

TOWARDS A CRITICAL PHENOMENOLOGY OF BORDERS AND MIGRATION

INTRODUCTION TO THE THEMED ISSUE

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In June 2022, as we prepare to publish this themed issue, over 6.6 million Ukrainian refugees have fled their country after the Russian invasion on February 24 and the ongoing Ukrainian-Russian war. In total, over eight million Ukrainians have fled their homes, the majority of which (90%) are women and children, as many men have remained in Ukraine to fight (UNCHR; UNCHR Data Portal). Moreover, many Ukrainians already living abroad, both men and women, returned to Ukraine in the early days of the war “against the current” of refugees, so to speak, to fight or in other ways help the resistance (The Economist 2022a). After months of fighting and what is hailed as heroic resistance from the Ukrainian people, the war continues and has entered a phase described by NATO’s Secretary General as a war of attrition, i.e., a dragged-out war where even the victor is likely to suffer considerable losses (Al Jazeera 2022; Pifer 2022; The Economist 2022b). After almost four months of war, many refugees are starting to return: over two million Ukrainians who fled the country early after the invasion have returned to their country now that cities such as Kyiv are considered safer (BBC 2022).

While the suffering of the Ukrainian people is undeniable, and the Russian invasion brutal and unjust, the Ukrainian refugee crisis has had the surprising effect of bringing to light, in plain sight for everyone to see, the astonishing difference between how Western countries are handling the Ukrainian refugee crisis and other recent or ongoing crises, such as the 2015 Syrian refugee crisis. European countries and the US have responded to the Ukrainian crisis in an almost unprecedented manner. On March 2, 2022, less than a week after the Russian invasion, the EU activated its “Temporary Protection Directive,” an “exceptional measure” aimed at providing “immediate and temporary protection in the event of a mass influx or imminent mass influx of displaced persons from non-EU countries who are unable to return to their country of origin” (European Commission, n.d.). The Directive was adopted in 2021 as a response to the war in the former Yugoslavia but had never been activated until March 2022. Its activation aims “to offer quick and effective assistance to people fleeing the war in Ukraine,” and obliges EU countries to grant any Ukrainian national a list of (temporary) rights in order for

them to enjoy temporary protection, including a temporary residence permit, the right to move freely in and between EU countries, the right to work, access to housing, social welfare, medical care, and education for persons under 18 (European Commission, n.d.). In other words, all “Ukrainian nationals, as visa-free travelers, can choose the EU member state in which they want to exercise the rights attached to temporary protection, allowing them to join family and friends in various EU countries” (Rush 2022). As for the US, the Biden Administration’s response to the Ukrainian crisis and Ukrainian refugees has taken the form of massive financial aid, as well as a commitment to “welcome up to 100,000 Ukrainians and others fleeing Russia’s aggression through the full range of legal pathways” (The White House 2022).

As philosopher Serena Parekh puts it in a March 2022 interview in which she compares the treatment of Ukrainian refugees to that of Syrian refugees in 2015:

European countries seemed prepared to welcome [Ukrainian] refugees from the very start. A day after the invasion, there were already reception centers set up on the border with Ukraine facilitated by Poland’s government. There were also aid donations, while the US military helped with logistical support.

Moreover, as Parekh points out, this was a response with an overwhelming and political consensus behind it, being supported even by “anti-immigrant” towns and politicians. By contrast, while the 2015 refugee crisis may have started with sympathy toward Syrians and other refugees from Africa and the Middle East arriving on European shores after crossing the Mediterranean in small boats, the sympathy “very quickly . . . turned to hostility,” the large numbers of refugees being considered “unprecedented and impossible to deal with.” Of course, the welcoming of Ukrainian refugees has shown that this claim was simply false. *Serena Parekh’s latest book, No Refuge: Ethics and the Global Refugee Crisis (2021), is reviewed in this issue.*

As Francesco Rocca, president of the International Federation of Red Cross and Red Crescent Societies, has pointed out, the difference in treatment reveals a “double standard” in how Europeans deal with people seeking protection. While “ethnicity and nationality should not be a deciding factor to saving life,” as Rocca puts it, this seems to be precisely what is happening (Lederer 2022). The difference in treatment indeed seems to reflect an underlying racism informing Western countries’ refugee policies and attitudes toward displaced people. In a *Guardian* article that went viral, Moustafa Bayoumi (2022) compiled examples of the disturbing and sometimes openly racist media coverage of the crisis in its early days. For example, CBS news correspondent Charlie D’Agata pointed out, on air, that Ukraine “isn’t a place, with all due respect, like Iraq or Afghanistan, that has seen conflict raging for decades,” and described a Ukrainian city as “a relatively civilized, relatively European—I have to choose those words carefully, too—where you wouldn’t expect that, or hope that it’s going to happen.” Bayoumi’s conclusion was harsh, judging that the outpouring of solidarity for the Ukrainian people is not as much about solidarity for the oppressed as about *tribalism*, emphasizing that “a pernicious racism . . . permeates today’s war coverage and seeps into its fabric like a stain that won’t go away. The

implication is clear: war is a natural state for people of color, while white people naturally gravitate toward peace” (Bayoumi 2022).

Racism and “tribalism” can also help explain, as formulated in a report by the Global Detention Project, “why some of those fleeing Ukraine—in particular, nationals from Africa, Asia, and the Middle East—are not getting the same generous treatment as the citizens of Ukraine” (Global Detention Project 2022). What’s more—and beyond incidents of openly racist language—the *amount* of media coverage of the Ukrainian crisis says something about how displaced people are divided into deserving and undeserving refugees. An annual report from the Norwegian Refugee Council on the world’s “most neglected refugee crises” found that, for the first time, the ten most neglected refugee crises in the world are all in African countries (Africa News 2022). As one newspaper puts it, the number of media articles in the English language covering the Ukrainian crisis in its three first months—85,000—is three times as high as the total number of articles covering the crisis in Burkina Faso during the entire year of 2021 (Matre 2022).

The crisis in Ukraine highlights a fact that, for us at *Puncta*, was one of the main motivations behind this themed issue: migrants—border-crossers, internally displaced, asylum-seekers, economic migrants, climate refugees, documented and undocumented migrants, voluntary and involuntary migrants—find themselves at the intersections of some of our time’s most pressing issues and questions. In the life of the migrant, major crises like war, poverty or climate change often intersect with structural issues and injustices pertaining to global capitalism and capitalist production, racism, gender, class, settler colonialism, and post-coloniality. Moreover, the sheer numbers of migrants make migration one of the most urgent questions in our time. Today, there are more international migrants than ever before: the Ukrainian crisis only adds to the already astronomical figure of 281 million international migrants worldwide in 2021, or 3.6 percent of the world’s population (IOM 2021). Millions of these are displaced persons: migrants who do not move because they want to, but because they must, including refugees and asylum seekers. In 2021, this number topped 89.4 million, and includes 26.4 million refugees, 4.1 million asylum seekers, and 55 million internally displaced people (IOM 2021, 4).

What Can Critical Phenomenology Offer?

As a journal committed to phenomenology not as a mere descriptive practice, but as a critical interrogation of the concrete conditions that structure lived experience, thinking, and the enactment of critique itself, *Puncta* hopes with this themed issue to cultivate a space in which phenomenology responds to and confronts highly timely and urgent questions concerning borders and migration.

For a long time, philosophical discussions about migration—what has come to be known as the ethics of migration—has to a large extent been dominated by a moral-political philosophical debate concerning the question of immigrant admissions. As Christopher Heath Wellman (2020) puts it, “the central debate in [the area of the

morality of immigration has been] whether states have the moral right to exclude potential immigrants” (Wellman 2020). In recent years, however, this philosophical debate has been increasingly challenged by various non-ideal, decolonial, and feminist approaches to the ethics and politics of immigration. The newer contributions have in common that they aim to be more attuned to migrants’ concrete realities and lived experiences. They are moving away from classical moral-political theory, they are more interdisciplinary in nature and inclusive of empirical research, and they challenge the dualist framework that opposes human rights to state sovereignty.

In this vein, Serena Parekh (2014, 2017) criticizes the philosophical debate concerning refugees for only being concerned with refugees who are eventually admitted (*de jure* refugees) and neglecting the large majority of displaced persons (*de facto* refugees) who will most likely never be admitted to a new country—a fact that motivates her defense of an extended and temporary “ethics of displacement.” Ernesto Rosen Velásquez (2017) argues that the question of immigration cannot be addressed properly without criticizing the violent and colonial history and nature of the state. Alison Jaggar (2020) similarly argues that what she calls “the Anglo-American debate on migration justice” is systematically biased because it “ignore[s] or misrepresent[s] its colonial past and possibly neocolonial present” (89). Other examples of scholars representing the new turn in the philosophical literature on migration are Natalie Cisneros (2013), Aytén Gündoğdu (2015), Zahra Meghani (2016), Eduardo Mendieta (2011), José Jorge Mendoza (2017), Amy Reed-Sandoval (2015; 2020), and Carlos Sánchez (2011).

This shift is of great importance because it challenges unquestioned biases in the established political philosophy of migration and, more specifically, criticizes philosophical approaches to migration-related issues that eclipse the voices of migrants themselves and hence contribute to rendering those voices irrelevant to the ethics and political philosophies of migration. As Aytén Gündoğdu (2015) argues, migrant speechlessness, in the sense of one’s speech losing a platform and losing its relevance, is “one of the most fundamental forms of rightlessness” today (21). If a philosophy of immigration is to challenge this speechlessness instead of contributing to its consolidation, it must be rooted in a commitment to start from migrants’ own voices. *Aytén Gündoğdu has also contributed with an article to this themed issue: “Border Deaths as Forced Disappearance: Frantz Fanon and the Outlines of a Critical Phenomenology.”*

In the wake of this shift in the philosophical literature on migration, we at *Puncta* wish to highlight the need for a continued systematic reflection on the lived experiences of migrants in relation to the political and social structures that inform these experiences. We do so with this themed issue, *The Critical Phenomenology of Borders and Migration*. Moreover, by claiming that critical phenomenology can be a fruitful approach to this work, we insist that the complex lived experience of migrants should not only be acknowledged and included in the form of examples and anecdotes, but systematically integrated and interrogated in philosophical conversations on migration-related matters. The hope is that critically attuned phenomenological analyses of migrant lived experiences may contribute to offer new knowledges indispensable for understanding what is actually at stake—philosophically, politically, ethically, and existentially—with the particular situations that

migrants, border-crossers and border-dwellers continually negotiate. We hope, in short, that a critical phenomenology of borders and migration may contribute to shedding some light on: visible and invisible social, economic and political structures conditioning migrants' lives; the particular kinds of harm that migrants and refugees are subject to; how these structures and these harms are related to larger questions concerning identity, nationality and belonging in the twenty-first century; and on the value as well as the limits of liberal notions of rights and justice to capture moral, political and ethical challenges related to migrants' situation.

Lastly, as Lisa Guenther (2019a) emphasizes in her account of the critical phenomenological approach, this work also has a transformative ambition, and does not aim to stay “neutral” at any costs. The work of describing the relations between lived experiences and the world, between the mind and the material structures that inform and are informed by it, has the potential to transform, through that very process of description, how we see ourselves, others and the world itself.

Contributions to the Themed Issue

The issue's first article is Ayten Gündoğdu's “Border Deaths as Forced Disappearance: Frantz Fanon and the Outlines of a Critical Phenomenology.” Here, the author raises the question of “the regime of impunity surrounding migrant deaths and disappearances resulting from border control practices,” and asks how we can best account for this particular regime (12). Emphasizing the racialization of labels such as “illegal,” “unauthorized,” and “migrant,” Gündoğdu argues that accounting for the violence of border regimes requires interrogating, on a more fundamental level “the impact of racism and racialization, shaped by histories of slavery, colonialism, and imperialism, on contemporary migration policies.” The special contribution of this article is to rethink racialized border deaths in terms of “forced disappearance”—a notion that, as the author herself points out, tends to be associated with military dictatorships, but that she “extend[s] . . . to border control policies that push migrants beyond the pale of the law, make it difficult to find out about their fates or whereabouts, and render their lives disposable” (13). More specifically, Gündoğdu argues that “the term ‘forced disappearance’ offers a much-needed counter to the euphemism ‘missing migrants,’ which obfuscates the problem and displaces the question of state responsibility” (18). Analyzing the phenomenon of “forced disappearance” through the work of Frantz Fanon, Gündoğdu claims that “Fanon's work can help us examine how border enforcement incorporates and refines certain elements of colonialism—i.e., spatial compartmentalization, immobilization, lawlessness, and racialized violence—as it substitutes the ‘migrant’ for the ‘native’” (21).

In the second article, “Illegal Skin, White Mask: A Critical Phenomenology of Irregular Child Migrants and the Maintenance of Whiteness in the United States,” Sierra Billingslea reflects on the situation of undocumented child-migrants in the US, who, under the Trump administration, were separated from their parents and held in cages. Notably, she looks

at these experiences through the lens of “Whiteness as Property” and the protection of “White Space” as it appears in the works of Cheryl Harris (1993) and Lisa Guenther (2019b). In a reflection on the “adulthood” of Black and Brown children—how they tend to be “perceived as more adult than their White peers” (49–50)—Billingslea argues that there is a mutual contradiction between the notion of the Child as a symbol of White innocence and the (racialized) Illegal Immigrant who is always already guilty. This divided perception was threatened by images of migrant children emerging during the Trump administration, triggering “two opposing emotional scripts” and threatening the idea of “American Niceness” (50–51). Billingslea’s argument, however, is that instead of disrupting the “schemas of Whiteness,” the child migrants were instead “subsumed into the project of Whiteness” through masks of whiteness allowing them to keep representing “The Child,” and thereby rendering the child migrant regime “digestible by the emotional economy” (56).

Third, Carlos Sánchez offers a phenomenological analysis on what he calls “Undocumented Immigrant Reason,” which is a “sort of historical reason grounded on undocumented immigrant life” (61). Drawing on Amy Reed-Sandoval’s (2020) notion of the “socially undocumented,” Sanchez argues that undocumented immigrant reason is not only a way of thinking or being in the world of people who, juridically speaking, are undocumented immigrants, but also “those who are thought to be, seen as, or treated as though they are residing in a country without legal permission, documentation, or right, even though they may very well have such legal right,” or again, “those who live *a certain kind of life*, one that reflects the ‘undocumented immigrant experience’” (61; emphasis in original). Grounding his reflection in personal descriptions of life growing up among undocumented immigrants in California, Sanchez proceeds to a description of “categories of undocumented immigrant reason”: *Journeying, Crossing/Nepantla, Uncertainty/Zozobra, Nostalgia, and Return*.

Of particular interest is perhaps Sanchez’s emphasis on nostalgia and longing for return as central aspects of undocumented immigrant reason. As he puts it, the harsher realities of undocumented immigrant existence—uncertainty, hostility, various double binds, hard work

is tolerated because the nostalgia for the origin is greater than the suffering of the present. The world is seen through this *longing: I will do the hard, dirty, risky jobs that no one else will do because one day I will be done and I will go back home, even if I don’t know when that will be.* (68; emphasis in original)

As readers we can draw two questions from this analysis that go even beyond the author’s own argument concerning undocumented immigrant reason: (1) To what extent can *nostalgia*, often portrayed in the time of the alt-right as a reactionary sentiment with little political value neither as motivation nor as a form of resistance, be a legitimate or subversive reaction or motivation? (2) To what extent can *return*, the main ambition of anti-immigrant politics and often associated with inhuman and brutal force, also be a dream for the undocumented refugee, but often and paradoxically, unobtainable?

The last contribution to the themed issue is José Jorge Mendoza’s review of Serena Parekh’s latest book, *No Refuge: Ethics and the Global Refugee Crisis* (2021). This contribution

connects the philosophical discussion of migrants' situation to topics that have longtime been discussed in migration ethics, thus situating the phenomenological contributions of this issue within the larger theoretical framework of the philosophy and ethics of migration. Mendoza shows how Parekh's work represents a turn toward approaching the ethics of migration from the perspective of "structural injustice" as developed by Iris Marion Young (2011). Connecting Young's concept to the specific situation of refugees, Parekh describes structural injustice as an

injustice [that] stems from social structures, structures that constrain the opportunities of some while granting privilege to others, whether or not anyone desires or intends this outcome. Structural injustice can arise from the policies and the actions of thousands of individuals acting according to morally acceptable rules and norms. [Young's] insight is that large-scale processes in which individuals or collective entities seek to accomplish their legitimate goals can nonetheless result in unjust but unintended consequences when looked at structurally. (2021, 163)

As Mendoza emphasizes, Parekh shows how the injustices that refugees face are structural in this sense, i.e., they cannot be traced back to individual, blame-worthy actors or actions, but are deeply rooted in global social and political structures that tend to benefit some while disadvantaging others. However, for Young, this acknowledgement has consequences for how we can reconceptualize political *responsibility* as a response to such injustice, and more specifically concerning the temporality of responsibility. As Young (2006) herself puts it:

[t]he temporality of assigning and taking responsibility [in relation to structural injustice] . . . is more forward-looking than backward-looking . . . The injustice produced through structures has not reached a terminus, but rather is ongoing. The point is not to blame, punish, or seek redress from those who did it, but rather to enjoin those who participate by their actions in the process of collective action to change it. (122)

Both Parekh and Mendoza emphasize the need to rethink the temporality of responsibility as a consequence of thinking about injustices as structural, and emphasize a forward-looking temporality that should inform responses to what Parekh calls the global refugee crisis. Mendoza, moreover, pushes Parekh's argument into more well-established philosophical territories by arguing that responding to the refugee crisis understood as a structural injustice also would imply "advocating for open borders" (78).

Arguably, all the migrant experiences discussed in this themed issue, whether it is a question of refugees (Mendoza/Parekh), the impunity surrounding migrant deaths (Gündoğdu), the unjust treatment of migrant children (Billingslea), or the hardship characterizing undocumented immigrant lives (Sánchez), can be connected to issues concerning structural injustice. What emerges from the four contribution is a clearer picture that illustrates how different groups of migrants and undocumented immigrants—

or, as Sanchez puts it, “those who are thought to be, seen as, or treated” as such—experience and navigate different structural injustices, including, structural racism. A critical phenomenology of borders and migration is committed to paying close attention to these experiences, which help us better understand the complexity of the structures we are working with and within, and the directions in which they are to be transformed.

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BORDER DEATHS AS FORCED DISAPPEARANCES: FRANTZ FANON AND THE OUTLINES OF A CRITICAL PHENOMENOLOGY

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On February 6, 2014, around 400 migrants from West and Central Africa attempted to cross the Spanish border in Ceuta, a town near Morocco, by swimming around the Tarajal seawall. The Spanish border control officers responded to this attempt by shooting rubber bullets, smoke canisters, and detonator blanks, creating mayhem at sea and resulting in the drowning of fifteen migrants. According to the Spanish authorities, the lethal action was justified given the migrants' "belligerent attitude." The legal investigation of the case confirmed that conclusion, as the judge presiding in the case ruled that it was the migrants who placed themselves in harm's way by willingly "accept[ing] the risks of illegally entering Spanish territory" (Abad 2015).

The Spanish case illustrates that border enforcement has become increasingly lethal with the adoption of ever more restrictive policies and technologies of immigration control. According to a conservative estimate of the International Organization of Migration, over forty-nine thousand migrants have died as they tried to cross borders since 2014 (International Organization for Migration). States that routinely adopt lethal border control policies have so far remained unaccountable for their actions. This "international regime of impunity" goes hand in hand with an institutionalized indifference to the migrants who die or disappear in transit, as can be seen in the lack of any systematic effort to locate their whereabouts, recover remains, identify the dead, inform families, and have proper burials (Callamard 2017, 21).

