

HUMAN RIGHT – WHICH HUMAN; WHAT RIGHTS? BIOPOLITICS AND BARE LIFE IN MIGRATION AND COVID-19

Randolph B. Persaud, Ph.D.

Associate Professor, School of International Service, American University

Jackson Yoder

B.A. in International Studies, School of International Service, American University

Abstract: *This article argues that human rights are outcomes of relations of power. Invariably, the privilege of enjoying state protected rights are at the expense of vulnerable and marginalized populations. We apply the concepts of homo sacer and bare life to interrogate differential rights in the Europe and the United States with specific focus on two issue areas – migrants/refugees/asylum seekers, and the effects of Covid-19 on African Americans.*

INTRODUCTION

This paper argues that what are generally known as human rights are really relational forms of power where some must be denied rights for others to have them. Human rights go beyond juridical rights; rather, they are one of the conditions of emergence and reproduction of state sovereignty, where the denial and guarantee of rights are not disconnected instances, but are outcomes of different constellations of social forces within a social formation. In what follows we draw on the work of Michel Foucault¹ and Giorgio Agamben,² both of whom have broached the reduction of the human to ‘bare life’ (*zoe*) in order to make possible life as *bios*, which is life within a political community where rights are granted and protected. We show that there are relations of antagonism between *zoe* and *bios* and that these relations are an essential part of life in liberal democracies. *Zoe* amounts to the reduction of the human to a position of overdetermined insecurity, while *bios* is constituted in the language and symbols of the dominant social forces. Accordingly, we argue that unless the human *in toto* becomes the referent object of security, liberal democracies and other forms of socio-economic and political configurations will not be able to establish rights as a generalized condition. We look at recent and current developments in European and American security policies and practices, with emphasis on migrants who come from marginalized populations. We also analyze current developments around COVID-19, not only because the pandemic has revealed the unevenness in human rights, but because it is indicative of the idiom of the bare life thesis—that some must die for others to live. One must recall that as the COVID-19 pandemic is wreaking havoc, Texas

Lieutenant Governor Dan Patrick has called for the economy to be reopened. The Governor went so far as to advocate sacrificing older Americans so that the American economy, and the American people who are not aged, can have life.³

BIOPOLITICS AND THE SOVEREIGN BAN

In his lecture at the Collège de France between 1975 and 1978, Michel Foucault engaged in a broad shift in his theory of state power. The fulcrum of this shift can be found in a movement away from the political economy of discipline and punish, where state power had traditionally been invested in the sovereign, and where the *raison d'état* was the right of the sovereign over life and death. Put differently, the basis of the sovereign power was the right to decide on the right to live or die. As Foucault states, "...the classical theory of sovereignty, the right to life and death was one of sovereignty's basic attributes."⁴ In this instance, life and death are not *inherent* human rights in the Kantian sense of a categorical imperative that is morally universal, but practices of power where some are designated as the deserved whom must be protected, against the "damned," whom the power of the state shall be brought to bear. Accordingly, "...the lives and deaths of subjects become rights only as a result of the will of the sovereign."⁵ The giving of life is condemnatory, in that it is only conducted in terms of the denial of death. The preponderant action is for the sovereign to retain the right to kill, or "the right to take life and let live."⁶

The shift to biopolitics took place toward the end of the seventeenth century, and developed steadily during the eighteenth and the nineteenth centuries. In the contemporary political economy of discipline, where the targets are individuals and the objective is conformity, states began to think in more structural terms, focusing more on populations. The apparatus of "make life and 'let' live" replaced the idea of "take life and let live."⁷ The leitmotif of biopower is to make national populations available as resources for capitalism and war, consistent with the rise of the modern nation-state. If Hobbes' Leviathan was to end anarchy and institute order, then biopolitical governmentality is to manage life through a new array of techniques and strategies.⁸ These methods include statistics, demography, medicine, health and hygiene, and education. The aim is to produce new forms of subjectivities, rationalities, imaginaries, such as patriotism, nationalism, the family, markets, work ethic, and self-discipline. In turn, these become a *derivative* set of rights; that is, human rights for the individual, the citizen, the patriot. In the current conjuncture, biopower is expressed in terms of neoliberal governmentality, where the well-being of individuals and populations are reciprocal co-implications, and where new regimes of social rights, such as the right to education or medical care, must be understood along with old disciplinary tendencies, which are embodied as the carceral state, the management of borders, and the ideologization of the marginalized in the languages of racism.

