynetnews.com*. http://www.ynetnews.com/articles/0,7340,L-3322247,00.html.

Ben-Eliezer, Uri. 2008. "Multicultural Society and Everyday Cultural Racism: Second Generation of Ethiopian Jews in Israel's 'Crisis of Modernization'." *Ethnic and Racial Studies* 31(5): 935–961.

Chehata, Hanan. 2012. "Israel: Promised Land for Jews…As Long as They're Not Black?" *Race and Class* 53(4): 67–77.

Hanna, David and Richard Lynn. 2007. "Intelligence Differences between European and Oriental Jews in Israel" [In English]. *Journal of Biosocial Science* 39(3): 465–473.

Elias, Nelly and Adriana Kemp. 2010. "The New Second Generation: Non-Jewish Olim, Black Jews and Children of Migrant Workers in Israel." *Israel Studies* 15(1): 73–94.

Flum, Hanoch and Rachel Gali Cinamon. 2011. "Immigration and the Interplay among Citizenship, Identity and Career: The Case of Ethiopian Immigration to Israel." *Journal of Vocational Behavior* 78(3): 372–380.

Foucault, Michel. 1990. *The History of Sexuality, Vol. 1: An Introduction*, Vintage Book ed. New York: Vintage.

Goldblatt, Hadass and Sara Rosenblum. 2007. "Navigating among Worlds: The Experience of Ethiopian Adolescents in Israel." *Journal of Adolescent Research* 22(6): 585–611.

Haynes, Bruce D. 2009. "People of God, Children of Ham." *Journal of Modern Jewish Studies* 8(2): 237–254.

"Israel." 2012. In *CIA World Factbook*. https://http://www.cia.gov/library/publications/the-world-factbook/geos/is.html: The Central Intelligence Agency.

Lyons, Harriet D. and Don Seeman. 2012. "Who Is a Jew?" *Anthropology and Humanism* 37(2): 259–261.

Mualem, Mazal. 2013. "Arab-Israeli Mps to Get in the Game." In *Al-Monitor*. http://www.al-monitor.com: Al-Monitor.

Nesher, Talila. 2013. " Israeli Minister Appointing Team to Probe Ethiopian Birth Control Shot Controversy." *Haaretz*, February 29, 2013.

Offer, S. 2007. "The Ethiopian Community in Israel: Segregation and the Creation of a Racial Cleavage." *Ethnic and Racial Studies* 30(3): 461–480.

Santamaria, Ulysses. 1993. "Ethiopian Jews in Israel." *Dialectical Anthropology* 18(3/4): 405–412.

Shohat, Ella. 1988. "Sephardim in Israel: Zionism from the Standpoint of Its Jewish Victims." *Social Text* 19/20: 1–35.

Walsh, Sophie D. and Rivka Tuval-Mashiach. 2012. "Ethiopian Emerging Adult Immigrants in Israel: Coping with Discrimination and Racism." *Youth and Society* 44(1): 49–75.

Weil, Shaiva. 2011. "Israel's Ethiopian Jews Face Challenges." Published electronically March 16, 2011. http://www.isn.ethz.ch/isn/Digital-Library/ISN-Insights/Detail/?lng=en&id=127682&contextid734=127682&contextid735=127094&tabid=127094.

Weingrod, Alex and André Levy. 2006. "Pardoxes of Homecoming: The Jews and Their Diasporas." *Anthropological Quarterly* 79(4): 691–716.

Zegeye, Abebe. 2004. "The Construction of the Beta Israel Identity." *Social Identities* 10(5): 589–618.

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