How do we account for the regime of impunity surrounding migrant deaths and disappearances resulting from border control practices? To answer this question, we need to attend to the organizing principles of the nation-state system, particularly the norm of territorial sovereignty. Endowing states with a prerogative to control entry into their borders, this norm renders migrants suspected of "illegal" entry ineligible for even the most fundamental rights such as the right to be free from indefinite detention and arbitrary deportation (Gündoğdu 2015). But territorial sovereignty does not render every border-crosser equally vulnerable to arbitrary state violence. Terms such as "illegal" and

“unauthorized,” or even “migrant,” are labels reserved for racialized subjects crossing borders.¹ There is a need to understand how violence wielded in the name of territorial sovereignty targets certain categories of migrants by considering the impact of racism and racialization, shaped by histories of slavery, colonialism, and imperialism, on contemporary migration policies (Achiume 2019; Beltrán 2020; El-Enany 2020; Gutiérrez Rodríguez 2018; Mayblin 2018; Mayblin and Turner 2021; Mongia 2018; Walia 2021). We could recall the Tarajal massacre cited at the outset, particularly the Spanish authorities’ remark about the “belligerent attitude” of migrants who stormed to the beach in large numbers and tried to swim around the border. The Spanish authorities argued that they had to use anti-riot gear in order to “demarcate the border line in the water” in response to the migrants’ act that (in their eyes) violated the sacrosanct principle of territorial sovereignty (ECCHR 2019). Border-crossing in this case was deemed to be not only a breach of Spanish sovereignty, however, but also an act of “belligerence” because the subjects in question were perceived as suspicious and violent due to racialized assumptions about their identity and conduct; the fact that the act was collectively undertaken further fueled the perception. The Spanish authorities’ justification of their lethal action introduces us to a perceptual field saturated by racialized images, including the colonial representations of Africans as “savage hordes” innately disposed to violence.

This article aims to examine the racialized forms of violence enacted by contemporary border regimes by rethinking border deaths as “forced disappearances.” Within international human rights law, this term is used to describe state practices of arrest, detention, or abduction that make someone “disappear,” followed by a refusal to acknowledge the fate of that person. Although “forced disappearance” is often associated with military dictatorships, I extend it to border control policies that push migrants beyond the pale of the law, make it difficult to find out about their fates or whereabouts, and render their lives disposable. In the case of the Tarajal massacre, while the official death toll was fifteen, an unofficial estimate suggests that it was at least twice as high (Herman 2015). The bodies that were not recovered remain uncounted and unidentified. The authorities even failed to identify all the bodies that were recovered, burying them in potter’s fields without informing the families or conducting proper forensic investigation. Spain denied visas to the families who wanted to identify the bodies and participate in commemorative events (Bengoa 2017), and the legal investigation relied primarily on the testimonies of the Spanish officers and systematically set obstacles to survivors who wanted to appear in court (ECCHR 2019). The posthumous condition of rightlessness in the Tarajal case underscores that contemporary border control policies give rise to forced disappearance, as they place their targets outside the protection of the law and can even make them vanish without a trace, as if they never existed.

In thinking about border deaths as forced disappearances, I also move beyond the strictly juridical meaning of this term and foreground its *phenomenological* resonances to pay

¹ For an analysis of “illegal” as a racialized label in the United States, see José Jorge Mendoza (2016). For a similar argument about the racialized functioning of binary categorizations such as refugee/migrant and regular/irregular within the European context, see Tazreena Sajjad (2018).

particular attention to “the way other persons become visible to us, or cease to be visible to us” (Scarry 1985, 22). How does someone cease to appear as a living being with whom we inhabit the world? Through what kinds of processes do we fail to apprehend their killing as murder? Why are their bodies treated as inanimate things stripped of rights after death? Such questions demand a phenomenological inquiry into the conditions of appearance and disappearance, including the social structures, normative orders, and representational frameworks that make and unmake one’s relations to the world and other living beings.

To undertake such an inquiry, I engage with the works of Frantz Fanon and examine how borders establish racialized partitions among both the living and the dead. Because the perceptual field is saturated by racial schemas that regulate visibility, racialized others become subject to various forms of violence that shatter their intersubjective experience of the world as embodied beings and transform them into thing-like entities deprived of agency, presence, and rights. Forced disappearance, I argue, entails not only an obliteration of legal and political status but also the imposition of invisibility in an ontological sense. Fanon’s account of colonialism highlights that, within a perceptual field permeated by anti-Black racism, Black subjects are held captive to dehumanizing representations that deprive them of any individuality, treat them as mere specimens of a race, and render their very appearance suspect on the basis of their skin color. In a world that renders Black appearance “illegitimate,” the only “acceptable being” for Black subjects becomes “nonexistence, nonappearance, or submergence” (Gordon 2007, 11). If being is identical with appearance from a phenomenological perspective, in the sense that we become who we are by appearing to others who can testify to our existence in this world, then racialized subjects experience a form of forced disappearance as they are denied the right to appear and relegated to “a zone of nonbeing” (Fanon [1952] 2008, xii).

The article develops this argument as follows: First, I provide an overview of border deaths, focusing particularly on the differential allocation of rights, including the right to life, in a world of securitized borders. Second, I propose the concept of forced disappearance to capture state crimes that obstruct the movement of racialized others across borders, expel them from the world of the living, and justify their annihilation with impunity. Third, I examine with Fanon how certain elements of colonialism—spatial compartmentalization, immobilization, routinized violence, legalized lawlessness—reappear within border governance. These elements can help us understand how border controls render mobility an exclusive privilege of whiteness and subject racialized others to forced disappearance. Fourth, I turn to Fanon’s ([1952] 2008) analysis of racism—especially his concepts of “historical-racial schema” and “epidermal racial schema” (91–92)—in order to understand the differential vulnerability to death, injury, and disappearance at the border. In the fifth and final section, I build on Fanon’s critical insights into the functioning of law under colonial rule and examine how courts of law often bestow an aura of legitimacy to state violence wielded in the name of border control. For the most part, courts of law have also become sites of forced disappearance, testifying to the expulsion of racialized migrants from a world reserved as a privileged habitat for those eligible for rights, as evidenced by the Tarajal case.

In examining border deaths critically with the help of Fanon, I focus on the Euro-Mediterranean border regimes for two key reasons. First, the Mediterranean Sea has become “by far the world’s deadliest border,” with at least 22,748 migrant deaths recorded between 2014 and 2021 (Sunderland 2021). Second, the Mediterranean also invites us to situate the racialized violence of contemporary borders within the *longue durée* of colonialism, imperialism, and slavery, as emphasized by the recent efforts to rethink migration to Europe through the conceptual lens of “the Black Mediterranean” (Danewid 2017; Di Maio 2013; Murray 2021; Proglia 2021).

Fanon provides us with critical insights into the legal, political, social, and even ontological dimensions of forced disappearance as a problem of “racialized rightlessness,” to borrow a term from Lisa Marie Cacho (2012). But as I underline in the conclusion of this article, his work also cautions us against a death-bound understanding of Blackness and invites attention to various forms of struggle that strive to “create the ideal conditions of existence for a human world” (Fanon [1952] 2008, 206). What arises from an engagement with his works is a critical phenomenology that explores borders simultaneously as “death-worlds” (Mbembe 2019, 92) and as sites of “world-building” (Arendt [1958] 1998, 96) in which the meanings of “life,” “humanity,” and “rights” are continuously and resiliently reinvented.

I. Differential Allocation of Rights in a World of Borders

Since the late 1990s, states have adopted increasingly restrictive border control policies that have criminalized migration, militarized borders, and pushed migrants to make ever more perilous journeys (Weber and Pickering 2011). As a result, major migration routes such as the Central Mediterranean route stretching from the sub-Saharan Africa to Italy and the Sonoran Desert between Mexico and the United States have turned into zones of death and disappearance.² We have become accustomed to photos of capsized boats and body bags lined up on a Mediterranean beach, or news stories of migrants who died of hyperthermia or hypothermia on their way to the United States. But border control policies are much more lethal than what the media coverage of this problem suggests, and there is a need to move beyond these more familiar visions of death in order to understand the scope of the problem (Walia 2021, 107–08). In addition to the more visible deaths at key-border crossing sites, there are less publicized deaths that result from the enforcement of routine border control policies—for example, deaths in immigration detention centers, deaths that result from deportation decisions, or deaths connected to the refusal of asylum claims. I use the term “border deaths” to include all these deaths that result directly or indirectly from border enforcement, and not just the deaths that occur in transit, as is often

² For migrant deaths in the Mediterranean, see Maurizio Albahari (2015); for deaths on the US-Mexico border, see Roxanne Lynn Doty (2011).

the case in official counts.³ Additionally, there is a need to reconsider “death” beyond its physical meaning since contemporary migration controls also give rise to certain forms of “civil death,” which denotes being “dead” in the eyes of the law and losing one’s status as a rights-bearing subject (Dayan 2011, 44–45). Migrants forcefully “disappeared” by border control policies are subject to this kind of civil death, even in cases where they are not killed. We also see civil death in policies such as indefinite detention and arbitrary deportation that deny migrants even the basic protections associated with the rule of law.

Border deaths demonstrate that fundamental human rights are allocated unequally. Within a human rights framework, each human being is assumed to be entitled to a set of universal rights by the mere fact of their humanity. But territorial borders install hierarchical divisions within humanity, leaving migrants in an irregular status with a narrower set of rights that have only precarious guarantees.⁴ Even the right to life is not secured equally for all, as evidenced by the problem of migrant deaths. Whereas states take on far-reaching obligations to ensure the safety of those who have prior authorization to travel, they evade these obligations in the case of border-crossers cast as “illegal” (Spijkerboer 2017)—an increasingly racialized status, as I will discuss below.

The differential allocation of the right to life also goes hand in hand with the differential treatment of the bodies and remains of migrants (Alonso and Nienass 2016; De Léon 2015; Kovras and Robins 2016). In Italy, for example, the recovered bodies and remains are often photographed and given a code; they are then buried in graves marked with these codes, and in the absence of a database that connects the photos, numbers, and burial locations, it is very difficult for families to find these graves. There is also no institutionalized effort to collect DNA evidence for purposes of identification (Nadeau 2017). If “[o]urs is the age of necronominalism” (Laqueur 2015, 414), understood in terms of “the moral imperative to know the exact numbers and names of the dead” (413), migrant deaths, for the most part, appear to be a remarkable exception to this rule.⁵ The lack of proper burial in most cases indicates “a posthumous exclusion from the cultural and political order, an obliteration of personhood after death” (148).

The language used to describe migrant deaths often reflects the posthumous obliteration of personhood. For the most part, these deaths are treated as “accidents,” as can be seen in the frequent use of the term “tragic” in news accounts: Small, overcrowded, flimsy boats seem to be doomed to capsize with the gale-force of winds and crashing waves. It

³ For the latter, see the International Organization for Migration (n.d.), which tracks only “deaths of migrants, including refugees and asylum-seekers, who have died or gone missing in the process of migration towards an international destination.”

⁴ For an analysis that shows how the stratifications that borders establish within humanity render migrants in an irregular status ineligible for human rights, see Kesby 2012, Chap. 4. For an examination of these stratifications within the context of immigration detention and deportation, see Gündoğdu (2015), Chap. 3.

⁵ Thomas Walter Laqueur (2015) uses the term “necronominalism” to describe the normative urgency of naming and counting the dead since the beginning of the nineteenth century: “We live in an age of necronominalism; we record and gather the names of the dead in ways, and in places, and in numbers as never before. We demand to know who the dead are. We find unnamed bodies and bodiless names—those of the disappeared—unbearable” (366).

is difficult to think of criminal liability when an action is cast as an accident, especially one that results primarily from the desperation of those who are ready to risk everything, even their lives, for refuge or opportunity. Language itself becomes a means of disavowing responsibility and accountability—a site where migrants die or disappear once again.

The regime of impunity surrounding migrant deaths and disappearances has recently been challenged, however, to address questions of state responsibility and legal accountability. For example, in a 2017 report submitted to the UN General Assembly, Agnes Callamard, the then UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, argued that border deaths are “extrajudicial killings” (2017, 21). Criminal liability for these deaths, according to Callamard, lies not only with individuals such as smugglers and border control agents but also with states that have adopted “policies based on deterrence, militarization and extraterritoriality” (6). Another crucial effort in this regard is the dossier submitted in 2019 by two lawyers, Omer Shatz and Juan Branco (2019), to the International Criminal Court in order to hold the member states of the European Union accountable for border control policies in the Mediterranean and to prosecute them for “crimes against humanity.” Along these lines, several scholars and humanitarian practitioners have also adopted the legal concept of “forced disappearances” and argued that border control practices such as detention, deportation, and pushbacks are comparable to the strategies of deterrence, control, and terror that military dictatorships deployed to make dissidents “disappear” and deprive them of legal protections and rights.⁶

The aforementioned approaches have strategically mobilized the resources of international criminal and human rights law to address the problem of legal accountability in the context of migrant deaths and disappearances. In what follows, I join these efforts to rethink border deaths as “state crimes” and adopt “forced disappearance” as a conceptual lens that can help us attend to the different kinds of violence inflicted by lethal border policies (Cetti 2014, 5). As different from existing approaches, however, I do not use “forced disappearance” only in a juridical sense but also attend to the phenomenological resonances of this term in order to examine political, social, and ontological forms of forced invisibility and nonexistence that cannot be captured easily from a legal perspective. In fact, once reconsidered phenomenologically, “forced disappearance” urges us to think about existing legal frameworks, including human rights norms, much more critically, particularly to understand their limitations in providing migrants with robust guarantees of protection against arbitrary state violence. As the ruling of the judge in the Tarajal massacre highlights, law itself often participates in the justification of the violence that state agents use against migrants, sets obstacles to assigning responsibility for migrant deaths and disappearances, and leaves migrants in a condition of rightlessness in life and

⁶ Robin Reineke (2016) highlights that the families of disappeared migrants from Latin America use the term “*los desaparecidos*” and draws attention to the historical connections that the term invokes between disappeared migrants and the enforced disappearances that occurred throughout the second half of the twentieth century in Latin America. Making a similar argument, Emilio Distretti (2020) suggests that framing migrant deaths as “enforced disappearances” is an important move for assigning legal accountability to states. Estela Schindel (2020) makes a case for using this term for migrant deaths and disappearances in the Euro-Mediterranean region.

in death. Law's own complicity in the reproduction of a regime of impunity surrounding migrant deaths and disappearances urges us to critically examine law itself as a site of forced disappearance especially for racialized migrants.

II. Forced Disappearance: A Legal and Phenomenological Analysis

The term “forced disappearance” entered the human rights vocabulary particularly in the wake of the crimes committed by the military-authoritarian regimes of Latin America in the 1970s and 1980s. It refers to

the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law. (OHCHR n.d.)

While forced disappearance is often associated with extrajudicial killing and arbitrary detention, it cannot be reduced to either. In some cases, there might not be any killing, and the condition of rightlessness generated by forced disappearance exceeds the problem of arbitrary detention. As Andrew Clapham and Susan Marks (2005) highlight, forced disappearance exposes its victims to “*the possibility* of being seriously harmed or ultimately killed,” and that possibility results from the loss of legal status, expulsion from political community, and banishment to “a limit zone between life and death” (131–32; emphasis in the original).

It is in this sense that we can speak of forced disappearances in the case of border control practices such as the interception of migrant boats in the Mediterranean by European states and the return of migrants to detention centers in countries such as Libya. Such practices place these migrants outside the protection of the law, make it difficult to locate their whereabouts, and put them at risk of injury and death. Given the crucial importance of language in shaping what we see and how we see, the term “forced disappearance” offers a much-needed counter to the euphemism “missing migrants,” which obfuscates the problem and displaces the question of state responsibility.⁷ It also allows us to consider the crimes and harms of border control policies beyond the migrants directly affected by them. In cases of forced disappearance, “victim” is defined not only as the disappeared person but anyone “who has suffered harm as the direct result of an enforced disappearance,” which would allow migrants’ families, among others, to demand investigations and seek restitution and reparations (OHCHR n.d.).

⁷“Missing migrants” is the euphemism preferred in international circles, as it is used by major organizations such as the International Organization for Migrants and the International Committee of the Red Cross.

By reframing border deaths as forced disappearances, my goal is not, however, to use this term only in its legal sense, as others have successfully done.⁸ I suggest that we rethink the term primarily in a phenomenological sense to inquire into why forced *disappearance* amounts to *non-being* (in legal, political, social, and even ontological ways) and how racial schemas govern the field of perception in a world of borders. Moreover, rather than appealing to law for the resolution of the problem, I argue for the need to approach existing legal frameworks critically. As Clapham and Marks (2005) underscore in their account of forced disappearance, “the reassertion of rights is insufficient unless accompanied by efforts to investigate the ways in which law may have helped to make possible the deprivation of rights in the first place” (122). In the case of migrant deaths and disappearances, it is ultimately law that has to settle whether state agents have used violence legitimately or arbitrarily, proportionately or excessively in enforcing the borders of the state. Each time courts of law declare violence wielded in the name of border control to be a legitimate enactment of sovereign power, they also become complicit in the perpetration of that violence with impunity. In thinking about law critically, I aim to draw attention to how the *force* involved in “forced disappearance” is often authorized by law.

To unpack these points briefly, a phenomenological perspective anchors itself in the world of appearances (*phainόμενα*, “things appearing to view”) and emphasizes the interchangeability of “being” and “appearance” for living, embodied, sensing beings (Rockmore 2017, 68; Schuhmann 2012, 675). As Hannah Arendt (1978) strikingly puts it, “just as the actor depends upon stage, fellow-actors, and spectators, to make his entrance, every living thing depends upon a world that solidly appears as the location for its own appearance, on fellow-creatures to play with, and on spectators to acknowledge and recognize its existence” (21–22). Arendt’s observation does not simply have epistemological consequences, highlighting how our sense of the reality of the world ultimately depends on the assurances we receive from other living things that what we perceive is also perceived by them and hence real. It also has crucial political and normative implications in its suggestion that living things appear to each other with the anticipation of eliciting from fellow creatures an acknowledgment of their distinctive existence. From a phenomenological perspective, the world is an “intermundane space (*l’intermonde*),” to use Maurice Merleau-Ponty’s ([1964] 1968) term, “where our gazes cross and our perceptions overlap” (48). This inter-subjectivity, or more precisely, inter-corporeality, is an ineliminable dimension of the constitution of the world, and it is the *sine qua non* of our being/appearing in this world.

In foregrounding the world of appearances as the primary site of inquiry, phenomenology also draws attention to the *conditions* of perception, including the social norms, historical contexts, and relations of power that continuously shape what we perceive and how we perceive.⁹ Fanon’s work deserves attention for its critical attention to the conditions under

⁸ Please see footnote 6 for the arguments of Distretti (2020), Reineke (2016), and Schindel (2020). For the legal argument, see also Alonso Gurmendi (2019) and John Washington 2021.

⁹ More recently, the term “critical phenomenology” has been used to describe efforts to examine “the constitutive social, political, psychological, economic, historical, and cultural dimensions of the phenomena under investigation” (Weiss 2018, 233). On the convergences and tensions between phenomenology and critical theory, see especially Gayle Salamon (2018).

which some living beings are banished from the inter-corporeal world of co-appearance and co-perception described above. For example, in his account of the racial schemas that permeate the field of perception, Fanon ([1952] 2008) emphasizes how “the white gaze” unmakes the reciprocity or inter-subjectivity that Merleau-Ponty deems to be implicit in the very fact of belonging to a world in which every living being is both a sentient subject and a sensed object (90).¹⁰ Racialized bodies targeted by “the white gaze” are reduced to phobic objects on the basis of negative representations attached to the color of their skin. Turned into thing-like entities bereft of any living presence, their appearance in the world is received and judged through racial schemas that deny to them the possibilities of individuating themselves through their interactions with the world and other embodied, sentient subjects. Within a racist social order, racialized embodiment is a form of visibility (even hyper-visibility) that is simultaneously an enforced invisibility to the extent that the meaning of one’s appearance/being is already determined before one does or says anything.¹¹ As I discuss below, border control policies that generalize about racialized others (e.g., “sub-Saharan Africans”) and render them ineligible for freedom of movement result in “forced disappearance” in this more phenomenological sense: they make their targets vanish not only from a juridico-political stage but also from a world in which they can elicit from others a “tacit acknowledgment” of their distinctive existence (Arendt 1978, 46).