The Italian philosopher Giorgio Agamben has also written extensively on the idea of bare life, some of it criticizing Foucault. In particular, Agamben thinks that Foucault's perspective on biopower underestimates the extent to which death is still central to sovereignty and the giving of the right to life. Agamben builds his theory of bare life around *homo sacer*, a juridical figure in Roman law, who apparently, was not worthy of sacrifice, but can be killed without punishment. In modern parlance, when a government declares a state of emergency, it assumes the right to kill without being held accountable, or the right to abandon those whom contribute to the life of "the citizen" by being abandoned. In other words, *homo sacer* represents a figure whose *existence* is both expendable and valued, allowing for the paradoxical treatment of these individuals. The differential treatment within the territorial nation-state is part of the process of constituting the state of exception, which are the grounds for establishing the relative autonomy of the state in the discriminatory exercise of state power. Differential treatment is more than an exercise of state power in the narrow sense of the state. Rather, a more extended understanding of the state, such as one propounded by Italian philosopher Antonio Gramsci, allows for an understanding of difference as an instrument of mobilization of those whom must be saved.⁹ *Homo sacer* can be observed in practice when governments and security agencies adopt policies and strategies that subsequently lead to the suffering and probable death of "irregular" migrants and other marginalized populations while simultaneously touting the wellbeing of the vulnerable, in so far as they can be saved or exploited for labor. For Agamben, the death camps of Nazi Germany were the fullest expression of the sovereign ban, or state of exception, where the state could kill without committing homicide, or where those considered "not sacred" could be abandoned through punitive exclusion. Non-humans cannot have human rights, because they are lives "unworthy to be lived."¹⁰ A more expanded interpretation that we adhere to is where bodies, or sub-sets of populations, are allowed in but placed outside of citizenship, outside the bio-cultural field of humanity. One will soon note that immigrant labor, and especially "illegal" immigrant labor embodies this category, where the product of the illegal human labor is appropriated but simultaneously separated from the human. This non-human, therefore, can supply labor, but cannot have human rights, the same rights afforded to the citizen. Neoliberal capitalist regimes of accumulation thus disembody the human from labor power. In Marxian political economy, it is labor-time, that is, labor in the abstract, that is sold as a commodity, *not* the sensuous human being as *homo faber*.¹¹

Agamben's objections to Foucault, though useful, are not universally accepted. For instance, Roxanne L. Doty, an accomplished scholar working at the intersection of poststructuralism and postcolonialism, believes that too much emphasis is placed on Foucault's peripheralization of death in the problematic of bare life, and more broadly of the biopolitics of governmentality.¹² In fact, Doty's argument correctly credits Foucault with broadening bare life by introducing race as a specific element.

For Doty:

race performs two functions in the Foucauldian oeuvre – namely:

- (1) it introduces a break in the domain of life under power's control between what must live and what must die thus fragmenting the field of the biological that power controls, and*
- (2) it establishes a relationship between life and death.¹³*

As Doty points out, Foucault is clear that “if you want to live, you must take lives, you must be able to kill.”¹⁴

Doty applies the strategy of bare life to the techniques of US border control, where she finds that the “prevention through deterrence” strategy amounts to knowingly violating the human rights of migrants, asylum seekers, and refugees by willfully abandoning them to the vagaries of the borderlands between Mexico and the United States. These borderlands are an amalgam of technological surveillance and monitoring, a kind of abstract instrumentalization of state-sponsored sovereignty based on abject racism. More fundamentally, the willful abandonment of the migrants in the desert or in the sea is intended to have them die as a warning to other prospective migrants who may want to take the risk. Abandonment is veritably the technology of some must die in order for others to live.