This kind of violence is not accidental or incidental but rather endemic to systems that hierarchically stratify the living, and it is often sanctioned by law. As Fanon’s ([1961] 2004) analysis of French colonialism in Algeria makes it clear, within a social order in which racialized violence has become routinized, law itself is often reduced to a seal of approval (50). This conclusion can be extended to border deaths, as courts tend to uphold territorial sovereignty as a sacrosanct principle and shift culpability to migrants themselves for crossing borders without prior authorization. Rethinking border deaths as “forced disappearances” then also urges us to examine the ways in which law itself enables, condones, and legitimizes lethal violence enacted in the name of border control. Working with this phenomenological understanding of “forced disappearances,” I turn below to Fanon’s analyses of colonialism, racism, and legalized violence in order to discuss the regime of impunity surrounding border deaths.

III. Colonial Partitions and the Politics of Immobilization

Fanon’s ([1961] 2004) account of colonialism, particularly in *The Wretched of the Earth*, brings to view the spatial configuration of “a compartmentalized world” that colonial domination engenders. “The dividing line, the border” between the colonist sector and the colonized sector installs an “apartheid,” immobilizing the colonized and making sure that they “remain in [their] place and not overstep its limits” (3, 15). This border

¹⁰ For the reciprocity implicit in sensing and being sensed, see Merleau-Ponty ([1964] 1968, 130–55).

¹¹ For an account of why racialized hyper-visibility amounts to a form of invisibility from Fanon’s phenomenological perspective, see George Yancy (2005, 226–27).

establishes a relationship of “mutual exclusion” between the sectors of the colonists and the colonized, as it gives rise to fundamentally different socioeconomic, juridical, and normative orders (4). The colonist’s sector is one of affluence and extravagance, parasitic on the dispossession and destitution of the colonized. Besides this socioeconomic disparity, the border introduces us to “the barracks and the police stations” that maintain colonial rule (3). The police or the military become direct enforcers of law under colonialism, without any intermediaries between “the exploited and the authorities,” and they deploy “a language of pure violence” in order to keep the colonized under control (4).

Colonialism, for Fanon, transforms the subjects over whom it rules into rightless entities who can be subject to arbitrary rule and violence with impunity. It does that by establishing “a Manichean world” in which the colonized symbolize “absolute evil” and are declared “impervious to ethics” ([1961] 2004, 6). Since the colonized subjects do not belong to the same normative order with the colonizers, they “can be arrested, beaten, and starved with impunity;” moral principles such as “human dignity” are completely emptied of their meaning within this context (9). Even the most extreme forms of violence such as torture are legalized and normalized under these conditions; torture becomes, in effect, “a fundamental necessity” and “a way of life” under colonialism ([1964] 1967, 66). The colonial juridical order does away with the fundamental rights and basic protections associated with the rule of law, and it instead elevates “lawlessness, inequality, and multiple daily murder of humanness” to the status of “legislative principles” (2018, 434). Within this normative universe, even the massacres of the colonized subjects will not arouse any moral indignation ([1961] 2004, 47).

Fanon’s account of colonialism can provide crucial insights into the violent practices that contemporary border control policies entail (Proglia 2021). His analysis assumes a critical force especially in the wake of recent scholarship that has challenged the tendency to trace the origins of border control to the rise of the modern nation-state and urged us instead to look to the practices of immobilization and forced displacement that accompanied histories of slavery, colonialism, and imperialism.¹² More specifically, Fanon’s work can help us examine how border enforcement incorporates and refines certain elements of colonialism—i.e., spatial compartmentalization, immobilization, lawlessness, and racialized violence—as it substitutes the “migrant” for the “native.”

To revisit the Spanish-Moroccan border introduced at the outset of the article, Ceuta and Melilla, two Spanish enclaves located in North Africa, are the only land borders between the European Union and the African continent. These borders are heavily militarized especially because of the desire to maintain a racialized partition that is quite similar to the one under colonialism. In an interview with CBS (2019), a Spanish border

¹² For a critical overview of the connections between contemporary migratory phenomena and colonial histories, see Lucy Mayblin and Joe B. Turner (2021). For an illustration of these connections, see Gurminder K. Bhambra’s (2017) study of Europe’s response to the 2015 “refugee crisis,” which underscores the need to examine the entanglements of Europe’s cosmopolitan project with its colonial and imperial histories. See also Radhika Mongia’s (2018) analysis of migration control debates and policies within the British Empire for a genealogical account that uncovers the colonial origins of contemporary migration control technologies such as passports.

control officer confirms this desire, as he explains that the border marks “the difference between the Third World and the industrialized world.” Characterizing “the Third World” in terms of an absolute lack (of hope, food, and future) and Europe as a space promising “future, democracy, and liberty,” he reproduces the Manichean framework that Fanon criticized, overlooking that the prosperity of Europe entails the impoverishment of “the Third World” and that the border he guards can only be maintained through the day-to-day violation of democratic principles propounded by Europe.

The Spanish-Moroccan border also shows how contemporary migration control interweaves colonial techniques of immobilization that Fanon examined—policing, barbed wire—with new technologies such as motion sensors, heartbeat detectors, and cameras tracking body heat (CBS 2019). But the technological sophistication should not detract us from the cruel intentions built into the border fences in Ceuta and Melilla, manifested powerfully by their design. These three six-meter-high fences, equipped with anti-climbing grids, are “topped with barbed wire or even coils of razor blades,” which can cause injuries and death; in one case, a Senegalese migrant died due to a pierced artery (BBC 2018). The razor wire used in these fences is known as Concertina wire because it can be spooled like the small, accordion-like instrument it is named after. It is designed to terrorize, maim, disfigure, and kill, as callously advertised by one of the manufacturers: “Concertina wire has sharp blades which can slice deep into your flesh and cause fatal injuries sometimes” (HB Jinshi, n.d.). Spain’s socialist government declared in 2018 their intention to replace the razor wire with other measures that “are less bloody and more respectful of the integrity of the people,” according to a statement of the Spanish Interior Ministry (Hattam 2018). But even that declaration, moved by a purportedly humanitarian concern, stands as an unwitting admission that the European borders cannot be permanently sealed without violence; “less bloody” measures, after all, are not altogether bloodless.

Just like the colony in Fanon’s analysis, the Spanish-Moroccan border is placed under the lawlessness of an arbitrary military-police rule; as I discuss in the last section, to the extent that this lawlessness is legally regulated and sanctioned, it should not be understood as the absence of law altogether. The *Guardia Civil*, Spain’s para-military police force, cooperates with the Moroccan border guards to block migrants particularly from “sub-Saharan Africa” from entering Europe. Routinized violence that migrants face in the hands of Spanish and Moroccan officers—e.g., beating migrants with truncheons and wooden sticks, shaking the fence to force migrants to fall down, forcefully expelling even injured migrants who need medical assistance—have been extensively documented through video footage, migrants’ testimonies, and investigations by various organizations.¹³ As Fanon’s ([1964] 1967) account of colonialism reminds us, such acts of violence should not be seen as exceptional or incidental (66). Just as in the colony, within the context of contemporary border control, even the most extreme forms of violence—including those that amount to torture—have been routinized as a necessary component of keeping racialized others in their place.

¹³ See, for example, Council of Europe: Committee for the Prevention of Torture (2015).

Fanon's work urges us to understand forced disappearance beyond its legal sense in order to attend to practices that render certain categories of living beings superfluous, justify or disavow the violence inflicted upon them, and cast their deaths as foreordained (hence unnoteworthy) incidents. I draw this conclusion from Fanon's ([1961] 2004) claim that the colonized can be subject to violence with impunity because their lives are deemed to be of no substance: "You are born anywhere, anyhow. You die anywhere, from anything" (4). Because they are perceived to lead lives that seem to lack "the specifically human reality," to use a phrase from Arendt ([1951] 1968), they can be injured and killed with impunity (192). There was no "death" to be noted, accounted, mourned, and remembered since there was no "life" worthy of living, to begin with.¹⁴ Moving to the migration context, ordinary forms of violence that racialized migrants routinely face do not elicit any attention because they are perceived as destitute bodies reduced to mere existence. The lives they had in their countries of origin are deemed to lack those elements or traits characterizing a truly "human" life, according to the racialized images of "the Third World," particularly "Africa," as a place of absolute deprivation, devastation, and precariousness (Mbembe 2017, 48–53). Their dangerous journeys to Europe are taken to be an incontrovertible attestation to their desperation, and if they happen to die on their way, their deaths do not elicit any recognition or outrage because such perils are considered to be intrinsic risks of their own wretched lives. There may be some exceptions to this general trend, as we see, for example, in the case of shipwrecks with large numbers of fatalities spectacularized by the media. But any atrocity that cannot be spectacularized remains invisible within this framework, often normalized as an inescapable, albeit tragic, consequence of an inherited and insurmountable destitution. That invisibility, even when it does not amount to extrajudicial killing or torture, also deserves to be described as a form of forced disappearance, phenomenologically speaking. If all living beings are in need of others who can testify to their appearance/being in the world, various forms of legal, political, social, and cultural non-recognition that attend the deaths and disappearances of racialized migrants consign them to a state of oblivion, as if they have never appeared on the face of this earth.

IV. Racial Schemas as Conditions of Forced Disappearance

How is it possible for human beings to be turned into rightless entities to be maimed and annihilated with impunity? Fanon's ([1961] 2004) answer to this question can be found in his analysis of racism as an organizing principle of colonialism: "Looking at the immediacies of the colonial context, it is clear that what divides this world is first and foremost what species, what race one belongs to" (5). Racism is a ruling device that puts the humanity of colonized subjects into question, often animalizing them with "zoological" references (7). It also suspends their status as living beings inhabiting a world characterized by interrelatedness

¹⁴ See Judith Butler (2009) for the argument that "specific lives cannot be apprehended as injured or lost if they are not first apprehended as living" (9).

or inter-subjectivity, as it exposes them to a “suffocating reification” (Fanon [1952] 2008: 89). Phenomenologically speaking, embodied beings are not only sensed objects but also sentient subjects actively interacting with and responding to the world around them and other embodied beings. Within a racist social order, however, bodies at the receiving end of the “white gaze” are reduced to mere objects to be looked at through the racialized schemas that affix negative, mythologizing, and deindividuating representations to the color of their skin (Ngo 2017, 64–65). Regardless of what they do or say, they are perceived as “phobogenic” objects that exist solely for the gaze of the (white) other (Fanon [1952] 2008, 129). Building on Fanon, I suggest that border control policies occasion “forced disappearance” also because they hold racialized migrants captive to “a *visible appearance* for which [they are] not responsible” (18; emphasis in the original). Every move of these subjects is perceived as suspicious on the basis of “solely negating” representations that pre-determine the meaning of their existence and deny to them any possibility of responding to the world and individuating themselves through their actions (90).

Fanon examines the devastating effects of racism on the subjects who experience it on a daily basis by revisiting the key assumptions that phenomenologists make about the body schema. “Body schema” denotes a pre-reflective sense of one’s body and its capacities in relation to the world. As theorized by Merleau-Ponty ([1945] 2012), the concept foregrounds a reciprocal relationship (i.e., “co-existence” or “communion”) that exists between the body and the world (221): it is my situatedness in the world that allows me to have a sense of the powers and coordinates of my body, and it is my body that orients me to the world, allows me to perceive it, and endows me with a “habitual knowledge” of it (247).¹⁵ The body that we encounter in Merleau-Ponty’s account of the body schema seems to be truly at home in the world: it navigates its environment with ease, maintains its stability and unity in its dynamic interactions with the world, and summons its powers in response to the possibilities opening within its perceptual field. Only in the pathological cases that Merleau-Ponty discusses do we see a disruption of the kind of bodily awareness, coordination, and synthesis that he associates with the body schema. Fanon ([1952] 2008) has this phenomenological understanding of the body schema in mind as he gives the following example illustrating the pre-reflective and effortless movements of a body engaging in an everyday activity:

I know that if I want to smoke, I shall have to stretch out my right arm and grab the pack of cigarettes lying at the other end of the table. As for the matches, they are in the left drawer, and I shall have to move back a little. And I make all these moves, not out of habit, but by implicit knowledge. (90–91)¹⁶

¹⁵ For an explication of Merleau-Ponty’s concept of “body schema,” see Taylor Carman (2020, 100–04).

¹⁶ Fanon’s example is very similar to the one that Merleau-Ponty ([1945] 2012) gives in *Phenomenology of Perception*, as he describes the pre-reflective and non-discursive awareness of his own body as he stands in front of his desk and holds his pipe (102).

The example is followed by a brief summary of Jean Lhermitte's argument in *L'image de notre corps*, which was a crucial source for Merleau-Ponty: the body schema denotes "a slow construction of myself as a body in a spatial and temporal world," one that is "not imposed on me" from the outside but rather formed through "a genuine dialectic between my body and the world" (Fanon [1952] 2008, 91).¹⁷

Fanon takes issue with the generalizing assumptions that phenomenologists make about the body schema, as he examines how racism obliterates the mutually reinforcing relationship between the body and the world and points out that "[i]n the white world, the man of color encounters difficulties in elaborating his body schema" (90). To illustrate these difficulties, he recounts an encounter he had on the train with a little white boy who pointed to him and shouted to his mother in fear—"Look, a Negro! *Maman*, a Negro!" (91). The boy's frightened call to his mother interrupts Fanon's first-person experience of the world as a living, embodied subject, as it locks him out of the world and into his body, or more specifically, into an artificially constructed and denigrating representation of his body. As Fanon becomes aware of his own body through the third-person perspective of the white other, he finds his body torn asunder and pulled in different directions by its embodied experience of the world, the racist representation imposed on it forcefully from outside, and his own internalization of that representation.¹⁸ If the body is supposed to be "an expressive unity" (Merleau-Ponty [1945] 2012, 213)—coordinating movements, synthesizing sensory perceptions, and orienting the living being in the world—racism reduces that unity to ruins: "My body was returned to me spread-eagled, disjointed, redone, draped in mourning on this white winter's day" (Fanon [1952] 2008, 93). Fanon's account of the encounter with the white boy highlights how racial schemas permeate even the most mundane forms of sociability, obstruct possibilities of individuating oneself in the eyes of the others, and leave behind fragmented and undone object-like entities that are denied an equal share in the world of the living.

In light of this negating experience of the body within a racist social order, Fanon revises the phenomenological understanding of the body schema with two interrelated concepts: "historical-racial schema" and "epidermal racial schema." In the case of racialized subjects, the experience of the world via the body is significantly shaped and undermined by the mythologized narratives constructed "by the Other, the white man, who had woven me out of a thousand details, anecdotes, and stories" (Fanon [1952] 2008, 91). These artificial constructs, forming the historical-racial schema, make it impossible for racialized subjects to appear as individuals with distinct trajectories and perspectives. They are instead seen as representatives of a "blackness" that is inextricably tied to "cannibalism, backwardness, fetishism, racial stigmas, slave traders, and above all, yes, above all, the grinning *Ya bon Banania*" (92). Fanon's concept of "an epidermal racial schema" points to

¹⁷ For a comparative analysis of Merleau-Ponty's and Fanon's conceptions of "body schema," see Dilan Mahendran (2007).

¹⁸ Fanon's ([1952] 2008) declaration that "I existed in triple" underscores the fragmented experience of the body schema by racialized subjects (92). Lisa Guenther (2019) identifies the three subjects arising from this fragmentation as follows: "a living, embodied subject of experience; a degraded artifact of white history; and a third being whose skin is formed both in and against a white mask" (200).

the ways in which these historical representations become naturalized as they are affixed to the skin color. As Jeremy Weate (2001) puts it, “[t]he epidermal marks the stage where historical construction and contingency is effaced and replaced with the facticity of flesh” (174). “Epidermalization,” for Fanon, captures “the inscription of race,” understood as a biological or genetic fact, “on the skin” (Hall [1996] 2021, 342).¹⁹

Fanon’s ([1952] 2008) account of the historical and epidermal racial schemas suggests that one of the key harms of racism is “reification,” or being reduced to the status of thing-like entities on the basis of enduring phantasmic images produced by the white imaginary (89). Such objectification can also be understood as a form of “forced disappearance”—one that severs living beings from their embodied experiences of the world, holds their bodies captive to racist representations, and denies them any possibility of individuating themselves through a reciprocal engagement with the world and other living beings. To unpack this point, appearance and being are interchangeable from a phenomenological perspective, as discussed earlier; we become who we are as our appearance in the world is received and acknowledged by others who are also living, embodied subjects. But Fanon’s account of racism highlights how appearance can also amount to a form of disappearance when its meaning is already given on the basis of racializing and racist schemas; in that context, one’s “*appearance* undermines and invalidates all his actions” (189; emphasis in the original). George Yancy (2008) clarifies Fanon’s point, as he points out how the racist gaze locks the Black body into its exterior, hyper-visible surface and reduces it to “a single black thing, unindividuated, threatening, ominous, *Black*” (861). Objectification renders “the very material presence” of the Black body “superfluous,” as Yancy (2014) argues, assigning it a pre-determined, fixed meaning and refusing to see it in any other way (57).²⁰ Because the racist gaze stops at the very surface of a body and marks that surface with a stigma, it makes it impossible for those at its receiving end to appear in their distinctness (Mahendran 2007, 201; Schmitt 1996, 42). Objectification makes the living body of the embodied subject disappear from the face of the earth, in other words, and leaves in its place a figment of the white imagination.

How do we rethink racism in relation to border controls that have given rise to increasing numbers of deaths and disappearances? The history of immigration controls is notoriously racist, as illustrated by infamous examples such as the 1882 Chinese Exclusion Act in the United States, the 1901 “White Australia” policy, and the 1962 Commonwealth Immigrants Act in Britain (Fine 2016). It is tempting to think that the current system of passports and visas, working with the purportedly color-blind criterion of “nationality,” is a far cry from these old policies that explicitly discriminated on the basis of “race” and “ethnicity.” But as Fanon ([1964] 1967) reminds us, racism continuously reinvents itself and takes “more refined” forms especially in contexts where “vulgar, primitive, over-simple” forms of racism, which are “genotypically and phenotypically determined,”

¹⁹ “Epidermalization” also denotes the Black subject’s internalization of the racist representations of Blackness (Fanon [1952] 2008, xv).

²⁰ Alia Al-Saji (2010) makes a similar argument about why hypervisibility of racialized subjects entails invisibility in her analysis of veiled Muslim women: “Racialized bodies are not only seen as naturally inferior, they *cannot be seen otherwise*” (885; emphasis in the original).

cannot be as easily maintained (Fanon [1964] 1967, 32). Within the migration context, “nationality” continues to function in ways that are very similar to “race” and “ethnicity” in constructing “whiteness” as a privileged status granting its beneficiaries unhindered access to mobility and relegating racialized others to a status of “illegality” (Mendoza 2016).²¹ Technologies that are used to enforce border controls are not race-neutral either. New forms of epidermalization are introduced with “smart” border controls that incorporate biometric databases (of fingerprints, facial traits, DNA, iris and retinal scans, etc.), algorithmic assessments of risk and threat, thermal imaging, gesture and gait recognition technologies, and drone surveillance.²²

The racialized partition of the world, instituted by contemporary immigration policies and technologies, highlights that the historical and epidermal racial schemas that Fanon examined permeate the border as a perceptual field. Within the debates on migration in Europe, these schemas can be detected in the imagery of a “civilization” under threat by “savage” hordes on the move. Take, for example, the recent use of the term “*ensauvagement*,” which can be translated as “becoming savage,” within the French political circles. It was Marine Le Pen, the leader of the far right National Rally (formerly known as the National Front), who popularized this term to draw an association between an alleged rise in crime and “mass migration” (Lichfield 2020). In July 2020, the term moved to the mainstream, as the French Interior Minister, Gérald Darmanin, used it in the wake of a series of violent crimes that involved the youth from the *banlieues* (Berdah et al, 2020). The savage/civilized dichotomy at work in this recent political debate highlights that the mythologized narratives about “Blackness” have not ceased to exist with the formal end of colonialism. They continue to represent Black bodies as an undifferentiated mass, reduce them to phobic objects, and make it impossible for them to appear in their distinctness.