Nick Vaughn-Williams also engages the biopolitics of bare life in his analysis of the European border crisis of the 2010s.¹⁵ Building on Foucault and Agamben, Vaughn-Williams expands the security-identity matrix by culling from Roberto Esposito's theory of immunity. Vaughn-Williams' work bears directly on the general politics of human rights. These rights include the different ways in which the rights of migrants, asylum seekers and refugees are dealt with at the local, national, and international levels. In particular, the contradictions between security and humanitarianism come to the fore in the European Frontex policies.¹⁶

Vaughn-Williams poses the question thus: “Why do European border security practices often expose the very irregular migrants they are supposed to protect to dehumanization and death?”¹⁷ The exposure to death, which Vaughn-Williams notes has increased dramatically after Italy abandoned its humanitarian rescue program, *Mare Nostrum*, in 2014, has been thoroughly documented. For example, Omar Shatz¹⁸ and Juan Branco¹⁹ submitted a 245-page report to the International Criminal Court, claiming that EU political leaders had committed serious breaches of human rights because their deterrence-based migration policy “intended to sacrifice the lives of migrants in distress at sea, with the sole objective of dissuading others in similar situation from seeking safe haven in Europe.”²⁰ Italy, Germany, and France were named in the report because they played prominent roles constructing routes in the Mediterranean Sea that they would have known to be dangerous.

The report by Shatz and Branco noted above also states that the charge of “crimes against humanity” were partially based on “internal papers from Frontex.” Frontex’s website represents itself as follows:

*Frontex, the European Border and Coast Guard Agency, supports ER Members and Schengen Associated Countries in the management of EU’s external borders and fighting cross-border crime. The agency is a centre of excellence for border activities at the EU’s external borders, sharing intelligence and expertise with all EU Member States, as well as neighboring non-EU countries affected by migratory trends and cross-border crime.*²¹

European border countries knowingly sponsor wars that contribute to the displacement of peoples from the Middle East and North Africa; they subsequently deny responsibility for the wellbeing of migrants before they ever cross a national border by hiring local reconnaissance organizations to intercept migrants and return them to their home countries, or simply letting them die at sea. Despite these actions, many European border countries continue to champion the rescuing of refugees as a patriotic and humanitarian act to continue to exploit the positive prospects of migrant labor and in order to maintain the image of Europe as a giver of life, this notion being a civilizational claim. This dichotomy renders migrants within the realm of Agamben’s concept of bare life and *homo sacer*, demonstrating how the lives of migrants are seen as both worthy of abandonment and protection.

The European border crisis demonstrates two key points regarding the significance of language in the securitization of borders and identity. In the case of the “regular” and “irregular” migrant binary, the “regular” migrant represents a person who has endured all of the legal and bureaucratic procedures to become legitimately “human” within a European country. Conversely, the “irregular” migrant represents someone that has resorted to means other than those bureaucratic processes established by European states and independent agencies to gain passage to European countries, including through boatlifts, caravans, and overstaying legal visas. By categorizing migrants in this way, European states and their agencies are able to conduct a subtle, yet effective way of demonizing migrants viewed as outside of the norm. When labeled as “irregular,” the name implies that these migrants have strayed from what is normal and routine, and, by extension, are seen as defective and, therefore, violators of the rational. Suddenly, the connotations of the “irregular” migrant as intrinsically lazy, freeloading, or conniving become easier to accept if a migrant has been labelled as deviating from the status quo of immigration routines. As we can see, the reduction of the “irregular” migrant to *homo sacer* can be done through processes of bureaucratization, where standard operating procedures governing asylum seekers, refugees, and migrants are mere objects in the vast and impersonal apparatuses of the state. The mechanisms through which state power is wielded inscribes the differential between affirmative biopolitics and destructive thanatopolitics; that is, a situation

where the rights of the human are suspended. Put differently, human rights or the denial of rights to some humans are conducted through an abstracted machinery of sovereign power. Nasir's examination of Article 2 of the European Convention on Human Rights, as applied to two case studies, reveals that "the juridical interpretation and application of the right to life produces a differential governmental management of life."²² The politics of death adumbrated by Governor Patrick above comes to mind here, when he suggested that there is an "anti-death bias," a bias that must be put aside in order for citizens to live.

This anomaly is compounded by the fact that, in recent years, the definitions of who is a "regular" and "irregular" migrant has expanded to include larger swaths of people. The increasing importance of technological innovation and the devolution of border security authority to lower bureaucratic agencies has allowed considerable elasticity in the definition of who is "regular" and who is "irregular". In other words, it is entirely possible that migrants that were considered "regular" before the Arab Spring of 2011, or before Mare Nostrum ended, may now be considered "irregular" due to the narrowing of the "regular" and the widening of the "irregular." Coupled together with the manipulation of language to vilify migrants, the dynamic nature of the definitions of migrants contributes to a narrative that the scale of issues surrounding "irregular" migration are much larger than they are. In practice, governments and media agencies apply this strategy further when labelling migrants as "swarms," "plagues," and other pejoratives designed to dehumanize and homogenize these people into a group that needs to be expelled or killed. Greece's Minister of Health, for example, warned of a "hygiene bomb," a clear case of negatively labelling refugees as diseased.²³

In the same way that bare life portrays "irregular" migrants as passive beings that can only be acted *upon*, it is important to acknowledge that dehumanizing practices *within* border and identity securitization occur both at the national and regional levels. While this biopolitical governmentality may serve to disenfranchise "irregular" migrants at the individual level, it also does an enormous disservice to people living in European countries at the societal level. Following Roberto Esposito, Vaughan-Williams likens biopolitical governmentality to an auto-immune disorder, whereby in an attempt to protect the populace, or "body," the policies adopted result in the suffering and killing of others. Control of the border is intended to immunize citizens within the territorial border, against the diseased. In this way, biopolitics not only refers to the politics of the life and death among individuals, but also highlights the quasi-biological processes that governments utilize to preserve their security and identity from "irregular" migrants viewed as potentially harmful to nationalist paradigms of sovereign and citizen.

Whereas previous focus on humanitarianism as both having a positive impact on "irregular" migrants' lives and serving as a naturalized opposite to the

militarized security measures that governments otherwise use, humanitarianism and disenfranchisement fundamentally satisfy the same role of keeping migrants suspended in their journeys.²⁴ Regarded as a sort of purgatory, migrants are subject not only to the dehumanizing policies that may ultimately lead to their deaths, but they also endure the humanitarian propaganda that helps to justify these policies and thereby offset the consequences to an entity rather than the governments and agencies ultimately responsible.

The work of Didier Fassin is also of great value in understanding the relationships among borders, boundaries, and human rights, all of which are linked to the biopolitics of bare life and neoliberal governmentality.²⁵ For Fassin, borders and boundaries are hemmed into a structured but dynamic totality that allows differential rights, namely, human rights for citizens, and bare life for Others. In the U.S. for instance, immigration policies, combined with the processes of naturalization and assimilation “separates the wanted from the unwanted among immigrants, but eventually reminds its newly naturalized members how they still differ from the Indigenous fellow-citizen.”²⁶

CASE STUDY: CORONAVIRUS AND COVID-19 IN THE UNITED STATES

Borders and boundaries have become virtually seamless since the COVID-19 pandemic reached the shores of the United States. In what follows, we examine the ambiguity of the immigrant figure as both enabler of life, and object of the politics of bare life, or even death. The immigrant dimension, however, can only be understood in terms of intersectionality, meaning in this instance that the elements of race and class are integral to the human rights contradictions that currently exists.²⁷

Let us begin with a recent White House press briefing on COVID-19, a novel coronavirus, which is now a global pandemic. The transcript begins with an exchange between a reporter and Acting Secretary of Homeland Security Chad F. Wolf. Following Secretary Wolf, President Trump responds to questions related to farm workers in the United States:

[President speaking to Sec. Wolf]

THE PRESIDENT: While you're up, could you talk about how tight that southern border is right now?

ACTING SECRETARY WOLF: Absolutely. We have—we continue to build miles of the wall every day. We're up to over 150, I believe. We're continuing to build new—new miles of wall. And a lot of folks ask about a replacement wall or new miles. And it's a new capability on our southwest border that we haven't had before. And so, whether you talk to the agents—the Border

Patrol agents—they like that capability. They like that impedance and denial that it provides them. And it provides the ability for those agents to focus elsewhere on parts of the border that are very difficult to patrol so we can use our resources in a different way. And so, we see a lot of benefits from the border wall system. And again, that includes not only the physical infrastructure, but the cameras, the roads, the lighting, the fiber-optic cables. And we're looking forward and we're still well on our track — well on our mark to meet 400–450 miles by the end of the calendar year.