In many respects, *ensauvagement* names the racial anxieties that drive the border control policies of Europe and mark Black bodies as inherently threatening in ways reminiscent of the train scene recounted by Fanon (“Look, a Negro! Maman, a Negro!”). It captures the desire to close off the continent to migrants from African countries. This desire is manifest in the various cooperation schemes that the European Union (EU) devised in order to outsource migration control. Particularly since the 2015 Valetta Summit, which established the EU Trust Fund for Africa, the EU has been providing financial assistance to African countries in return for their cooperation in migration control. The EU and its member states have also signed bilateral agreements with countries such as Morocco, Libya, Mauritania, Nigeria, Senegal, and Ethiopia.²³ These efforts are often presented in a humanitarian light, as if the goal was to stop human trafficking and smuggling and

²¹ Mongia (2018) highlights that “nationality” was introduced as “an alibi for race” within the debates on migration in the British Empire (136). For a phenomenological account of racialized experiences of motility and mobility, see Sara Ahmed (2007).

²² For an analysis of how biometric immigration control operates in a racialized manner, see Simone Browne (2010). Tamara Vukov (2016) makes a similar argument about border control technologies that track and inscribe race through the use of biometrics and algorithms.

²³ See, for example, a list of the various migration cooperation arrangements at EU Trust Fund for Africa (n.d.).

protect human lives and rights. That framing conveniently overlooks how such cooperation schemes have criminalized most migration from Africa to Europe, created trafficking and smuggling businesses, and led to the use of more dangerous routes. These schemes, euphemistically defined as “mobility partnerships,” aim to immobilize migrants from “sub-Saharan Africa” in particular, as can be seen in the agreement that the European Union signed with Morocco in 2013. The partnership aims, among other things, to support Morocco “in implementing the return of third-country nationals, for the most part sub-Saharan Africans” (European Commission 2013, 19).

Within the European debates on migration, “sub-Saharan Africa” operates as a code phrase inextricably entangled with the colonial imagery of the “Dark Continent.” Far from a race-neutral, geographical designation, the term lumps together all of the countries in the African continent despite their numerous differences and excludes only the countries in North Africa whose inhabitants are perceived to be closer to whiteness (Ball, Lefait, and Maguire 2021, 5). Fanon’s account of racialized embodiment underscores the need to understand forced disappearance in relation to such racial schemas that immobilize migrants on the basis of reifying representations about who they are and where they come from. Turning borders into “dead spaces of non-connection” and “impassable places” (Mbembe 2019, 99) for racialized migrants, these representations make it impossible for them to appear with their individual life stories and distinct rights claims, as I discuss further below.

V. Law as a Site of *Forced Disappearance*

Phenomenology, as exemplified by Fanon’s critique of colonialism and racism, can help us attend to the different kinds of injury ensuing from forced disappearances within the context of border control. Differing from the earlier sections that focused more on unpacking the meaning of “disappearance” in the term “forced disappearance,” this final section turns to “force” to understand how law endows racialized violence with an aura of legitimacy. To this date, domestic and international courts have, for the most part, reaffirmed sovereign justifications of violence wielded in the name of border control and shifted culpability from states to migrants crossing borders without prior authorization. Purportedly acting in a color-blind fashion, they have also turned a blind eye to racialized attributions of this culpability, as they have insisted on authorized border-crossing as a condition of eligibility for rights and disregarded the de facto impossibility of such authorization in the case of migrants from certain regions and countries.

Fanon’s reflections on law under colonial rule offer critical insights into its complicity in the justification of racialized violence. In describing the crimes committed by colonial authorities, Fanon (2018) argues that they are “irremediably outside the law” (621). But this lawlessness should not be understood as a problem arising from the absence of law altogether. Instead, Fanon ([1964] 1967) draws attention to the monstrous peculiarities of colonial law itself as a mechanism that condones routinized perpetration of atrocities such as torture: “The police agent who tortures an Algerian infringes no law. His act fits

into the framework of the colonial institution” (Fanon [1964] 1967, 71). Fanon ([1961] 2004) draws attention to this legally tolerated regime of lawlessness also in his critique of the commissions established to investigate the crimes committed by colonial authorities: “In the eyes of the colonized, these commissions do not exist. And in fact, soon it will be seven years of crimes committed in Algeria and not a single Frenchman has been brought before a court of justice for the murder of an Algerian” ([1961] 2004, 50). This statement highlights how law participates in the production of a regime of impunity in which the colonizer is in effect exculpated of any wrongdoing.

For Fanon, colonial law is “a form of violence that legalizes, a form of legality that imposes violence,” as Gary Boire (1999) aptly puts it (588). To unpack this somewhat puzzling point, we can recall that, even within a non-colonial context, it is ultimately law that delineates the line between legitimate “force” enacted by state agents and illegitimate “violence” perpetrated by non-state actors, and it is again law that determines what would be an “excessive” or “disproportionate” use of force by state agents. Within a colonial context, law makes these determinations often without the conventional norms and principles associated with the rule of law (e.g., equality before the law, impartial application of the law). For example, in April 3, 1955, France declared in Algeria a state of emergency (renewed in 1956), justifying it as a response to the increase in bombings by the F.L.N. (*Le Front de libération nationale*), the main nationalist actor in the Algerian anti-colonial struggle. Law No. 55–385 allowed civil liberties to be suspended, removed restrictions on police power, and effectively sanctioned the routinized practice of torture in Algeria (Boire 1999, 587). This historical context illuminates Fanon’s distrust of legal procedures within the colony and illustrates that the regime of lawlessness within the colony is paradoxically maintained by law itself.

While colonial law exempts the colonizer from any culpability, it also presumes the colonized to be always “guilty” (Fanon [1961] 2004, 16). This presumption is justified on the basis of racist narratives such as “the North African criminality” thesis that depicts “the North African” as biologically disposed to criminality, impulsiveness, and aggressiveness (223). Within this pseudo-scientific theory, these traits were characterized as congenital defects tied to the underdevelopment of the cortex—a presupposition that reduces “the normal African” to “the lobotomized European,” according to Fanon (227). Colonial law sanctions this “racial allocation of guilt,” as it recognizes the colonized as legal subjects only to attribute criminal liability to them (Fanon [1952] 2008, 83).²⁴ As a result, the colonized are relegated to a “negative personhood” (Dayan 2011, 42); they are denied law’s protective elements such as the presumption of innocence and stand before it as always-already suspect and ineligible for rights. To the extent that colonial law works with racial schemas, it engages in the kind of reification that Fanon criticizes in *Black Skin, White Masks*: it turns racialized subjects into phobic objects to be surveilled, disciplined, and punished. Reproducing the white gaze, colonial law participates in “forced disappearance” in a phenomenological sense, as it makes the colonized vanish as living, embodied subjects

²⁴ As Al-Saji (2020) points out, Fanon’s account highlights how colonialism disavows its own guilt and projects it onto the colonized (212).

and leaves in their place the negating, dehumanizing representations produced by the white imagination.

Law operates in a quite similar fashion within the migration context, as exemplified by the 2020 ruling of the European Court of Human Rights in the case of *N.D. and N.T. v Spain* (ECtHR 2020). This case concerns the “pushback” of two migrants, N.D. from Mali and N.T. from Ivory Coast, by Spain to Morocco. N.D. and N.T. were part of a group of around six hundred migrants who tried to cross the Spanish-Moroccan border through the border fence in Melilla in August 2014. They succeeded in doing so, but the Spanish authorities immediately returned them to Moroccan authorities, without conducting any identification procedures or any assessment of their individual circumstances. The question before the Court was whether Spain violated the prohibition against collective expulsion and the right to effective remedy by depriving these migrants of the means to challenge their immediate return. In 2017, a Chamber of the ECtHR found violations on both counts, but then the case was referred by Spain to the Grand Chamber, which delivered a troubling ruling in February 2020. The Spanish pushback did not amount to a human rights violation, the Court concluded, because it was the applicants themselves who “placed themselves in an unlawful situation” as they “chose not to use the legal procedures . . . to enter Spanish territory lawfully” (§242). With this move, the Court created a disturbing exception and declared that only those migrants who entered a territory lawfully should expect protections against collective expulsion and access to effective legal remedy. The Court’s decision sanctions the rightlessness of migrants who cross borders without prior authorization, as it announces that their culpability disqualifies them from entitlement to human rights.

But the ruling is much more sinister in that it sanctions “racialized rightlessness,” in Cacho’s (2012) terms, in ways that bear disturbing resemblances to the functioning of law under colonial rule, especially when it comes to assumptions about culpability. In the guise of targeting conduct, the Court targets status; anyone who enters the European space without prior authorization is rendered an “unlawful” being, declared ineligible for rights (9). Within the context of the Spanish-Moroccan border control, “unlawfulness” is a racialized status that disproportionately befalls migrants from “sub-Saharan Africa” who are systematically denied access to legal entry procedures. This problem was even acknowledged by the representative of the United Nations High Commissioner for Refugees, Grainne O’Hara, who testified during the court proceedings that access to legal avenues is in practice available to only persons from the Middle East and North Africa and “virtually impossible for sub-Saharan Africans” (Forensic Architecture 2020).

Paying no heed to the overwhelming evidence documenting this problem, the Court instead presented the applicants as unreasonable subjects who could not produce “cogent reasons based on objective facts” for not following the legal procedures for entering Spain (European Court of Human Rights 2020, §229).²⁵ Lurking beneath that seemingly color-blind reasoning were the racialized assumptions about disposition to law-breaking,

²⁵ For the Court’s insistence on such “cogent reasons,” see also European Court of Human Rights 2020, §§210, 211, 218, and 220.

aggressiveness, and impulsiveness—not unlike the assumptions that underlie “the North African criminality” thesis criticized by Fanon, albeit this time attributing culpability to “sub-Saharan Africans”:

In the light of these observations, the Court considers that it was in fact the applicants who placed themselves in jeopardy by participating in the storming of the Melilla border fences on 13 August 2014, taking advantage of the group’s large numbers and using force (European Court of Human Rights, §231).

That conclusion, in its deceptively measured tone, calls into question the rationality of the migrants who would rather climb three fences, risk being injured by razor wire, and expose themselves to violence by border guards instead of completing the legal paperwork for asylum. Abou Baker Sidibé, a refugee from Mali and a filmmaker, questions that stupefying reasoning, as he responds to the claim that these migrants could have simply applied for asylum at a Spanish consulate such as the one in Nador: “When I hear such a claim . . . I can’t stand it! It is like making fun of people. *Making fun of the human beings that we are*. We are not even allowed to be in the region of Nador” (Forensic Architecture 2020; emphasis added). As this statement strikingly puts it, just as the colonized did not expect the commissions and courts established by the colonial power to deliver justice, migrants who are regularly subject to racism at the border have no such expectation.

This recent case demonstrates the ways in which law itself becomes a site of forced disappearance in the migration context, rendering racialized migrants ineligible for rights, closing off avenues of redress, restitution, and reparation, and relieving states of any legal responsibility for violent practices of border enforcement. Law is complicit in forced disappearance also in a much more phenomenological sense: reproducing the racial schemas that permeate the perceptual field, it declares nonwhite (especially Black) migrants to be inherently suspicious and culpable. The mere act of crossing a border becomes perceived as a belligerent act that can justify even the most disproportionate use of force by state agents, as illustrated by both the Tarajal case discussed at the outset and the ECtHR case examined in this section. Given this problem, we cannot simply appeal to law to remedy the problem of border deaths. Fanon’s analysis highlights that lawlessness was sanctioned by law itself under colonial rule; similarly, the regime of impunity surrounding border deaths has been, for the most part, upheld by existing legal frameworks. Lawlessness, which exposes racialized subjects to violence with impunity, goes hand in hand with a certain form of “hyper-legality” that generates an ever-expanding repertoire of legal formulas invented to evade human rights and the rule of law—even the basic premise of the equality of all persons before the law (Dayan 2011, 190–91). What we need is nothing less than a radical critique that carefully examines how law itself becomes complicit in the racialized governance of borders, and Fanon’s work offers crucial insights in this regard as it invites us to think about the numerous ways in which the operations of colonial law resurface within the migration context.

Conclusion

This article makes a case for rethinking Fanon's work in response to contemporary border control policies, particularly the problem of migrant deaths and disappearances. I argued that Fanon's analysis of colonialism, racism, and law provide critical insights into the legal, political, social, and ontological forms of non-existence engendered by racialized migration controls. The term "forced disappearance" offers a critical lens for understanding this problem, especially when reinterpreted beyond its legal meaning and in the light of Fanon's critical engagements with the phenomenological tradition. Fanon's account of racialized embodiment suggests that a much more fundamental type of forced disappearance occurs when racial schemas render nonwhite (especially Black) bodies hyper-visible as phobic objects, deprive them of their living presence as embodied subjects navigating and inhabiting the world with other living beings, and lock them into dehumanizing representations that undermine their efforts to individuate themselves and pursue their distinct life trajectories. Forced disappearance, understood in terms of an objectification inflicted by the white gaze, can also occur in the legal domain that is supposed to be a site of remedy and redress. As Fanon's account of colonialism highlights, the operations of law are not immune to racial schemas and can often reproduce them in its determinations of culpable conduct and entitlement to rights.

One of the most fundamental harms inflicted by the racialized partitions of the world then is the transformation of certain categories of living beings into object-like entities. But Fanon ([1961] 2004) also emphasizes that the success of this operation is by no means certain to the extent it is always subject to contestation by those reduced to the status of things. As he puts it in the context of French colonialism in Algeria, "the colonist achieves only a pseudo-petrification," which is continuously threatened by the resistant acts of the colonized (17). It is the struggles of those subjects who refuse to be reified, petrified, and eradicated that carry the fragile promise of "the birth of a human world, in other words, a world of reciprocal recognitions" ([1952] 2008, 193).

One key example of such "world-building" (Arendt [1958] 1998, 96) are the numerous struggles waged by the families of migrants subjected to forced disappearance by border control policies. We can think of, for example, the several organizations established by the Tunisian families of disappeared migrants (e.g., *La Terre Pour Tous*, *Les Mères des Disparus*) (Souiah 2019). With their sit-ins, demonstrations, and petitions, these families contest the regime of impunity surrounding migrant deaths and disappearances and draw attention to the racialized governance of borders. In a petition submitted to the European Union in 2013, for example, Tunisian families highlight the European border policies that push non-European, non-white migrants to ever more dangerous journeys: "Our sons and daughters . . . left crossing the Mediterranean in the only way allowed to them, namely on small boats, as European policies prevent Tunisians to take a plane or a liner boat with the same freedom allowed to European citizens when they come to our country" (Forum Italo Tunisino 2013). Such efforts also challenge states' efforts to make these migrants disappear without a trace. Pushing states to recognize these migrants as "legal subject[s] with rights that include identification, return, burial, and memorialization," they question

the assumption that those who have been forcefully disappeared are banished from the world of the living—stripped of their presence, agency, belongings, and rights (Rygiel 2016, 549).

To conclude, rethinking border deaths as forced disappearances, with the help of Fanon, draws attention to not only the routinized efforts to immobilize, petrify, and obliterate racialized others but also the struggles that vigorously contest such projects of racialized annihilation. As Achille Mbembe (2017) puts it, we owe to Fanon “the idea that in every human subject there is something indomitable and fundamentally intangible that no domination . . . can eliminate, contain, or suppress, at least not completely” (170). The struggles arising from migrant deaths and disappearances reanimate that ineliminable element through the work of remembrance, endurance, refusal, and resistance. In doing that, they bring to view a world in which every living being can claim an equal share.

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ILLEGAL SKIN, WHITE MASK: A CRITICAL PHENOMENOLOGY OF IRREGULAR CHILD MIGRANTS AND THE MAINTENANCE OF WHITENESS IN THE UNITED STATES

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The struggle is inner: Chicano, Indio, American Indian, Mojado, Mexicano, immigrant Latino, Anglo in power, working class Anglo, Black, Asian.... Awareness of our situation must come before inner changes, which in turn come before changes in society. Nothing happens in the “real” world unless it first happens in the images in our heads.

—Gloria Anzaldúa, *Borderlands/La Frontera: The New Mestiza*

In 2014, nearly 70,000 unaccompanied irregular child migrants (ICM)¹ arriving from the northern triangle (Guatemala, Venezuela, and Honduras) were apprehended at the southern border of the United States (Ataiants et al. 2018). This surge overwhelmed US facilities, and child migrants were placed in detention centers and other makeshift holding areas until they could be released to family or deported. In these facilities, many children received improper nutrition and medication, while others experienced physical and sexual abuse, and others died or “went missing” (Cantor 2015). In the ensuing years, the treatment of ICM in the United States garnered international attention and backlash, particularly during the family separation policy instituted by the Trump Administration in 2017. In spite of this backlash and interference by the UN, conditions and rights for both child and adult migrants have disintegrated over the last decade.

I began this project in the summer of 2017, following the two-year-long barrage of racial epithets and calls to “build a wall” that characterized the Trump presidential campaign and laid a foundation for his administration (Lee 2015). The success of the Trump campaign emboldened the anti-immigration movement and, as Judith Butler poignantly stated in an interview, “emancipated unbridled hatred” toward marginalized communities, and particularly toward racialized migrants (Butler 2016). Donald Trump

¹ These children are typically referred to as “illegal migrants.” However, I will refer to them as “unaccompanied” or “irregular.” “Irregular” defines those who move outside regulatory norms of migration and is the language preferred by the International Association for Migration and the United Nations generally (n.d.).

continued to utilize the language of White Supremacy in order to gain support among White Americans and has cast “illegals” and “thugs” as the racialized antagonists of his presidency (Lee 2015). Though issues of racialization are sometimes addressed by migrant studies scholars, there is a noticeable lack of engagement with racialization by migrant studies scholars. Nevertheless, it has been shown that immigration and citizenship policies are, and have been, a core tool of White Supremacy in the US, which serve to dehumanize and deny rights to racialized migrants (Sáenz and Douglas 2015).

Images of child migrants have frequently been used by immigration activists to expose the suffering and dehumanization of all irregular migrants. Often, however, the rhetorical devices used to defend these children universalize their identities as children and obfuscate factors that lead to their mistreatment. For instance, in scholarship pertaining to migrant children’s rights, there is little to no mention of the role that racialization plays in the conferral of legal status and rights.² By failing to see the interaction between childhood and racialization, and the processes through which children become racialized, activists and scholars are unable to address the unique “collision” point or intersection at which these irregular child migrants find themselves. The suffering of the “racialized child” is rendered invisible under the suffering of universal children. Neutralizing the role of race and racialization in regard to understanding the issues faced by migrant children succeeds only in shifting the borders of Whiteness and legality a few inches, rather than pulling these walls down altogether.