Q: Mr. Wolf, can I get one more question from you while you're here? There's been concern among farmers about being able to get enough migrant labor to keep the food supply moving as we go into the harvest season. What are you doing to address that?

ACTING SECRETARY WOLF: Well, at the direction of the Vice President and the task force, we are looking at a number of different options with the H-2A workers that you mentioned, on how do we either extend the validity of their visa or looking at a couple of different options. Nothing to announce here today. But again, at the direction of the President and the Vice President, we're looking at a very—a variety of different options that I think we will have soon and it will be very beneficial.

[The President replaces Secretary Wolf at the podium]

Q: What about waiving visa restrictions for —

THE PRESIDENT: But I am glad you asked that question because we want the farmers—they've had this for years. We want the farmers to be able to get the people that have been working those farms for years or we're not going to have farms. So, they're going to come in and they're going to be given a certain pass. And we're going to check them very, very closely, especially over the next month. Because remember, after a month or so—I think once this pass, we're not going to have to be, hopefully, worried too much about the virus. But we want them to come in. We're not closing the border so that we can't get any of those people to come in. They've been there for years and years, and I've given the commitment to the farmers: They're going to continue to come. Or we're not going to have any farmers. Okay? Yeah. One more question.

Q: What about waiving visa restrictions for immigrant doctors?

THE PRESIDENT: Who are you with, by the way?²⁸

This exchange provides a window into the ways in which the basic necessities of sustaining life, in this case through food production, is a *negotiated* contradiction between the necessity of producing food on the one hand and “securing” the nation against the same population that provides the necessary labor for farming to be sustained on the other. Secretary Wolf’s pronouncement on the Mexico/U.S. border offers determined clarity about the border-wall currently being built, and the commitment to “impedance and denial.” Moreover, Secretary Wolf points out that protecting the border “includes not only the physical infrastructure, but the cameras, the roads, the lighting, the fiber-optic cables.” What is striking here is the nonchalant way in which the border wall gets accommodated within the briefing about a pandemic, as if the former is a natural continuation of the latter. The sealing-off of the border is not total. Migrants still cross in significant numbers, many of whom work both on farms with and without proper documentation.

In his address, the president explicitly tells the nation that “They’re [the migrants] are going to continue to come. Or we’re not going to have any farmers.” The controlled entry at the U.S. southern border may be understood as offering a triple benefit. The first is that the discourse surrounding the wall provides some measure of ontological security by not only patrolling the border, but also by simultaneously governing the internal boundary between the saved and the damned.²⁹ Secondly, the seepage through the border feeds into neoliberal economic strategies of accumulation by having a plentiful source of labor, but labor without the protection of labor law, or protection of their human rights, as per the United States constitution. The third dimension, one that Doty brings forcefully to light, is that the techniques of surveillance noted by Secretary Wolf directly lead to the abject condition of bare life. The technological apparatuses of surveillance have pushed migrants to more dangerous routes in the desert, a strategy that has led to an immense loss of life. The International Migration Organization estimated that between 2014 and 2018, nearly 1900 persons died while trying to travel to and cross the U.S. border.³⁰ The publicity around the loss of life is intended to send a message to would-be migrants on the other side of the border. Put differently, and in the theoretical framework of Esposito as articulated by Vaughn-Williams, the sophisticated techniques of surveillance are really the instruments of immunization of the American people from dangerous “pathogens” that threaten the body-politic. In the meantime, the Washington Post reported that President Trump has used emergency powers during COVID-19 to implement an even stricter enforcement regime at the U.S. southern border, compared to what was in place before the pandemic. Laws that protect minors and asylum seekers have been suspended so that the government can immediately deport the unwanted, or turn them away.³¹