In this paper, I reinterpret the experiences and perceptions of child migrants through the lens of racialization and White Supremacy by advancing work by Cheryl Harris (1993) and Lisa Guenther (2019) on the critical phenomenology of “Whiteness as Property” (WaP) and the protection of “White Space.” WaP is “the collective investment in state violence” to protect the economic, territorial, and legal privileges of Whiteness, while White Space describes its two dimensions: “enclosure and territorial expansion” (Guenther 2019, 202). I build on this foundation by examining the way WaP regulates sociogenic³ and emotive states in order to protect its accrued resources, resulting in an “economy” of racial identity where ownership produces and is produced by particular societal structures and relationships. I use these concepts to understand the framework that willfully misinterprets racialized children. I establish “the Child” as a sociogenic concept and symbol of national futurity and universalism, and therefore of the futurity and universalism of Whiteness; reiterating and interrogating the inconsistency that many immigration and child activists point to, that there is no such thing as an “illegal” or racialized child. Thus, the ICM either loses the privileges and protections afforded to children or must don the White

² See *The Oxford Handbook of Refugee and Forced Migration Studies* (Fiddian-Qasmiyeh et al. 2016); the work of Mai Ngai (2014), Alex Sager (2016), and Joseph Carens (1987; 2013) in immigration studies; and Karl Hanson’s and Olga Nieuwenhuys’ (2012), and David Archard’s (2015) work in the study of children’s rights.

³ I use “sociogeny” in opposition to ontology as it clearly marks these ideas as social-historic phenomena that masquerade under the notion of ontically fixed (or even fluctuating) principles. Capitalization of the words Black and White, an increasingly prevalent practice, also indicates this: the word references race as a sociogenic, historical construction. By categorizing race in this way, I foreground its lived-reality, while acknowledging it as socially produced; thus race becomes “racialization,” or a process of production and interpretation, rather than an ontic state.

Mask through a performance of victimhood. Through this framework, I undertake an examination of the ICMs as portrayed in the legal process using tools from legal sensorial studies and critical phenomenology, demonstrating the sociogenic shifts that occur for the ICM and how these shifts work to protect WaP.

Race, Legality, and Property

Before moving further into WaP, which primarily concerns the racialization of African Americans, it is necessary to outline a brief history of racialization for Latine people in the United States. Although many Latine and specifically Chicano revolutionaries borrow from Black Critical Race Theory and Black revolutionary strategies in order to bolster their movements, racialization functions differently and appears slightly less “fixed” for Latine peoples than for African Americans.⁴ Many Latine peoples living in the United States, for example Cubans and Argentineans, may consider themselves to be White and may pass as White. In contrast, White Americans frequently apply a homogenous lens to this diverse group—for instance, although the majority of child migrants come from the Northern Triangle, they are typically perceived as Mexican. Therefore, when we discuss the racialization of these ethnicities by White people, as opposed to colorism (Glenn 2009) or national/linguistic prejudice, it is primarily through the racialization of Mexicans.⁵

The homogenization and racialization of Latine peoples in the United States began after the annexation of the American southwest and the discovery of gold in California, effectively destroying existing social hierarchies in the region. We encounter the racial homogenization and calcification of Latine peoples as a distinct non-White racial group as a mode of territorial expansion, similar to the way Indigenous peoples were racialized and subjugated in order to allow for western expansion. Race was, at this time, conceived in terms of regional descent (African, Asian, European). Mexicans being largely of mixed descent (European, Indigenous and Black) symbolized the instability of race and the possibility of transgressive racial interaction and movement. They therefore presented a unique danger to the racial hierarchy of the US (Haney López 2004, 57). At the outset, Mexicans symbolized the instability of race and the possibility of transgressive racial interaction and movement.

While Mexicans were perceived as socially Brown, they remained legally White up until the mid-twentieth century when “Hispanic” became an ethnic category. Many Latine peoples actively fought (and still fight) to protect their “White” status. Although

⁴ The slipperiness of race as applied to Latine people is illustrated in the trial of the East LA Thirteen, a group of Chicano student protestors. This case established a precedent for Chicano people not to be considered a unique racial group that could not, therefore, be discriminated against. As Ian F. Haney López (2004) illustrates in *Racism on Trial: The Chicano Fight for Justice*, this ruling reflects much of the “racial” history of the Latine peoples in the US as part of the expanding “boundaries of whiteness” while “many in our society remain victimized by the brutal politics of race” (ix-x).

⁵ This is not to erase the racial and ethnic hierarchies that exist within Latine and Hispanic culture, of which there are many. See Teun A. van Dijk (2009).

this legal “Whiteness” may appear to give Latine peoples better access to resources, by maintaining their pseudo-whiteness, the state invisibly underserved communities of Latine peoples who were not a defined “racial group.” The Chicano Movement was the first to identify Mexicans as racially non-White (as in the case of the East LA Thirteen).⁶ Although Mexicans are only one nationality of many that I discuss in this paper, the example of the Chicanos serves as a microcosm of the (perhaps non-intuitive) theoretical and practical ideas that I touch on. The backlash against the Chicano movement, as in the trial of the East LA Thirteen, demonstrates that the malleability of Whiteness is not an instability or weakness but is rather its strength—its shifting borders enable its survival and continuous presence, and thus the perpetuation of a racial hierarchy. In rejecting Whiteness, the Chicano movement does not reject the freedom from racial oppression that appears to be a property of Whiteness, but rather the right to exploit and oppress others that undergirds that freedom.

Whiteness as Property and Proxy-Whiteness

In “Whiteness as Property,” Cheryl Harris (1993) maps a history of the United States that establishes the transition of Whiteness from color to race, and status to property. This is key to understanding the role of racialization in the US, where, as Frantz Fanon (2004) states:

two centuries ago, a former European colony took into its head to catch up with Europe. It has been so successful that the United States of America has become a master where the flaws, sickness, and inhumanity of Europe have reached frightening proportions. (236–37)

Although slavery is no longer a legal practice and the citizenship and personhood of non-White peoples has been established (at least on a surface level), this collective investment in Whiteness as Property explains the unique forms of racial violence that have underwritten American history.

By “property” Harris refers to the set of legal rights, rights of identification, and social privileges afforded to Whiteness as it came into being as a legal status. Harris offers several expansive interpretations of “property” that are useful in fleshing out this understanding of race. Property has never been limited to the rights one has over physical things and should rather be understood as the relationships (or potential relationships) one has with objects, other people, and the world (Harris 1993, 1725). WaP can only be understood as existing

⁶ In the trial of the East LA Thirteen, Chicano leaders who had run student walk outs or “blow outs” were prosecuted. The defendants argued that they had been justly protesting unjust treatment due to racism. In order to argue this, they had to first prove Chicanos were a distinct racial group. While the ensuing arguments provide some of the most obvious evidence for the malleability of Whiteness being used to subjugate Latine people, this pattern can be traced backwards to the nascent period of westward expansion. See Haney López (2004).

within social contexts and attached to certain expectations—property becomes a mode through which the law restructures experience and individual orientations in the social world—this stands in stark contrast to the seeming naturalization of both race and property rights. As property, Whiteness has certain functions including rights of disposition, or inalienability; right to use or enjoyment; reputation and status property; and the absolute right to exclude (Harris 1993, 1733–37).

Despite WaP’s “inalienability,” some non-White people appear to be able to affect a proxy-Whiteness. Forms of “passing” are common in all nations structured upon White Supremacy, despite the psychological harms caused by doing so; this phenomenon points at once to the terrific privileges granted by Whiteness, and its movability when under scrutiny. However, while some People of Color (PoC) are able to “pass,” their access to White privilege only occurs by association with and superior performance of Whiteness, which can be brought into question at any time or rendered “unperformable.”

Emotional Economies of Whiteness: Niceness and Victimhood

In her essay, “Seeing Like a Cop: A Critical Phenomenology of Whiteness as Property,” Lisa Guenther (2019) further links WaP to Fanon’s epidermal-racial schema wherein properties and rights that are attached to Whiteness are naturalized and de-historicized. WaP presents

[i]ts “I want,” “I can,” and “I ought to be able to”—as a fluid, natural body schema that dovetails fluidly with the White world . . . the racialization of Whites as owners of land and other property, as extractors of wealth from the bodies of others, and as excluders or selective includers of the right to claim Whiteness as property. (200)

By mapping the epidermal-racial schema of WaP, Guenther reveals the invisible center of racialization, which is essential to understanding and explaining the entwinement of White supremacy and border maintenance of White Space.⁷

It is implicit throughout Guenther’s paper that the epidermal-racial schema of Whiteness also includes an “I feel,” or entitlement to a set of emotions and emotional expression surrounding the acquisition of bodies, extraction of wealth, and exclusion. Guenther discusses this in terms of gentrification: White gentrifiers are entitled to feelings of excitement, safety, and “niceness”—a certain moral superiority to their suburban forebears in that they are purportedly willing to interact with and “improve” traditionally Black and Brown communities. Similarly, White people are entitled to sets of emotional ranges that are not accessible to PoC—for many PoC, it seems that any emotional display fuels racial stereotypes and makes them vulnerable to further violence from White people,

⁷ I interpret race and racialization as “border-concepts,” an understanding introduced by Robert Bernasconi (2012) in his paper, “Crossed Lines in the Racialization Process: Race as a Border Concept.”

most immediately, in Guenther's scenario, police. To explicate this element of Guenther's work, I would like to propose an emotional economy tied to WaP.

This emotional economy recalls Sara Ahmed's (2014) work: she argues that although emotions and emotional characteristics may appear to be a-historical, individuated, or spontaneous, they in fact accumulate over time within and through specific groups. Within these economies, "emotions may involve 'being moved' for some precisely by fixing others as 'having' certain characteristics. The circulation of objects of emotion involves the transformation of others into objects of feeling" (11). I will focus, for the moment, on the seemingly unmoving center of this relationship, around which racialization orbits, but will later return to the way in which Latine peoples are "fixed" with certain characteristics. In particular, I focus on "niceness" and "victimhood." While the latter is something experienced generally by White people, American "niceness" is more unique to modern American settler-colonialism and imperialism.

In discussing the self-perceived national character of the United States, niceness is foundational. As Carrie Bramen (2017) notes in her cultural history of American niceness, niceness encompasses the child-likeness of the American spirit (5). Niceness here refers to a certain ability to facilitate social relationships, but without the self-discipline or manners of "civility," typically associated with the British. While the British, as Ahmed notes at the beginning of her book, frame themselves as cold and unaffected/unaffected, the Americans frame themselves within an impenetrable niceness and amiability (Bramen 2017). While the "undeserving" refugee threatens the British national character as Ahmed (2014) argues, the deported and caged child threatens the American national character. When this "niceness" is disrupted—the United States' actions are revealed as inhumane, the suffering of Black People in America comes to the fore, or images of children in cages reach the media—the White epidermal-racial schema is briefly shaken. However, often in these cases, Whiteness retreats within itself, reverting to its mode of "victimhood" until it can once again reclaim its "niceness." Robin DiAngelo (2011) notes that when confronted with the experiences of the racial other and the violent reality of racialization (which DiAngelo terms "racial stress"), White people retreat into "White Fragility" which manifests as "the outward display of emotions such as anger, fear, and guilt, and behaviors such as argumentation, silence, and leaving the stress-inducing situation" (57). Through the performance of certain kinds of victimhood, particularly "White Fragility," White people can re-center their experience and reassert the racial hierarchy (Accapedi 2007; Bonilla-Silva 2006, 2019).

Through understanding "niceness" as a justification for the expansion of property and "victimhood" as a retreat from the consequences of White-supremacy, the emotional framework that protects the White body-schema from the horror of Whiteness begins to reveal itself. Thus, by foregrounding the role of emotional states to the epidermal-racial schema and WaP, it becomes evident that the White Mask, or the performance of Whiteness, also includes aligning oneself with this kind of performative victimhood to appear on the horizon of the White world and justify inclusion in White Space.

The Right to Childhood and White Fragility

The Child is an embedded archetype and symbol within the American cultural and political fabric; it is considered pre-social, innocent, and capable of infinite change (and is therefore worthy of forgiveness). The Child comes to represent the futurity, possibility, and economic investments of the US and is aligned with the project of American “niceness” and the preservation of WaP.⁸ As Erica Burman (2015) states, “in particular, children figure as prototypical malleable material for the nation—whether in terms of prosperity or public order” (269). Just as children rely on their parents, the Child demands the protection and paternalistic intervention of the state. When children are under threat, the state is given permission to act in extremes, to protect the Child and ensure the state’s own longevity. Thus, it is also evident that children have a particular capacity for victimhood or potential victimhood.

Fanon frequently plays on the discordance within the image of the Child and its relationship to Whiteness and settler-colonialism, though the role of children in Fanon has received little analysis (Burman 2015). It is the boy on the train who causes the collapse of Fanon’s (2008) body-schema of the Black man by calling upon the symbolic-racial order when he says to his mother, “[l]ook a negro!” (79). Fanon thereby spoils the image of the Child by revealing its lack of racial innocence and ignorance and the way that the Child too is a sociogenic (socio-historical) production. Through this, in understanding the Child as a symbol of settler-colonial nations and of Whiteness itself, Fanon disturbs the pretense of the innocence of the Child and Whiteness, in effect emphasizing how these are two sides of one sociogenic production. Additionally, he portrays the Child, and through it this pretense of pre-social reality, as a tool through which racialization can be enacted. As Burman (2015) states, “it is in the name of the child . . . as the signifier of both deserving victimhood and site for the penetration of transnational capital—that imperialism is waged” (78). The image of the Child becomes a “political trump card”—one cannot oppose “fighting for *the* children” (Ropp 2019, 469; emphasis added). I emphasize “the” here as it indicates a kind of universal belonging. In a way, this means children are uniquely endowed with a cosmopolitical citizenship. Yet this appears to be exactly what some conservatives seek to destabilize, many anti-immigration protesters carrying signs with the sentiment of “they aren’t our children” (469). This tension points to an interesting sociogenic effect: the problem is not “our” children versus “the” children, but rather, who can be the Child when and within what contexts. Even though some Black and Brown children can appear as the Child to varying degrees (contingent upon their convincing performance of Whiteness), their racialized and Child identities cannot be acknowledged at the same time—a racialized Child is, in this sense, impossible.

⁸ Erica Burman’s reading of the Child (which I share), comes primarily from the work of Lee Edelman. The debate regarding futurity and hope between Edelman and the Cuban critic José Estaban Muñoz is of note here as they offer slightly different understandings of futurity, failure, and (in my reading) the Child. While I am sympathetic to Muñoz’s perspective, the un-prescriptive future he outlines in *Cruising Utopia: The Then and There of Queer Futurity* (2009) stands defiantly against the projections of White futurity I seek to elucidate in this paper.

Notions of the Child stand in stark opposition to racial archetypes. In this case, as what Leo Chavez (2013) refers to as the “Latino Threat Narrative,” developed in the modern era of immigration anxiety in the United States that began in the 1980s (coinciding, incidentally, with a greater concern over children). Chavez condenses the Latino threat narrative to the following key tropes: reproductive threat, unwillingness to learn English, unwillingness to integrate into society, unchangeability or immutability (not subject to history or social forces), and desire to reconquer the US. The Latino Threat narrative makes two key assumptions—Latino/a’s are culturally and historically static and criminal. This stands in opposition to the Child, a collective embodied investment in the future that is figured as inherently innocent and capable of redemption.

It is not that the Child is always good, indeed a necessary aspect of the Child is their propensity to make mistakes. The Child may be hedonistic or mischievous, but this says nothing of its “actual” self—when the Child makes a mistake it is because they are *learning to be good*, but when the immigrant makes a mistake it is because *they are bad*. The Child is not caught up with sticky characteristics, indeed their “actual” self appears to be blank, with potential being its only attribute.

Three Approaches to Children of Color

What can we then make of the reality of Latine children? There are a few possible answers to this question: first, that Latine children disappear into a racialized mass with little room for personhood; second, that Latine children are not seen as children, but rather “miniature adults;” and third, that some Latine children take on a “White Mask” until their inevitable Brownness is discovered.

In her book, *In the Wake*, Christina Sharpe (2016) draws attention to Black children and mothers in a way that has rarely occurred in scholarship. She illuminates how meaning slides around words like “child” within the overburdened signifier of Blackness. Sharpe states, “Black children are not seen as children and the corral of ‘urban youth’ holds them outside of the category of the child, they are offered more trauma by the state and state actors” (89). Here, Sharpe is directly invoking the exclusionary nature of the Child and the future that it represents: there are no Black children, only “urban youths” with a bleak and criminal future. There is a parallel to be drawn between the way Black children are dehumanized as described by Sharpe, and the way Latine children are dehumanized. Latine children are similarly transformed into “locusts,” a “plague,” and other designations that have no room for personhood, let alone the freedom and rights of childhood (Luiselli 2017, 15).

Sharpe’s (2016) critique also suggests a secondary feature: the presumed maturity or *adulthood* within the connotation of “youths” as opposed to “children” (89). The concept of “adultification” of Black and Brown children has come to national attention in recent years, particularly after the murders of Tamir Rice and other Black children by police officers. Adultification refers to the way that Children of Color (CoC) are perceived as more

adult than their White peers and are deprived of the rights and freedoms of childhood. While the concept of the “developmental child” has resulted in the expansion of children’s rights in the last several decades, this extension of rights and the perception of children has not included CoC (Kennedy 2006). Studies involving the Adultification of African American children conclude that they are perceived to be more independent, know more about adult topics, and need less nurturing and support (Epstein and Blake 2020). We can map a similar mode of Adultification onto Latine children—Latino boys are perceived as more dangerous, while Latina girls are perceived as hypersexual (Chavez 2013). Both are seen to be more culpable and less capable of growth than White children.

The final perception of Latine children, and of CoC in general, is that they are not Brown, but are rather “becoming White,” and come to bear the White Mask. This is, perhaps, the most insidious perception of the CoC discussed thus far, as it does not readily or easily bear its intentions and aims. This phenomenon occurs specifically when the characteristics of the Child, and therefore of a particular Whiteness, come to eclipse the brownness of a CoC. Like the Black man in Fanon’s conception must over-perform his Whiteness with impossible perfection and precision, the CoC must portray the Child’s innocence and purity to the extreme. While it is essential to acknowledge that the perception that CoC have more “adult-knowledge” than their White counterparts is part of a racializing lens, the actual experiences of CoC are often divergent from the experiences of their White counterparts because of racialization.

Bearing the White Mask does not simply mean being trapped within a strict emotional range; it also demands a destruction of culture and language in favor of assimilation. Children of the 1.5 generation, who arrived in their host country as children and young teens, must be “re-educated” in the United States, often being held back several grades and frequently being denied access to ELL resources or courses in Spanish (Luiselli 2017, 92–93). Of course, not all children can bear the White Mask as well or as frequently or carry it with them into adulthood. Those who more easily pass, have better mastery of English, and who come from wealthier backgrounds are able to bear the mask easier than others. Just as the Californios were dispatched into either the racialized mass of Mexicanos or dissolved into Whiteness, so too are children upon entering the US (Haney López 2004). They can be children, or “like children” insofar as they grow toward Whiteness and become complicit in it. Bearing the White Mask is, in other words, an investment in WaP: by performing Whiteness one seeks to benefit from the protections it offers. However, just as ICM may find temporary relief in the United States, any such benefits that WaP may offer only provides temporary protection from legal systems that are built on ongoing racial violence and segregation.

As I have shown so far, the Child and the Illegal Immigrant can be regarded as mutually exclusive categories. While the Child is innocent, the Immigrant is duplicitous; while the Child deserves forgiveness and love, the Immigrant absconds with care that they do not deserve; while the Child is the future owner of territory, the Immigrant must be evicted from it. And yet, images of children in cages still shake the national character of the US, with people/voices on both sides of the immigration debate finding conditions for children abhorrent (Cantor 2015). This is because the Child and the Illegal Immigrant trigger two opposing emotional scripts and threaten to shake away the filaments of American

Niceness—niceness, in its brazen unpolished and natural glory signifiatory of the Child itself. How can the United States seal the leakage of its national borders while preserving American Niceness?