The race and class dimensions of COVID-19 are inextricable, and though gender no doubt figures in the admixture of “penalties,” the data currently available

makes it harder to establish any clear-cut patterns. Since the last week of March 2020, numerous commentators and publications started to identify a pattern of higher infection and death rates for African Americans. In Chicago, for instance, while African Americans make up 29 percent of the population, they accounted for 70 percent of COVID-19 deaths.³² The same pattern holds state-wide in Illinois, where although African Americans make up only 18 percent of the population, 38 percent of those infected are in that population group. On April 7, 2020, the New York Times reported that while African Americans make up only a third of Louisiana's population, they accounted for nearly 70 percent of COVID-19 deaths. The situation in Milwaukee where about 27 percent of the population is African American, the infection rate is over 50 percent. While data is not readily available, the patterns appears to be nationwide.³³

Since race is more of a sociological category, it is imperative that we understand the broader societal forces that have contributed to these developments of disproportionate deaths. These pertain to preexisting health conditions, location in the economy, access to insurance, economic health in terms of savings, the density of inner cities where the African American population shows high occupancy, and finally due to what is commonly known as "implicit bias," which makes African Americans more likely to be denied testing and treatment. Native Americans and immigrants of color also face many of these conditions, though for the latter, a good deal of the reduction to bare life cannot be generalized without significant qualifications. Notable among these is that large sections of the visible minority populations are at the higher end of the service economy, especially in education, healthcare, and small businesses.

We want to take a more radical position on "pre-existing condition" by extending it beyond health issues. African-Americans and illegal immigrants have lived in an entire ecology of historically produced and reproduced pre-existing conditions of bare life. The economic, political, social, and cultural institutions that accorded affirmative biopolitics for the "American people" always had its exceptions. These pre-existing conditions have been wide-ranging, beginning with violations of the most basic principle of human rights, such as equality before the law in all things existing, especially regarding life and property. The general architecture of society that maintained separate lives during conquest and enslavement, and then through Jim Crow, were "reinvented" in the post-1945 period, and this happened despite significant gains through the civil rights movements and concomitant legislations. Neoliberal globalization became the new platform for the new economic segregation. As for legal immigrants, the situation is much more complicated, reflecting the split in the economy between high-end and lower-end service jobs. Notwithstanding these nuances, an objective measure of quality of life after the Great Recession paints a picture of significant disparities.

The human development index in the Measure of America indicates major disparities across education, health, and income. The aggregated Human Development Index scores of different groups by race and sex bring out these disparities. The highest and best score is ten; the lowest and worse score is zero. In 2010–2011, the scores were as follows: all Asian Americans 7.68; all Whites 5.53; all Latinos 4.19; all African Americans 3.91; all Native Americans 3.24. Let us look at the gender and race/ethnicity configurations: Asian American men 7.81; Asian American women 7.47; White men 5.61; White women 5.46; African American women 4.45; Latina women 4.29; Latino men 3.60; Native American women 3.60; African American men 3.33; and Native American men 2.84.³⁴ Clearly, Native Americans and African American men and women lag behind Whites and Asians in all categories of human security. While Native Americans scored lower than African American men and women, there is only scant data on the impact of COVID-19 on this population so far. Note that Latino men have a higher life expectancy than White men.

Our argument here is that the death rate of African Americans triggered by COVID-19 has a deeper structural, or pre-existing, cause; namely, a general subjugation of vast sections of the Black population to economic peripheralization, and, more broadly, to bare life. Taken together, the amalgam of vulnerabilities has lacerated their human security, but relatedly also afforded opportunities for upward social mobility with all its privileges to the racially privileged section of white America. COVID-19 has revealed what was always known in the background; namely, that some humans have more rights in the United States than others. The privileged sectors of the population fall “nicely” into the biopolitics of neoliberal governmentality, with the obverse of bare life and thanatopolitics for the Others.

CONCLUSION

Societies built on the principles and practices of liberalism and capitalism are readily thought of as the great bastions of human rights. There are good reasons for this; it is the case that, broadly speaking, individual rights and property rights are well-protected where liberal-democratic governance prevail. The right to protect life, limb, and property has a long history in the Western tradition. There is little doubt that it is indeed Western philosophers and political theorists who have articulated the most systematic disquisitions. As noted above, Immanuel Kant, one such thinker, even went as far as arguing that rights are universal, and are products of reason rather than derived from historical development and lived experience. In Kant’s pure practical architecture, reason, morality, and rights are logically connected.³⁵

The promise of universal rights has no doubt flowered in liberal democracies more than in any other types of social formation. While true, the question of what rights, and for whom, has always dogged Western liberalism. As Sven Beckert has shown, even the most cursory examination of the history of the modern

world system, will show that human rights have never been the same rights, for all humans.³⁶ One could argue that modernity itself unfolded with inequalities through multiple calculated denials of rights for some, in order for others to have them. These inequalities which have been based on race, gender, class, nationality, sexualities, as well as biases against rural populations, have been widespread, leading to devastating consequences especially in times of economic and other crises such as the current situation with refugees and vulnerable migrant laborers. Liberal democratic theorists have themselves accepted as much, but almost always with the caveat that there is no better system for the articulation and guarantee of human rights.

While basically true at first glance, we, along with many critical theorists working out of radical feminism, postcolonial theory, decolonial theory, critical race theory, and some dimensions of postmodernism and poststructuralism, insist that human rights in liberalism have been at the expense of the repression of these same rights; so much so that the denial of rights of the marginalized are the condition of possibility for those who do have the privileges of being fully human, that is, human without qualifications.

The theory of biopolitics and bare life seem to us especially apposite to capturing the productive contradictions between Kant's pure practical reason of the categorical imperative, and the more historical, phenomenological experiences of lived rights and rights denied. We suggest, and at this point it cannot be more than a suggestion, that the coalescence of borders and boundaries as articulated by Doty, Fassin, and Vaughan-Williams is subsumed in a long history of differential, hierarchical humanities where some lives were killed off in order for progress to take place. Conquest and slavery were the quintessential forms; though these have ended, many of the institutional structures and ideologies of supremacy remain, and when triggered by such an event as the COVID-19 pandemic, the limits of the guarantee of equal human rights for all come to the surface in ways that are both shocking yet predictable. The biopolitics of neoliberal governmentality is deeply implicated in multiple vulnerabilities of which the struggles of the displaced, the asylum seeker, the refugee, and the migrant, have come to occupy a global space that is viscerally present in their public agonies, and also publicly managed into self-serving acceptance or outright denial. *Homo sacer*, the ancient, tragic figure of Roman jurisprudence, is regrettably alive, if only to speak to that which cannot be hidden; namely, that some must be shorn and exposed for others to be embraced and protected.

Randolph B. Persaud is an Associate Professor of International Relations at the School of International Service, American University, Washington DC. Recent publications include R.B. Persaud and A. Sajed (Eds) Race, Gender, and Culture in International Relations: Postcolonial

Perspectives. New York: Routledge, 2018; R.B. Persaud and Narendra Kumarakulasingham (Eds.) *Violence and the Third World in International Relations*. New York: Routledge, 2019. He has also published in *Alternatives*, *Cambridge Review of International Affairs*, *Globalizations*, *Third World Quarterly*, *Race & Class*, *Latin American Politics and Society*, *Korea Review of International Affairs*, and *Con. J. of Int'l Law*.

Jackson Yoder is a recent graduate of American University's School of International Service. They hold a Bachelor of Fine Arts Degree in International Studies with a focus on Human Rights and Development in the Middle East and North Africa. They also published "Combatting Homophobia and Stigma in American Blood Donation" in *The World Mind* in 2018.