The Incoherent/Unyielding Child

Critical socio-legal theorists Dawn Moore and Rashmee Singh (2018) have undertaken a project studying the use of artefacts in the prosecution of interpersonal violence. Moore and Singh highlight the disharmony between a victim and the court-produced image of Victim, creating both truth effects and, in the words of Moore, “emotive responses that claim a degree of contestable universality which saturates their consumption,” or instigating an emotional script, which offers codified and culturally normative modes of “being moved” by another (117). Through the process of data collection prior to court proceedings, a data-double of the victim is created—an image of the victim as Victim. Unlike the real victim, the data-double does not tell contradictory stories, does not withhold its wounds, is not angry, is not uncooperative—the image of the Victim obscures the actual victim and becomes a docile non-agent, ripe for the intervention of a paternalistic state. Moore and Singh note that the dissonance between the victim and the image of Victim is not merely a gendered one; it is also racialized. The performance of White “female” fragility is necessary in the creation of a compelling emotional script in order to trigger a sympathetic emotional response, because paternalistic intervention relies on the assumption of a White gatekeeper/protector against a racialized other. Though donning the White Mask may allow migrant children to achieve refugee status in the United States through triggering the correct emotional script, they become coopted into the project of US settler-colonialism as they are weaponized against their racialized family and community.

Unlike proceedings for interpersonal violence and domestic abuse, immigration and deportation hearings do not primarily rely on pictures or visual evidence. Both proceedings do, however, develop a compelling image of the Victim. In deportation hearings, particularly for those involving children, this revolves around compelling narrative creation. And in a similar way, the image of “Child-Victim” eclipses the living child in court. The majority of these children do not know English well enough for lawyers to build a proficient case alone, necessitating translators. While the images of domestic abuse victims serve to filter and concretize the “data-double,” the necessity of translation serves to filter the child into the Child. The importance of the filter and presentation of the narrative/data-double of the child appears then to be key in the success of the appeal.

A Child in 40 Questions

In her book, *Tell Me How It Ends*, Valeria Luiselli (2017) outlines her experience working as a translator for a non-profit that defends child migrants in deportation hearings. As part of

her role, she asks a series of forty questions developed to help build a defense and translates the responses into English. The majority of the children she works with are in the United States to escape extreme gang violence in Latin America. To achieve Special Immigrant Juvenile (SIJ) status, a child must be impeded from reunification with at least one of their parents because of abuse, abandonment, or neglect, and must further demonstrate that returning to their home country is not in their best interest (as determined by the court). Luiselli (2017) stipulates that there are “correct” answers to the questionnaire: “an answer is ‘correct’ if it strengthens the child’s case and provides a potential avenue of relief” (61). Although Luiselli, as a translator, claims to render the child’s words directly, she frequently guides the children toward particular answers and/or categorizes their experiences into certain sub-groups (prostitution, sexual abuse, gang violence, etc.) in order to improve their chances of having their case taken by a lawyer. Essentially, Luiselli works to establish the victimhood of these children.

The analogy between trials for inter-personal violence and deportation hearings is clear: the trauma or potential trauma must render itself visible on either the physical or legal body. Many of the questions on the questionnaire are fishing for answers that are imperative for building a legal case. Questions oriented around school and work seek to discover whether the child was forced to do hard labor or was not allowed to attend school; others are more direct, such as, “Were you punished if you did something wrong?” . . . “How often were you punished?” and “Did anything happen on your trip to the U.S. that scared you or hurt you?” (65, 28). While Luiselli states that translators cannot answer these questions on behalf of children, in particularly frustrating cases Luiselli rephrases or frames the questions in order to obtain the kind of answers lawyers are looking for when deciding to take the case or not.

Luiselli compares the court system and “screening” as viewing the child as a roll of film:

a term that is as cynical as it is appropriate: the child a reel of footage, the translator-interpreter an obsolete apparatus used to channel that footage, the legal system a screen, itself too worn out, too filthy and tattered to allow any clarity, any attention to detail. (11)

For migrants, there is no clear beginning or end to their migration, only a constant liminality. As the “Immigrant’s Prayer” states, “[t]o leave is to die a little / To arrive is never to arrive” (98). Many of the children Luiselli screens do not know the answers to the questions Luiselli asks—they do not know when they crossed the border, when they left, where they entered the United States, where their parents live. Some are not even able to answer the first question to the screening: “Why did you come to the United States?”

The experiences of the migrant children as expressed through their answers resist the trauma-narrative that is demanded of their cases in court. Their experiences also resist the narratives of children and childhood, particularly that of the teleology of the Child—their lives are disrupted and pieced together through the loss of friends and family, gang violence, systemic rape, and other abuses that are part of their reality. These are experiences children may be reticent to talk about in court, either from shame, trauma, or misunderstanding.

While this trauma is necessary in order to be granted relief, the specific modes of expressing it are limited. Furthermore, the trauma must be presented in specific forms and manifest in particular ways (on the body or legally). The extensive lengths to which these children must go in order to claim their immigration status (or need of status) is not unique among PoC, who often must go to greater lengths to have their pain or emotions acknowledged. Through the process of proving their trauma, however, these children are able to enter into a state of “victimhood” and be “rescued” by the United States.

This is but one example of the dissonance—one that is non-linear and racialized—between the lived-experience of migrant children and who they must present themselves as in the courtroom to be granted a path to citizenship. This narrative myth-making for the court functions to preserve overarching ideologies touched on in this paper and that Luiselli highlights in her book—the United States does not acknowledge the way it systematically underserves and criminalizes the Latine and migrant communities, exposing them to the same dangers experienced in their own country. These are the islands of non-White Space that exist within the frontier of the United States. This matrix of state violence contradicts the second criteria that Luiselli outlines for the “correct” answer: there must be a clear potential avenue for relief. In other words, it is in the interest of the child not to reveal their mistreatment once they have entered the United States despite its frequent inconsistency with their experience.

Furthermore, ICMs are often forced to “out” illegal family and community members. All children in the United States must give the name, address, and immigration status of their sponsor, and are asked to provide the immigration statuses of other family members.

The immigration status of family members is almost always “undocumented.” This, of course, means that presenting themselves in court in the company of a sponsor exposes other members of their family to a system that they have been dodging, sometimes for decades. This guilt weighs on some children noticeably. (2017, 49)

Children that apply for the N-visa, which grants residency status and a fast-track to citizenship to those who have suffered great harm within the United States, must further comply completely with the police, implicitly rewarding those who are able to provide substantial information that leads to the incarceration of other individuals. This usually involves exposing many undocumented people, sometimes family members, to the government, and still operates within the pitfalls of our current system for prosecuting those accused of inter-personal violence. Essentially, in order to become a citizen, these children are forced to betray their own families and communities, further rendering them docile agents of the state.

In doing so, the state is able to fulfill a paternalistic role for these children—to “rescue” them, if they prove themselves worthy of “rescuing.” The questions asked of these children in court reflect a duality of fears held by the state about the other—as immigration questionnaires often do. However, while the green-card questionnaire contains anxieties over communists and polygamists, the questionnaire for child migrants seeks to distinguish

the child from the Brown other. It seeks to uncover the Child from the violence imposed on them by their Brownness, to rescue them, and to raise them towards a proxy Whiteness they will never be able to fully embody.

Data-Doubles: Uncovering the Migrant Child as the Child

Despite the repression of sensorial data related to child migrants, a handful of recordings and photos have made it out to the public, along with some narrative accounts, such as Luiselli's (2017), and a video-recreation of child migrant hearings. These materials have sparked international outrage, particularly regarding the family separation policy. While these materials have garnered rights for child migrants, the basis of their emotive pull is the image of the Child and effaces larger issues faced by migrants. Indeed, despite some changes to allow for family reunification, there has been little positive shift in migrant rights in the United States in the last decade.

Luiselli and other immigration advocates perform critical work in rendering visible the mechanisms of the state and the experiences of child migrants. Through her continued work as a translator and writer, Luiselli has revealed the migrant child and cultivated support in the American public, particularly the White liberal public. A case in point: it is through Luiselli that I first encountered the experiences of these migrant children. Through exploring her own experiences as a Mexican immigrant and her work tying the current immigration crisis to the US's history of intervention in Latin America, Luiselli offers an emotive depiction of ICM. Nevertheless, her account relies on the notion of "the Child" to trigger sympathetic emotional scripts from her readership while ignoring the larger impacts of race on the Adultification and dehumanization of migrant children. This particularly effects those that she does not address, those who are angered by their circumstances in the United States, those who were unable to avoid induction into gangs, those who were not able to live up to "the Child." *Tell Me How It Ends* is a compelling piece of representational activism but succumbs to its own limitation—Brownness is still too overburdened a signifier to render a non-White child onto the White horizon, and thus race must be covered over with the White Mask of the Child in the way that a sheet may render visible the transparent ghost underneath.

Although Luiselli begins to address race through wondering "if the reactions would be different were all these children of a lighter color," she stops there, leading her readers to the question of race without addressing it in the text (2017, 15). As I have already shown, the experiences of CoC are intimately entangled with race and this cannot be discredited in the retelling of their experiences. Luiselli thus does not merely serve to translate these children to the court, but also translates and reveals them to her White readership. As she states in regard to the decision to cross the border, "children do what their stomachs tell them to do . . . [t]hey have an instinct for survival, perhaps, that allows them to endure almost anything just to make it to the other side of horror" (19–20). Luiselli draws upon the image of the Child here implicitly, both its universalism and its exceptionalism, as seen through her notes on the child's apparent pre-social qualities (19).

“UNACCOMPANIED: Alone in America” is a short documentary by Linda Freedman (2019) that includes scenes from deportation hearings for child migrants who have been separated from their families. Freedman calls this video a “reenactment” as opposed to a “dramatization” of court proceedings. Like Luiselli, Freedman claims that she transcribes the experiences of these children without fail, or angle; she claims to have erased her gaze. However, on my reading, the video inevitably falls within the genre of “poverty porn”—a sad orchestral track plays as nervous Latine children, beginning with a teenager and ending with a five-year-old girl, file into the court room, many of them finding it difficult to peek over the desk they sit behind. There is very little talking in the video, and no real depiction of court proceedings. Some atmospheric noise creeps in, the hollow echoes of the courtroom, serving to make the child appear alone and small. The judge, who appears visibly upset, asks each of the children a few preliminary questions, the children offer a yes or no answer, their voices small and diminished as compared to the closely-mic’ed judge. Across from the child sits the representative for the US government, the camera occasionally panning over to show him idly flipping through a book, or looking into the camera, eyebrows raised in impatience. The children, by contrast, never look into the camera, their gazes waver, darting between the judge, the translator, and the floor.

Although many of these same details are present in immigration court, by emphasizing them in the video, Freedman is able to elicit what she perceives as the “correct” emotional script from her audience, but in doing so she has created a data-double of the “child-migrant” that is forever trapped within the enactment and reenactment of victimhood—docility, smallness, alone-ness, and passivity. She uses the White judge to model the correct emotional response and foils him with the impatient and callous White prosecutor, who does not even look at the children throughout the video. Thus, Freedman does not only deny the agency and subjecthood of the children; she makes the dangerous implication that the US government is the sole villain. Meanwhile, the idea of justice and the American values it upholds can prevail, preserving the possibility of American niceness and moreover, saving the Child. As I demonstrated in the first section of this paper, the US judicial system, US values, and national character have done more to further White supremacy than any administration ever has. It thus becomes evident that the video intends not to rupture White Space or the leaky border, but rather renegotiate the borders of Whiteness to include and care for these children who are utterly “alone” as declared by the title of the film.

On the film’s website, Freedman (2019) relates her first encounter with the stories of child migrants and states her shock that this was happening “in my own country.” Freedman goes on to quote Hilary Clinton: “[t]here is no such thing as other people’s children” (as quoted in Brant 1996). This appears to be a call to “common sense”—of course all children matter. As Gayle Salamon (2018) states, “[c]ommon sense and shock thus work in concert, either for the purpose of establishing and enforcing norms or with the aim of challenging them” (109). Yet, calling back to the common sense of the Child frames this courtroom as an aberration of the American ideals rather than its inevitable consequence. These are *not* “our” children; they belong to families and communities of color, who reside both in the US and in Latin America. As CoC, they will face many of the same challenges within the United States that they faced in their home countries—persecution, police violence, gang

violence, under-funded education systems, and poverty. However, despite the continued oppression ICMs face, the fact that they made it to the United States, that someone paid for their transport and prayed for the betterment of their future proves that these children are loved and cared for by their racialized families and communities. These children may arrive to the United States unaccompanied, but they are not alone.

Casting ICMs as the Child and Victim in the courtroom (and in images of the courtroom) places a White Mask upon the child. This process, though offering temporary protection for some children, does not work to undo the function of the current immigration system—to protect WaP and White Space. Rather, this process of whitening ICM's, beyond the existential harms experienced by CoC as outlined in Fanon's work, supports the current system by concealing its racism. Under the guise of protecting these children, greater harm can be carried out against their families and communities, as they are forced to report undocumented relatives or caregivers. Furthermore, these children, though they come to perform Whiteness, or are portrayed as performing Whiteness, are not given access to WaP, as their precarious foothold in the United States can be destroyed, depending on the quality of this performance, ensuring that even if the United States loses some of its demographic Whiteness in terms of literal numbers, it continues to maintain White cultural and legal supremacy by defining who counts as citizens—who can vote and whose vote matters. By forcing and ensuring the continuation of this performance of Whiteness and rewarding those PoC who are able to effectively perform it, the legal system is able to quell dissent and further protect and disguise its protection of WaP.

Reflections

This paper began with the assumption of a phenomenological perspective of race and racialization that sought to understand the unique positioning of Latine ICM. Although I initially hoped to reveal the way ICM disrupted the schemas of Whiteness, I discovered instead the way ICM are subsumed into the project of Whiteness through the prothesis of The Child—which transformed ICM into a form digestible by the emotional economy. This figurative emotional economy, to use Ahmed's term, reinforced a literal economy—the material economy of WaP. Just as the virtue of a border is to import and export materials and individuals according to the expansion and continuation of its nation, so too is the virtue of Whiteness.

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TOWARDS A PHENOMENOLOGY OF UNDOCUMENTED IMMIGRANT REASON

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A lot was made about immigrant resilience and “heroism” at the start of the COVID-19 pandemic.¹ At that time, I published an OpEd in the *San Francisco Chronicle* criticizing that narrative, one that suggested that immigrant laborers risked their lives working in spite of a global health crisis out of a sense of social duty or supererogation (Sánchez 2020). My reasons for criticizing that narrative were simple, but grounded on an intimate (i.e., first-person) understanding of immigrant life: immigrant laborers continue to labor through a global pandemic not because of any sense of heroism, supererogation, or felt obligation to society at large, but because they believe that there is no other choice. In the immigrant laborer’s horizon of possible moves, *not working* is not one of them.

If we ask immigrants, especially “unauthorized” or “undocumented” immigrants, why they would choose work over their own safety or the safety of their families, a straightforward answer is that not working is not a viable option. It is not a viable option for a number of reasons, not least of which among them the understanding that if they don’t work, they don’t eat.² History has shown that immigrant viability depends on work—“work” in the sense of being a real, lived experience, one of transition and transcendence, but also of staying busy, of fulfilling the demands of nourishment, and of enjoyment.^{3, 4} This is the

¹ The news media and, even immigrant advocacy groups, began celebrating immigrant heroism early in the Pandemic. While the content of the reports called for reforms, protections, and the like, the headlines celebrated an unselfishness that needed to be recognized and appreciated. See, for instance, Eladio Bobadilla (2020) and Rondell Treviño (2020).

² It is well known, especially among the immigrant community, that undocumented workers are not eligible for unemployment benefits. See Rebecca Smith (2020).

³ For an overview of this history, as well as an excellent account of immigrant life, see Leo R. Chavez (2013).

⁴ I loosely appropriate Emmanuel Levinas’ notion of “labor” here. Levinas (1991) considers labor as an existential necessity, one requires for my future encounter with the other. However, labor is also what “nourishes” and “fulfils.” He writes in *Totality and Infinity*, “[t]he life that I earn is not a bare existence; it is a life of labor and nourishments; these are the contents that do no preoccupy it only, but which ‘occupy’ it, which ‘entertain’ it, of which it is enjoyment We live from our labor which ensures our subsistence, but we also live from our labor because it fills (delights or saddens) life” (111-12).

sense I find inherent to the undocumented immigrant experience and, furthermore, to what I call here, “undocumented immigrant reason.”

In what follows, I offer a phenomenological description of undocumented immigrant reason, provisionally understood as a sort of historical reason grounded on undocumented immigrant life. That is, the categories of undocumented immigrant reason are resources for undocumented immigrant existence and are inscribed in the historical memory of immigration (they are shared and communal), accessed by immigrants in stories, anecdotes, and interpersonal trauma. Abstracting from personal experience, testimony, popular culture, and elsewhere, I propose a fragmentary list of these categories of undocumented immigrant reason, a list that includes journeying, crossing/*nepantla*, uncertainty/*zozobra*, nostalgia, and return. These categories, which structure undocumented immigrant reason, are reflected in beliefs and attitudes about migration, belonging, the contingency of life, the centrality of memory, and the meaning of death. Moreover, because undocumented immigrant reason is a type of intersubjective, or shared, and historical rationality, it always highlights and puts into relief the practical and conceptual minefields that could affect that life at any moment. Thus, undocumented immigrant reason makes room for sudden adaptations to policy and enforcement, for changes in how undocumented immigrants are perceived by the media, society, and the state. In this way, undocumented immigrant reason is commonsensical and ultimately grounded on experienced, and shared, feelings, emotions, and communal memories. Finally, undocumented immigrant reason is tied to place and origins, which represent always the possibility of return, and welcome, but also to memories of leaving, of crossing, of reaching, and of returning. This return, which may be an impossible return (for instance, made impossible by death), is the end-goal, the great desire; at the heart of immigrant resiliency is thus a fear immobility, of a remaining still, or intransient. Seen in this light, immigrants worked through the pandemic not because they were heroes, but because the possibility of not working is not part of undocumented immigrant reason. Ultimately, constitutive of immigrant rationality are beliefs and ways of being that lend meaning to immigrant life, including those beliefs and ways of being that place immigrants in closer proximity to fundamental human truths.

Here, however, a clarification: by “undocumented immigrant” I refer to either (1) “undocumented immigrants,” or those who are residing in a country without legal permission or documentation, problematically called “illegal” (Sánchez 2014); (2) to those who are *thought to be, seen as, or treated as though* they are residing in a country without legal permission, documentation, or right, even though they may very well have such legal right, what Amy Reed-Sandoval (2020) calls “socially undocumented immigrants”;⁵ or (3) those who live *a certain kind of life*, one that reflects the “undocumented immigrant experience,” what elsewhere I have called a “post-immigrant identity” (Sánchez 2011b). The first may be persons who, in fact, live outside the bounds of the laws of the state, the second may be persons who simply look as though they do, and the third may be persons who, by blood

⁵ According to Reed-Sandoval (2020), the socially undocumented immigrant horizon belongs to socially undocumented persons, or persons who are: (a) “presumed to be undocumented on the mere basis of their appearance,” (b) “subjected to . . . ‘demeaning immigration-related constraints’ or ‘illegalizing forces’ (that is, they are ‘socially illegalized’)” (4, 61).

or circumstance, live the immigrant experience even though they may be neither “illegal” nor “socially undocumented.” In what follows, my focus will be on the first group, whose lived experience is phenomenologically distinct from the other two if only in the way that immigration enforcement, policy, and public opinion interrupts, and threatens, daily life. Thus, when I talk about a phenomenological account of “immigrant reason,” I refer to a kind of reason belonging to “undocumented” immigrants, a reason that points to a shared, historical, experience that grounds itself on stories, anecdotes, and collective memory.

I. THE UNDOCUMENTED IMMIGRANT EXPERIENCE

An Anecdote

I began working in the cauliflower fields at the age of 12. Although I was born in the United States (in Anaheim, California), and thus a US citizen, my parents were not, nor my cousins, nor the more than a dozen people who worked (and lived) with us and near us. Our day would begin early, hours before the sun rose and the fog dissipated. A lookout would be stationed a few miles away whose sole responsibility was watching out for immigration enforcement patrols (i.e., *la migra*); if one was spotted, he or she would sound an alarm and we would all run into the thicket—everyone, including me, a US citizen. We would hide for hours until the “threat” had passed. We knew that *la migra* knew we were hiding, after all, cars were lined up next to the field and lunch bags were scattered on the ground, signs of a quick getaway. It was common knowledge that they simply loved to torment us, and would hang around for hours waiting for one of us to walk out of the shrubbery and surrender. No one surrendered—this was simply not an option. In hiding, I recall *feeling* like I was doing something horribly wrong, like we are all complicit in the crime of “blanching”⁶ cauliflower for \$2 an hour.

Although that was many years ago, that feeling of guilt and criminality eventually mutated into an imposter syndrome that flares up at philosophy conferences or at bookstores when I see my own books staring back at me. However, for the undocumented, that feeling of criminality and guilt is an everyday reality, made worse by ever-mutating anti-immigrant narratives that praise immigrant heroism one moment and blame immigrants for all manner of social ills the next.⁷

⁶ This is the process of tying the cauliflower leaves around the developing curd to keep sunlight from spoiling it.

⁷ Thus, immigrants were praised for working through the pandemic and then blamed for spreading COVID-19. See Joel Rose 2021.

The Value of Work

The previous anecdote is meant to serve as a point of departure into a reflection of the immigrant experience, one that is shared, familiar, and phenomenologically grounded; a reflection that stands apart from objectifying narratives about undocumented immigrants. It also reveals one of the existential categories belonging to the immigrant experience mentioned above, what I will refer to as “uncertainty” or “*zozobra*.”

“Heroism” is not an existential category of the immigrant experience. What some have called the heroism of the immigrant experience points to the pro-version of the anti-immigrant narrative, one where the immigrant has a specific social role. In the time of global pandemic, it tells a story of a community who, faced with the option between fulfilling their obligation to society (viz., to work) or sheltering in place (viz., not to work), chose the former, and did so valiantly and in the face of death. But this is a simplistic and limiting narrative. Immigrants, particularly undocumented immigrants, chose the former not because of loyalty to society, but because the other option is also death. Not to work means that one does not eat, or pay rent, or survive; but it also signifies standing still, remaining stagnant, or risk being stuck where one is without escape (this observation points to another of the affective existential categories I mention below, “journeying”). Immigrants who labored during the early months of the pandemic did it not out of obligation to their role, but out of obligation to their own existence and the belief—internal to undocumented immigrant rationality itself—that to not work is death.

Immigrants labor despite a shared understanding that their work is “unauthorized,” or worse, “illegal.” That they were called “heroes” by an ever-changing narrative did little to change their actual circumstance—they were still vulnerable, unprotected, under constant threat. The narrative eventually changed again, this time to place blame on them for a sudden surge of the Virus.⁸

My emphasis on working is not meant to suggest that undocumented immigrants don’t do other things, like raise families or contribute to society in many other ways. My point is simply that these other contributions are also grounded on insecurity and fear. Thus, undocumented immigrants may, and often do, plant roots in their community, but this is done with caution, since the possibility to uproot is always left open. The always present threat of being discovered, harassed, arrested, or deported, makes it so that life is lived always already in anticipation of fleeing. To live in such a way is to live exposed, bare, and vulnerable to violence and oppression from all sides, but also in a state of perpetual oscillation, movement, and unsettledness.⁹

⁸ See, for instance, Daniel Politi (2021).

⁹ Indeed, as José Jorge Mendoza (2017) puts it, “[u]ndocumented immigrants, because of their susceptibility to automatic deportation, are some of the most vulnerable people in society. Their precarious situation leaves them virtually unprotected against various forms of exploitation, oppression, and discrimination by both public (e.g., tax collectors and police) and private (e.g., private employers and landlords) entities” (104).

In spite of immigrant vulnerability, and the exploitation this invites, undocumented immigrants persist in doing those things demanded by their way of life. Although undocumented immigrants exist in the margins of society, seeking always to stay out of sight, avoiding the entrapments of enforcement, they exist nonetheless. However, the experience of constant vigilance and fear becomes a communal and generational inheritance, and is experienced by others who may or may not have a reason to experience it (Sánchez 2011a).¹⁰ Immigrants will face challenges, not only against their persons, through immigration enforcement strategies, but also against their very being, through interruptions directed at their basic human right to journey, to flourish, and to, eventually, return on their own accord to their places of origin (Mendieta 2017).¹¹ These challenges are exacerbated by contradictory anti-immigrant narratives, which emphasize the stigmatization of immigrants as intruders in the community in which they find themselves yet simultaneously obligated to serve it; a narrative that says that immigrants can be considered both criminals and heroes. Immigrants themselves do not resist or speak to these conflicting narratives. In fact, as their actions during the COVID-19 pandemic have shown, they simply continue to do what they must do in order to claim a place in a world that continually denies it.

II. CATEGORIES OF IMMIGRANT RATIONALITY

An Autobiographical Reduction

The specific case of my father underscores certain phenomena applicable to the undocumented immigrant experience in a general sense. My father's case begins with the (very ceremonious) burial of his *ombligo*—the dried out strand of umbilical cord left over on a baby's navel after birth, and which usually falls out after a couple of weeks. In my father's case, once the *ombligo* fell off—*ombligo* also refers to that part that *does not fall off*, and the difference is understood in context—my grandmother buried it under a tree in the hills outside Acuitzeramo, Michoacán, Mexico. The reasons as to why this was done are unclear, but my father tells this story often, so it became, for me, part of his immigrant identity. Every time he tells it, nostalgia and longing are clearly evident in his words; he longs to return, he says, to that tree, to find his *ombligo* and see where *he* is buried. It is, as if, the *ombligo* never fell out and he is still attached to it, and it stretches a thousand miles across a border and into the heart of California. He is tethered to it and, in his mind, the

¹⁰ As Mendoza (2017) writes: “[s]ome citizens (e.g., Latino/as, Middle Eastern Americans, and Asian-Americans) are more likely than other citizens (e.g., white Americans) to have their day-to-day lives disrupted by internal immigration enforcement” (106).

¹¹ Eduardo Mendieta (2017) sums up this “right of mobility”: “the fundamental right of mobility, inchoate in the right to life, demands that no rule of law absolutely preclude either exit or entry: no wall without doors, no boundary without gaps, no borders without gates, no sovereign subject without the possibility of some coming in and some leaving” (84).

purpose of all his struggles is *to return* to that tree, to unearth his *ombligo*, and be one with himself again. His departure, his separation, was never meant to be permanent; the goal of his immigrant life has always been to return to his origin.

How does this story help us understand the immigrant experience in general? Consider Amy Reed-Sandoval's (2020) book on immigrant ethics, *Socially Undocumented*. The "socially undocumented" are those persons who are treated as if they were legally undocumented by virtue of their appearance—of how they are "read" (4, 61). Society, in a sense, *un-documents* them, stripping them of their "authorized" or "legal" status in the way they are treated. Reed-Sandoval goes on to suggest that essential to immigrant life is struggle, which is a struggle for work and survival (130, 134).

In order to highlight undocumented immigrant struggle, Reed-Sandoval appeals to Mexican regional music, specifically a song by the renowned norteño group, *Los Tigres del Norte*, "El Mojado Acaudalado." I'll quote it here because, according to Reed-Sandoval, it helps in understanding what she calls "the socially undocumented immigrant horizon," i.e., that interpretive framework that defines the undocumented immigrant experience in the US. *Los Tigres* sing:

I'm not happy where I am.
 Goodbye, goodbye Colorado
 Nevada and Oregon
 The "wetback" is saying goodbye to you
 The "wetback" who was covered in sweat
 In the fields of Arizona
 And the factories of New York. (Reed-Sandoval 2020, 138)

According to Reed-Sandoval, this stanza captures the struggle of the (socially) undocumented. Here, "the narrator clearly perceives the double bind in which he [is] positioned. US society reaped the benefits of his labor . . . while systematically denigrating him on the basis of performing it." But this is also "a *response* to the double bind in question" (emphasis in the original) which consists in "*choosing* to return to Mexico" (emphasis added) even though he doesn't have to. It is a choice grounded in rebellion, since, Reed-Sandoval asks, "why would [he] choose to remain in a place where he is degraded on the basis of his hard work?" Thus, rather than remain and continue to suffer degradation, the narrator chooses to leave because where he is going "he expects to be respected by others for his industriousness in the United states." We could say that the immigrant is *pushed out* of the US by systemic oppression and *pulled toward* Mexico by the promise of respect. Reed-Sandoval concludes that this journey out of and toward exemplifies, "quite literally, an *escape from* the double bind in question" (138; emphasis added). I read this stanza quite differently.

Categories of Immigrant Reason

In both my father's story and in "El Mojado Acaudalado," that which is thought to be emblematic of immigrant life—i.e., struggle and suffering—is not clearly evident. What is explicit, rather, is a longing, a nostalgia to return to an origin, an aspect of the immigrant experience missing from any objectifying account of the undocumented immigrant experience. There is, in both the song and my father's story, a sense that whatever struggle there has been or there is (viz., the double bind), is only part of a journey. But most importantly, in both accounts, the sense of impermanence is palpable, a sense unaccounted for when the undocumented immigrant experience is limited to a struggle against social injustice, obstacles, and oppressions. The undocumented immigrant experience is structured also by longing, journeying, and nostalgia. Moreover, the anxiety of being in one place, of standing still, can be gathered from my father's constant references to his native land and in the song's narrator many stops (Arizona, New York, Colorado, Oregon) leading ultimately to a decision to return *home*.

These are but two instances of the immigrant experience, but they can be found elsewhere, namely, in the shared repository of immigrant life, in the historical memory of immigration. Together with what has already been said about immigrant resiliency before enforcement, attitudes toward work in times of pandemic, and, yes, the *struggle* of immigrant life, the historical, communal, and shared memory reveals valuable phenomenological insights. Extracting from that memory and those experiences, I propose, in preliminary fashion, certain existential-phenomenological categories constituting both the undocumented immigrant lived experience and, what I've referred to as undocumented immigrant reason (this list is not exhaustive and can certainly be amended): journeying, crossing/*nepantla*, impermanence/*zozobra*, nostalgia, and return.

Journeying

Undocumented immigrant reason understands the world from the perspective of constant and perpetual movement, travel, and journeying. It is said that mobility is essential to human existence.¹² A mobility that is determined by the geographies of immigration we call "journeying." It is a journey that has an origin, a traversal of space, multiple destinations, and a point of *return*—a return to the origin. Thus, my father's journey away from his place of birth was not only a "transport" to a "point in space" which he imagined "beforehand," but also a movement *away* from a point in space which he intimately knew and to which he imagined he would return. The journey, in his case, was necessary for his own survival; it made the struggle bearable.

¹² See Mendieta (2017). Maurice Merleau-Ponty (1974) writes: "[m]obility, then, is, and, as it were, a handmaid of consciousness, transporting the body to that point in space of which we have formed a representation beforehand" (161; emphasis in the original).

Moreover, he understood that his journey will not be completed until he returns (even if his journey back is in death).

Crossing/Nepantla

The world is seen through the category of *journeying* as motion, and thus, it is seen in its transiency. For undocumented immigrant reason, this journeying also involves a “crossing” that is inevitable and never-ending. One is always crossing, re-crossing, and crossing again; boundaries appear, are overcome, and reappear again. The undocumented immigrant is always in the process of arriving and departing. Mexican philosophy and Chicana Feminism call this “*nepantla*” (Anzaldúa 1987; Mora 1993; Uraga 2021). The socially undocumented recognize this and accept it as a state of being, even if implicitly. Thus, challenges and struggles, like that presented by the double bind are endured, and so is the suffering that anti-immigrant sentiment attaches to it. Being *nepantla* means that the crossing is never done. The experience of crossing influences thought in many ways, certainly in the trauma and fear of knowing it as a limit and, since it was crossed, a transgression. Socially undocumented immigrants, like myself, internalize this crossing in our own lives. Becoming a philosopher, for instance, means that I’ve crossed to a realm unimagined by my father, and, thus, that I’ve transgressed some limit. Deportation is not an alien thought for my father who crossed the political dividing line, nor is it for me, who crossed some imagined threshold beyond which no other person *we* knew had gone. At the same time, however, crossing also means transcendence or going beyond imposed limits: it means opening up new spaces of possibilities, new challenges, and the chance for new triumphs. Immigrant parents whose children attend and graduate college certainly recognize that something they were not expected to cross has been crossed, and that the *new journey* on which their children embark is a better-equipped continuation of their own. This is a struggle that goes beyond the struggle to survive: it is a struggle to exist, transcend, and flourish.

Uncertainty/Zozobra

Undocumented immigrant reason filters experience through the categories of journeying and crossing. These are categories of motion, they are unstable, and fluid. This fluidity defines immigrant knowledge, which means that the so-called truths of immigrant reason are contingent, or they are never settled; undocumented immigrant reason assumes nothing as certain, and trust extends only to what has already been lived and the facts *on the ground*. If there is confidence, it is in accidentality, in the view that things may not be what they seem or that they may change at any moment—e.g., that immigration laws will change without warning, that anti-immigrant sentiment will be better or worse with the flip of some cultural switch, etc. In this way, undocumented immigrant reason is never secure; it travels from certainty to uncertainty, from yes to no, never settling in a

stable epistemological foundation. Borrowing from a concept in Mexican philosophy, we can call this category “*zozobra*” (Uranga 2021). In other words, the uncertainty in which undocumented immigrants exist is represented in undocumented immigrant reason as the permanent breakdown of affective certainty. As such, the world is seen through the category of “*zozobra*,” as offering incompatible and risky life choices—i.e., Reed-Sandoval’s “double bind”—none of which are advantageous, but all of which are necessary. That the disadvantageous choices feel “necessary,” however, further exacerbates the uncertainty and the mistrust, since the soul feels wounded and torn by the mere confrontation.

Undocumented persons living in the US have a proximal relation to *zozobra*. Their plight is filled with risks and everyday life is one of survival and overcoming. One the one hand, there is the risk of being found out, of being exposed, and becoming vulnerable to violence, exclusion, or deportation. An objectifying immigrant discourse makes it so that being undocumented means that one is always outside the space of law, thus outside the space of protection and fully in the realm of nastiness, violence, and death. Everyday activities become opportunities to be discovered and dehumanized. Hiding is also not the answer, since there is the risk associated with being anonymous, nameless, fully underground. Anonymity leaves immigrants vulnerable to exploitation in labor and wages, human trafficking, violence, and so on. To be an undocumented immigrant in the US is thus to embody *zozobra*: there is an indeterminacy and uncertainty in *being* a human being itself. As we saw above, the *zozobra* that defines immigrant life in the US is extended to others who are not undocumented immigrants.

Nostalgia

My father’s story about his buried *ombligo* is a story of nostalgia. He longs to return to his roots, to the origin of his tether. This longing for return is inherent to undocumented immigrant reason. The reality of the immigrant world—constituted by *zozobra*, anti-immigrant narratives, double binds, and so on—is tolerated because the nostalgia for the origin is greater than the suffering of the present. The world is seen through this longing: *I will do the hard, dirty, risky jobs that no one else will do because one day I will be done and I will go back home, even if I don’t know when that will be.* For some, the return is indefinitely postponed (they may die far from home); the impossibility of return, however, does not keep the nostalgia from affecting the experience of the world. *Nepantla* and *zozobra* refer to an unsettledness, and so as long as these constitute me, I will long for the origin. My immigrant father dreams through his nostalgia—when awake and when asleep. He recognizes that his struggle has never been merely for the sake of overcoming a double bind, an oppression, but for the sake of his own liberation in an end beyond *my* imagination. I recall asking him once why he bought a home in the US if his goal has always been to one day return to Michoacán. *We have to have a place to stay*, he said, as if buying a home in the U.S. was purely an expediency. In this sense, my father’s mortgage is not literal (“mortgage” means a death pledge), since the commitment to stay in one place is not a commitment till death, but until it’s time to return . . . again.

Return

There's a thinking-through-the-return that constitutes undocumented immigrant reason. It serves as an expectation of a coming-back, which is grounded on nostalgia, memory and expectancy. The return home is planned and always on the foreground. It structures undocumented immigrant reason by coloring the present with plans for the future; it displaces the primacy of the double bind by looking beyond it, to a doubling-back to the origin. This is evident in the immigrant's confrontation with the possibility of his own death and the practice of "postmortem repatriation," in which the bodies of deceased migrants are sent back to Mexico to be buried in their hometowns (Felix 2011). I say this is a category of undocumented immigrant reason because, of course, while immigrants expect to die, undocumented immigrant reason assumes that death may come while in the process of journeying, of going from one place to another; in other words, of dying *away from home*. Nevertheless, there is an expectation of a return, even in death. Thus, for instance, time and time again one hears about immigrants who've died in the United States being "repatriated" to be buried, honoring, even in death, a desire rooted in nostalgia and an existential need to return. Jorge Negrete's anthem of Mexican nomadic life famously expresses this desire:

Mexico lindo y querido
 Si muero lejos de ti
 Que digan que estoy dormido
 Y que me traigan aqui//
 Que me entierren en la sierra
 Al pie de los magueyales
 Y que me cubra esta tierra
 Que es cuna de hombres cabales.

Mexico beautiful and beloved
 If I die away from you
 Let them say that I'm asleep
 And bring me here//
 To bury me in the mountains
 At the foot of the magueyales
 And let this earth cover me
 Which is the cradle of upright men.¹³
 –Jorge Negrete, "México Lindo y Querido"

The narrator here implores "Mexico" itself to advocate for his return. If he happens to die in a foreign land, he asks that his body be returned so as to be buried in Mexican soil, in his land, in its history, in the "cradle of upright men." The nostalgia in these stanzas

¹³ Translation is my own.

is familiar; death cannot stop the journey from reaching its completion, which is a return to origins, to the earth, to where all *ombligos* are buried. The imploration to Mexico itself assumes a previous agreement, namely, that the journey would conclude until the return, one that not even death can prevent. Of course, in the everyday life of undocumented immigrants, the hope of return is the only hope. Immigrants who are documented, or who have *a* right to be in the country, may have no such plans for return—or any such hope, since they may only look as if they hail from Michoacán, while tracing their origins to the place in which they stand. Those who only look as if they are immigrant without being so may be those who, unlike their parents, have no connection to a similar origin—they don't have an option for repatriation. This is something that is worth considering from a phenomenological perspective; for instance, do these phenomenological categories structure *my* post-immigrant experience as they do the experience of my undocumented immigrant parents? I will leave this for another time.