NOTES

- 1 Michel Foucault, *Society Must Be Defended: Lectures at the Collège De France, 1975-1976* (New York: Picador, 2003); Michel Foucault, *Security, Territory, Population: Lectures at the Collège De France, 1977-1978* (New York: Picador, 2004).
- 2 Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, trans. Daniel Heller Roazen (Stanford: Stanford University Press, 1998).
- 3 Bess Levan, "Texas Lt. Governor: Old People Should Volunteer to Die to Save Economy," *Vanity Fair*, March 24, 2020.
<https://www.vanityfair.com/news/2020/03/dan-patrick-coronavirus-grandparents>.
- 4 Agamben, *Homo Sacer*, 240.
- 5 Ibid.
- 6 Ibid., 241.
- 7 Ibid.
- 8 Thomas Hobbes, *Leviathan* (New York: Penguin, 1982).
- 9 See Antonio Gramsci, *Prison Notebooks*, (New York: International Publishers, 1971), especially 206-276.
- 10 Agamben, *Homo Sacer*, 139.
- 11 Karl Marx, *Capital Vol. 1*. (New York: Vintage, 1977), 127-128
- 12 Roxanne L. Doty, "Bare Life: Border-Crossing Deaths and Spaces of Moral Alibi," *Environment and Planning D: Society and Space*, 29 (2011): 599-612.
- 13 Ibid., 602.
- 14 Ibid.
- 15 Nick Vaughn-Williams, *Europe's Border Crisis: Biopolitical Security and Beyond* (New York: Oxford University Press), 2015.
- 16 "Key Facts," Frontex: European Border and Coast Guard Agency, <https://frontex.europa.eu/faq/key-facts/>.
- 17 Vaughn-Williams, *Europe's Border Crisis: Biopolitical Security and Beyond*, 3.
- 18 An Israeli lawyer who previously worked as a prosecutor at the International Criminal Court.
- 19 Juan Branco holds a Doctor of Laws, and has been affiliated with Yale Law School and the Max Planck Institute for International Law in Heidelberg, Germany.
- 20 Owen Bowcott, "ICC submission calls for prosecution of EU over migrant deaths," *The Guardian*, June 2, 2019, <https://www.theguardian.com/law/2019/jun/03/icc-submission-calls-for-prosecution-of-eu-over-migrant-deaths>.
- 21 Frontex, "Key Facts."
- 22 Muhammad Ali Nasir, "Biopolitics, Thanatopolitics, and the Right to Life," *Theory, Culture and Society* 31, no. 4 (2017): 88.
- 23 Vaughn-Williams, *Europe's Border Crisis*, 94.
- 24 Ibid., 2.
- 25 Didier Fassin, "Policing Borders, Producing Boundaries. The Governmentality of Immigration in Dark Times," *Annu. Rev. Anthropol.*, 40 (2011): 213-226.
- 26 Fassin, "Policing Borders, Producing Boundaries," 215.

27 Kimberlé Crenshaw, "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine and Feminist Theory and Antiracist Politics," *University of Chicago Legal Forum* 1, no. 8 (1989): 139-167.

28 Donald Trump, "Remarks by President Trump in Roundtable on Border Security: Yuma, AZ," *The White House*, June 23, 2020, <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-roundtable-border-security-yuma-az/>.

29 For more on ontological security, see Catarina Kinnvall, "Globalization and Religious Nationalism: Self, Identity, and the Search for Ontological Security," *Political Psychology* 25, no. 5 (2004): 741-767; Jennifer Mitzen, "Ontological Security in World Politics: State Identity and the Security Dilemma," *European Journal of International Relations* 12, no. 3 (2006): 341-370.

30 Jeff Gammage, "Hundreds of migrants die every year trying to cross the southwest border into the U.S," *Philadelphia Inquirer*, <https://www.inquirer.com/news/southwest-border-deaths-desert-heat-20191029.html>.

31 Arelis R. Hernández and Nick Miroff, "Trump Tightens Restrictions at Mexican border," *Washington Post*, April 4, 2020.

32 Elliott Ramos and María Inés Zamudio, "In Chicago, 70% of COVID-19 Deaths are Black," *WBEZ*, April 5, 2020, <https://www.wbez.org/stories/in-chicago-70-of-covid-19-deaths-are-black/dd3f295f-445e-4e38-b37f-a1503782b507>.

33 Richard A. Oppel Jr., Dionne Searcey, and John Eligon, "Black Americans Face Alarming Rates of Coronavirus Infection in Some States," *New York Times*, April 7, 2020, <https://www.nytimes.com/2020/04/07/us/coronavirus-race.html>.

34 Lewis Kristen and Sarah Burd-Sharps, *The Measure of America 2010-2011: Mapping Risks and Resilience* (New York: New York University Press, 2010), 211.

35 Immanuel Kant, *Critique of Practical Reason and Other Writings on Moral Philosophy* (Chicago: University of Chicago Press, 1949).

36 Sven Beckert, *Empire of Cotton: A Global History* (New York: Vintage, 2014).

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