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THE BORDER SECURITY INDUSTRY AND THE SECOND REFUGEE CRISIS A COMMENTARY ON SERENA PAREKH'S *NO REFUGE: ETHICS AND THE GLOBAL REFUGEE CRISIS*

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When asked about the “refugee crisis”—and especially the crisis sparked by the 2011 Syrian civil war—Westerners tend to think about it in terms of either threat or tragedy. When presented as a threat, refugees are made out to be potential terrorists, sexual predators, criminals, economic burdens, or culturally unassimilable. Not everyone holds such prejudiced views about refugees, but even among those who don’t, they believe that enough of their co-nationals do—especially with regard to refugees that come from non-white or non-western countries—and they also believe that a large enough influx of refugees would lead to increased support for reactionary far right movements, which has the potential to undermine liberal democracy. On this view, refugees present us with the tragic choice outlined here by Michael Blake (2020). Western countries

can do justice for the world’s most miserable now, but at the cost of undermining the very institutions that put it in place to do that good. [They] can, instead, preserve liberal democracy, but at the cost of excluding some people with very good claims against that sort of exclusion. What it can’t do . . . is avoid sacrificing *something*. (140; author’s emphasis)

In *No Refuge: Ethics and the Global Refugee Crisis*, Serena Parekh (2020) offers a different perspective on the “refugee crisis.” Parekh agrees that “[f]or most people [the above description has been all there is to] the refugee crisis—the arrival of large numbers of asylum seekers, the struggle that ensued in Europe, and the political changes that resulted from governments’ handling of it.” But by focusing only on this part of the crisis, most Westerners have overlooked a second and more troubling crisis. This second refugee crisis is the crisis for refugees themselves. A crisis in which refugees “are unable to access the minimum conditions of human dignity while they wait for a more permanent solution” (3). What is more damning and what I believe Parekh convincingly shows in this book is that this second refugee crisis is one that “we have created: we have tolerated, financially supported,

and even encouraged” (Parekh 2020, 3). Until recently, much of the philosophical literature on refugees has focused on the first crisis and therefore dealt primarily with questions about who really counts as a refugee and when states acquire obligations to admit non-citizens. Rarely, however, do philosophers talk about the ethical implications of the second refugee crisis. This is a troubling development when, as Parekh reminds us, “most refugees remain in camps or urban settlements in the Global South—less than 10 percent seek asylum in the West, and less than 1 percent are chosen for resettlement” (104). In short, when philosophers debate the ethics of asylum and refugeehood, the conclusions or insights they come to will, at best, be applicable to about 10 percent of the world’s forcibly displaced.

In what follows, I would like to briefly outline Parekh’s argument. This outline will show how her reframing of the refugee crisis provides a much-needed intervention in the current philosophical literature. I then extend these insights into questions concerning immigration enforcement. In doing so, I argue that in order to adequately deal with the second refugee crisis we must be more receptive to the open borders position than Parekh seems to allow. The reason is that beyond the ignorance and moral bankruptcy that have kept Western states from responsibly acting on the second refugee crisis, there is also a strong and perverse economic incentive, one that has manifested itself as the border security industry, that keeps the second refugee crisis going or will generate similar crises until we decriminalize all forms of migration.

No Refuge: A Brief Sketch

No Refuge is an extremely smart and yet very accessible book. It is also, however, a very difficult read. Difficult not because of the book’s prose or style, or because the topic is too esoteric, but because each of the book’s six chapters begins with a gut-wrenching tale of vulnerable people just trying to survive and constantly finding themselves caught in an endless cycle of human rights violations, exploitation, and unwinnable choices. The stories are harrowing, but they are effective in putting a human face on each of the chapters’ themes and they serve as a reminder to the reader of how high the stakes are for the people we theorize about.

The book itself is divided into two parts. The first looks at the refugee crisis from the Western perspective; the second looks at it from the refugee’s. The principal claim of the book is that the refugee crisis tends to be thought of only from the first perspective, with Western countries asking themselves how this crisis will affect them and how generous they need to be. This kind of framework has the effect of covering over many of the important moral issues of today’s refugee crisis. To both uncover these overlooked moral issues and better address them, Parekh urges the reader to consider the refugee crisis from the second perspective.

Before delving into the main body of the work, Parekh uses the preface as a slight detour to address the elephant in the room. This elephant is the worry, which a number of well-intentioned people share, that refugees are a serious threat. Using her fear of flying as an

analogy, Parekh goes through and skillfully explains to the reader why fears about refugees are misguided and based on something more akin to turbulence than truth. She begins by informing the reader that we have decades worth of experience showing that refugees are some of the least likely people to be terrorists, which should come as no surprise once we learn about the intense level of screening refugees are required to undergo. Refugees are also not more likely to be criminals or sexual predators, and this has been confirmed and reconfirmed by various studies. Lastly, Parekh explains to the reader why refugees are not an economic burden, but often an economic gain, and why the idea that non-Western refugees are somehow culturally unassimilable is a myth.

For readers who remain unpersuaded by the arguments Parekh provides in the preface, it is unlikely they will accept much (although not nothing) of what she goes on to argue in the main body of the text. People who refuse to believe that refugees do not pose a threat probably will also not accept the idea that states have obligations to take in refugees that can outweigh their right to exclude, regardless of how such obligations might have been accrued. Fortunately—and this is one of the many virtues of Parekh’s book—there are some key ethical insights that even the more xenophobic will find hard to argue against. These are arguments that are found in the second half of the book, and they deal specifically with what is owed to the forcibly displaced who are unlikely to find durable solutions (i.e., refugees who are unlikely to be admitted into another country).

For those of us who are sympathetic to the arguments in the preface, the first part of the book, which consists of chapters 1-3, offers a helpful outline of the relevant philosophical literature and the different positions philosophers have taken with respect to the ethical questions surrounding refugees. These questions ask about who counts as a refugee and when, if ever, may a state deny admission to someone legitimately seeking refuge. As with most philosophical debates concerning the movement of people across borders, these questions are motivated by an inherent tension between respect for the sovereignty of a state (e.g., a state’s right to self-determination) and a commitment to respect the human rights of all persons (e.g., an individual’s right to freedom of movement).

After outlining the various positions, Parekh notes that even on more nationalist accounts, where states are thought to have an inherent right to deny admission to non-citizens (including refugees), there are still times when states must morally refrain from exercising this right. One of these times is when the state is the primary cause of the refugee’s displacement. We find such real-world examples in the cases of displacement that resulted from the U.S.’s war in Vietnam and more recently its interventions in the Middle East. Another time is when people find themselves in dire need of refuge, and it would cost the state very little to provide it. This second case does not require that the state be causally responsible for the refugee’s plight to accrue a duty to help. This duty derives from the larger moral principle of humanitarianism.

Parekh is correct in suggesting that a version of these two justifications is most often cited when one is making a case that a state should help refugees. The first justification, which we can call a causal account of blame, has a commonsense feel to it. It is a version of the old “Pottery Barn rule”: you break it, you bought it. The second, as Parekh points out, is how most of us tend to think about our duties to refugees. We do not see ourselves

as perpetrators, but nonetheless feel we ought to do something “to *rescue* refugees from the terrible circumstances that their governments place them in” (Parekh 2020, 103; author’s emphasis).

On this ethical framework there are only two sorts of obligations one might incur with respect to refugees. The first is very strong but applies only to a minimal set of actors (i.e., those who are directly responsible for their plight). The second can apply to a great many more actors (i.e., all who can provide help) but is weak and is considered more like charity than an actual obligation. Parekh is unsatisfied with either of these two options and wants to make a case for a third possibility. This would be an obligation that applies to a great many more actors (i.e., all who can provide help), but is strong enough to demand serious action, even from actors who are not directly responsible for the plight of refugees. This obligation is the result of states participating in, and often benefitting from, a system of global structures that together have created or contributed to the second refugee crisis. Explaining and outlining the second refugee crisis is therefore crucial to Parekh’s overall argument and is the subject of the book’s second half.

In the second part of the book, we learn that the second refugee crisis is, perhaps ironically, the result of Western states taking seriously the principle of non-refoulement while at the same time wanting to take responsibility for as few refugees as possible. The principle of non-refoulement says that states ought not to send asylum seekers (i.e., refugees who have made it into a state’s territory) back to a place where they would be persecuted or killed. Western states have largely abided by this principle, but at the same time they do not wish to take in or be responsible for very many refugees. This has created a situation in which Western states do everything they can to prevent refugees from accessing their territory because when they gain access to their territory it becomes a lot more difficult for states to expel them. This has given rise to draconian immigration enforcement policies and to various schemes for keeping refugees as far away from the territory of Western states as possible. For example, these schemes include paying non-Western states to warehouse refugees or subsidizing the immigration enforcement of other countries to serve as a buffer. According to Parekh, and as I will explain further below, this reaction from Western states has left refugees with “three more or less terrible options: squalid refugee camps, urban destitution, or dangerous migrations to seek asylum in the West” (105).

Chapter 4 of the book is devoted to explaining the first two options: refugee camps and urban settlements. We are told in this chapter that refugee camps are today the standard way in which refugees are expected to get help and they can be found throughout the world. These camps provide refugees with some basic lifesaving aid and are meant to be temporary. Despite their limited resources and temporary nature, refugees find themselves living in these camps for decades and in conditions that are extremely precarious. In this chapter, Parekh details the various human rights abuses and forms of sexual exploitation that refugees suffer as a regular part of life in these camps. These precarious conditions, however, are not the fault of the refugees themselves but a foreseeable result of host states not allowing refugees to interact with their local population or to gain employment outside of the camp. Refugees are expected to remain within these camps, which offer few options

for employment, commerce, or other forms of interaction that make a minimally decent life possible. Living in a refugee camp, as Parekh (2020) describes it:

forces refugees into a situation of enforced idleness, limiting their ability to maintain their agency and sense of control over their lives, not merely for a brief period but for, on average, twelve years, sometimes much longer. Refugees often see their bargain as trading in their autonomy, their ability to guide their own lives, for the sake of security and food. (112)

For many refugees this trade-off is unacceptable. Instead of living in camps they choose instead to live informally as urban refugees. This option has its advantages. Refugees who live outside of the camps can work informally and thereby earn a living. There are also, however, some serious drawbacks. Because the work is informal, these refugees tend to earn about half of the state's minimum wage, they constantly face horrible work conditions, and since they are not registered in a UNHCR camp, they are ineligible for material assistance such as housing, food, healthcare, or education.

Neither refugee camps nor urban settlements seem like attractive options. Add to this the following three important facts we are made privy to in the book's introduction. First, in 2019 there were about 70.8 million displaced persons throughout the world. Second, of those displaced only about one percent were ever resettled. Third, the average number of years a person is likely to remain a refugee is seventeen. Knowing these three things, it is no wonder that refugees would not want to choose to live in either camps or urban settlements. Instead, many will decide to test their luck and try to get into a Western state where, if they are successful, they could claim asylum and gain the right to not be returned. For this reason, many refugees have decided to embark on the dangerous mission to clandestinely enter a Western country and seek asylum there.

This third option for refugees is the topic of chapter 5. In this chapter we learn about the deterrence policies that Western states—specifically the United States, Australia, and Europe—have put in place to prevent or discourage refugees from accessing their territory.

[Today] every Western country has redefined asylum seekers as unauthorized migrants. Detention, in some cases in terrible conditions, is now routinely used as a strategy both to control unauthorized immigrants, including asylum seekers, and to deter those who might follow their example. The harsher the policy, the stronger the message: you are not welcome; do not seek asylum here. (130)

Yet because there are no other viable avenues for refugees seeking asylum in Western countries to pursue, the harsh enforcement policies have very little deterring effect on refugees. Often all they do is make the journey for the world's most vulnerable more dangerous and more expensive. These policies have the unintended consequence of creating economic opportunities for human smugglers. In fact, most refugees that made it into a Western country today did so through the services of a human smuggler. These

smugglers often take advantage of the refugee's vulnerability by having them undergo unsafe voyages at sea or through deserts to maximize their profits, and they funnel billions of dollars into other criminal organizations. Yet as bad as human smugglers are, we must remember they are a symptom of the broken refugee system, not its cause.

In chapter 6, Parekh lays out the case for understanding this second refugee crisis as a structural injustice. In making this case, Parekh begins by noting that there are two sets of harms that afflict refugees. The first set are those that force refugees to flee their homes in the first place. This set creates something like the duty of rescue we encountered in the first part of the book. In these cases, we can identify a clear perpetrator, but we also find that those who are not causally responsible may have a duty, one based on the principle of humanitarianism, to provide refugees with some help. The second set of harms are "all the things refugees must do in order to survive, including living in squalid, insecure camps, subsisting despite neglect and vulnerability in urban centers, or pursuing asylum on dangerous routes with human smugglers." This second set of harms is more often the result of indirect, uncoordinated, and sometimes unintentional actions of different individuals and states exercising what they take to be their rights and pursuing what they take to be their own best interest. This is what makes this second set of harms structural rather than a malicious conspiracy of a few:

While individual policies in isolation may not be problematic, when looked at as a whole these policies and actions have the cumulative effect of more or less ensuring that the vast majority of refugees will not be able to access the conditions that would allow them to lead a minimally decent life, one that includes autonomy, dignity, and basic material goods. (Parekh 2020, 159)

As with causal accounts of blame, solutions to structural injustice focus on those who have some responsibility. However, unlike causal accounts that tend to be backward-looking in assigning responsibility (i.e., finding those directly responsible), structural accounts are forward-looking. They are less about shaming specific bad actors and more about limiting future harms. In this respect, from a structural perspective, there is no contradiction in holding many more actors responsible for addressing the harms of the refugee crisis and at the same time focusing less on assessing blame or seeing who is more morally culpable.

Parekh then uses the conclusion to the book to suggest some ways to address the second refugee crisis as a structural injustice. One recommendation is that because much of the injustice of the current system results from Western states individually pursuing their own best interests, these states have an obligation to begin to work collectively to support and expand resettlement and asylum processes. A second recommendation is to focus more on integrating refugees who might never find a durable solution such as resettlement in another country or a safe return to their country of origin. Achieving integration would require host states to allow "refugees to live with the local population and attend school, use hospitals, and work just like anyone else who lives there" (183). It would also require economic measures, such as giving cash transfers directly to refugees and offering tax or

trade incentives to companies that hire refugees. A third form of integration would be political, which could be achieved through something like disaggregated citizenship. This is where the social rights of citizenship are separated from the political rights, so that even refugees can be “allowed to participate politically in some, though not all, ways” (Parekh 2020, 187).

Halting The Border Security Industry

I am very sympathetic to both Parekh’s approach and her overall recommendations. I believe that philosophers working on the ethics of migration—especially those concerned with questions about what is owed to the forcibly displaced—need to take seriously the second refugee crisis and begin to think about these injustices in more structural terms. Yet despite my agreement with Parekh, I remain convinced that if we want these structural changes to take place, we need to be less reticent about advocating for open borders. I understand why Parekh mostly side-stepped the thorny question of open borders in this book. There is little to gain from entering into this contentious and often too over-idealized debate. Instead, Parekh does a wonderful job of showing how we do not need to be convinced about the correctness of the open borders position to recognize the injustices plaguing millions of displaced persons and why it is that, even if not directly, we are nonetheless responsible for (and often benefit from) the structures that create and perpetuate these injustices for refugees.

So why then do I insist on harping on about open borders? I believe, practically speaking, that states will not do anything for the globally displaced until they are properly incentivized to do so. Conversely, states will not stop harming the globally displaced, or even stop being in denial about their role in creating and perpetuating this unjust system, until they are properly disincentivized from doing so. This is a point that Parekh (2020) herself acknowledges early in the book, when she notes in passing how “during the Cold War both communist and capitalist societies could claim a political victory if people from one country claimed asylum in the other” (9). During the Cold War there was an incentive structure that motivated developed countries to help some (although by no means all) refugees. In today’s post-Cold War world, however, the incentive structure has shifted dramatically. There are now powerful economic (and not just xenophobic) incentives to increase border enforcement and perhaps the only way to bring an end to this vicious cycle is to decriminalize all forms of migration.

The immigration enforcement business, commonly referred to today as the border enforcement industry, is booming. To give you an idea of just how much this business has grown, consider that at the end of World War II there were seven borders considered “militarized” around the world. By the time the Berlin Wall—perhaps the most infamous militarized border in modern history—fell in 1989, there were only fifteen militarized borders around the world. Today there are seventy-seven, and nearly two-thirds of those borders were militarized after 9/11 (Hjelmgaard 2018). When the political theorist

Joseph Carens (1987) made his now well-known argument for open borders, he began by reminding his readers that borders have guards and that these guards have guns. What he should have gone on to emphasize was that these guards are paid handsomely and that their guns are very expensive.

Militarized borders create jobs and demand for durable goods that include weapons, sensors, watchtowers, fencing, and much more (Miller 2019). So long as certain forms of migration are criminalized and there are people desperately seeking entry, the border enforcement industry will be a great investment for both capital and the state. As Parekh (2020) notes, asylum seekers (regardless of how they ought to be recognized under international treaties) make up a significant part of those seeking clandestine entry. There is currently no incentive to actually solve the second refugee crisis. Solving the second refugee crisis would dramatically reduce the number of people that the border enforcement industry needs to locate, apprehend, detain, put in cages, and deport in order to justify its existence. At each one of these steps, the border security industry generates a lot of money and provides middle class employment to citizens who might otherwise be unemployed or under-employed. And it is important to note that these jobs are not reserved only for citizens in Western states. The immigration enforcement of developed states has now been exported to countries like Mexico, Guatemala, and El Salvador (Sager 2018). As General John Kelly once “put it, ‘[U.S.] border security cannot be attempted as an endless series of ‘goal line stands’ on the one-foot line at the ports of entry or along the thousands of miles of border between this country and Mexico . . . I believe the defense of the Southwest border starts 1,500 miles to the south, with Peru” (Miller 2019, 7). And in this way, countries whose own citizens are victims of draconian immigration enforcement policies come to welcome the jobs, weapons, technology, and money brought to them by the border security industry.

In short, there is a lot of money being made in militarizing borders and this only incentivizes the proliferation of more draconian enforcement policies, not less. The cat-and-mouse game, as Parekh (2020) describes it, that is played out between immigration agents and human smugglers turns out to be good for business all around. Neither the smugglers nor the border security industry has an interest in decriminalizing migration because doing so would put both of them out of business. Therefore, if we are serious about helping the globally displaced, are worried about the kinds of indirect harms that result from states pursuing their own best interest, and recognize the perverse economic incentives that lead to the proliferation of draconian enforcement policies, then there might not be any other solution to the kinds of structural injustices that worry Parekh than to decriminalize human movement across borders and thereby eliminating the *raison d'être* of the border security industry.

To be clear, this recommendation is not based on the notion that freedom to cross international borders is the ideal solution for all displaced persons. Parekh is correct that there are many cases—maybe most—where movement across borders is not what refugees need, but I contend that decriminalizing migration will (a) give the forcibly displaced more viable options than they currently have and (b) it will shift the larger incentive structure away from increased enforcement and toward helping refugees where they are. Instead

of Western states using border enforcement as some deranged form of Keynesianism, in a world of open border these same states—perhaps ironically driven by their own racism and xenophobia—would be strongly motivated to find durable and humane solutions for the forcibly displaced that would not require them to trek hundreds of miles and deal with duplicitous human smugglers all for a chance at a minimally decent life. As Parekh (2020) points out, the number of people on the move today is really not as daunting as it is often made out to be. In a world of billions of people, we could find durable and humane solutions for the tens of millions that are currently displaced, but we will do so only if Western states are properly motivated.

Conclusion

In conclusion, I would like to reiterate my agreement with much of what Parekh (2020) has written in this book. I support her call for looking at the larger structures, and not just the individual actors, that create and sustain the current refugee crisis. I agree that appeals to national sovereignty are not morally weighty enough to justify the draconian enforcement policies that we see most Western states putting in place to prevent or deter immigrants (and especially refugees) from gaining entry into their territory. Where I would like to push Parekh's account a little further is with respect to the perverse economic interests these very same enforcement policies have created. And while I agree with Parekh that we do not need to accept the open borders position to see the injustices of something like the second refugee crisis and understand how it is that we are morally responsible for it, I don't see any way out of this crisis (or preventing another like it) without decriminalizing migration and thereby, even if indirectly, calling for a world without borders.

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