The Figure of the Refugee

DISSERTATION

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Abstract

This dissertation demonstrates how the processes and institutions of contemporary globalization have fundamentally altered the relation of people and place to politics. Thus, *The Figure of the Refugee* contributes to debates about mobility and freedom in an era of globalization. It intervenes in key debates regarding the meaning of citizenship, the mutations of territorial sovereignty, and struggles for self-determination and non-state social organization. The principal contributions of the dissertation are its critique of inclusion as the goal of social movements, its exploration of the figure of the refugee as the novel form of political subjectivity produced within globalization, and the articulation of a politics that begins with mobility as a constitutive element of the contemporary world.
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List of Abbreviations

CBO – Community Based Organization
COIN – Counter Insurgency
EU – European Union
EVW – European Voluntary Worker
Frontex - European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union
ICE – Immigration and Customs Enforcement (US)
IDP – Internally Displaced Person
ILO – International Labor Organization
IOM – International Organization for Migration
IRO – International Refugee Organization
Kanere – Kakuma News Reflector: A Refugee Free Press
NAFTA – North American Free Trade Agreement
NGO – Non-Governmental Organization
RSD – Refugee Status Determination
STC – Safe Third Country
UK – United Kingdom
UNHCR – United Nations High Commissioner for Human Rights
US – United States
1. Life

“How should we address the problem of refugees?” Throughout the 20th and 21st centuries, the problem of individuals who are “out of place” has become one of the most pressing questions in political thought and practice. In the decades immediately preceding and succeeding the end of the Cold War, there was a pervasive hope that issues of forced migration would abate, not least because of a widespread opinion that the end of bi-polar international order would open onto a world in which the nation-state would no longer hold the same power or significance that it once had (Skran 1995; Ohmae 1995; Appadurai 1996a; Appadurai 1996b; Strange 1996). However, the number of refugees actually increased between 1980 and 1990, from 8.2 million to 17 million (Skran 1995). And in the decade following the breakup of the Soviet Union, the number of nation-states in the world actually grew, initiating yet more refugee flows. As a result, Asia, Europe, North America, and Africa have all experienced a significant rise in the estimated number of refugees living in those respective regions since 1990 (Castles, de Haas, and Miller 2014, 12). The response to the growing number of refugees has been to extend and “improve” the system for determining and managing refugees, with the ultimate goal of creating a so-called “durable solution”: either repatriation to the “home” country, local integration in the region in which asylum is sought, or resettlement in a third country.
The preferred outcome – for governments, non-governmental organizations (NGOs), and many refugees – is repatriation, but the reality has in fact been a growth in “protracted” or “warehoused” refugee situations. A warehoused refugee is one for whom no “durable solution” has been achieved within five-years from a refugee’s initial movement away from a conflict, persecution, or other cause of forced mobility (UNHCR 2012). The classic case of “warehoused” refugees are the Palestinians living in Jordan, Syria, Egypt, and other countries. However, there are numerous other examples: to name only a few, there are Tibetan refugees living in Nepal, Afghans in Pakistan and Iran, and Sudanese living in Chad.

Refugees are typically framed as a “problem.” First, they are often found to be problematic in some way in their home countries, which leads to their forced mobility in the first place. Second, due to the perceived negative effect that an influx of refugees supposedly has on “receiving” countries, they are viewed as problematic both to individual states and the wider international order. As Peter Nyers (2006) describes:

> The speeches of politicians, the scripts of news anchors, the field manuals of humanitarian aid workers, and the pages of academic policy journals all contain anxious expressions of concerns over the global refugee crisis. “What is to be done?” is the collective chorus. (1)

The practical problem of “what is to be done” unfolds in a variety of ways and in a number of places: townships and cities, states and regions, public debate and private enterprise, governmental action and non-governmental aid. A great deal of ink has been spilled in a variety of academic, non-governmental organization (NGO), and governmental literature on best practices in refugee status determination (RSD) processes, in the provision of life-saving aid, in refugee camp management, and in the
search for “durable solutions.” Debates persist, and sometimes rage, regarding what specific obligations various states have to those seeking asylum, regarding who is a legitimate refugee, and regarding future global challenges, such as climate change, and whether they can or should count as legitimate grounds for asylum. This is largely the ground tread by the field of Refugee Studies. However, this dissertation takes a step back from the immediacy of such policy-oriented debates and focuses on a slightly different set of problematics than those circulating around the question: “how should we address the problem of the refugee?” Instead, this dissertation problematizes “the refugee,” first by describing a shift in bordering practices that dislocate and mobilize a great number of individuals without always or only creating “legal” refugees; second, by exploring the changing terrain of the refugee status determination (RSD) process and the labeling of refugees as distinct from economic migrants and other emerging identities of mobility; third, through elaborating an emergent global order that functions through bordering and control regimes; and fourth, by negotiating the fraught terrain surrounding the figure of the refugee.

In “Beyond Human Rights,” Giorgio Agamben (2000b) explores the difficult challenge that refugees pose today. In the essay, he provides a short genealogy of the “first appearance of refugees as a mass phenomenon” (16), which occurred at the end of the First World War when the Russian, Austro-Hungarian, and Ottoman empires
dissolved at about the same time.\textsuperscript{1} Especially significant is the shift in norm from individual asylum cases to a new mass phenomenon:

What is essential is that each and every time refugees no longer represent individual cases but rather a mass phenomenon (as was the case between the two world wars and is now once again), these organizations as well as the single states – all the solemn evocations of the inalienable rights of human beings notwithstanding – have proved to be absolutely incapable not only of solving the problem but also of facing it in an adequate manner. The whole question, therefore, was handed over to humanitarian organizations and to the police. (18-19)

The problem of refugees as a mass phenomenon, rather than as individual cases, confronts the international system of states with a profound challenge: the contingency and fragility of the state’s own existence as such. In other words, the refugee, Agamben argues, “brings the originary fiction of sovereignty to crisis” by drawing attention to the previously hidden inscription of birth (nascita) in nation, “so that there may not be any difference between the two” (21). In other words, the refugee exposes the many intermediate steps that makes birth into nation.

Given the refugee’s challenge to the nation-state system, Agamben thus poses a decisive program to re-think politics based on the figure of the refugee:

Given the by now unstoppable decline of the nation-state and the general corrosion of traditional political-juridical categories, the refugee is perhaps the only thinkable figure for the people of our time and the only category in which one may see today – at least until the process of dissolution of the nation-state and of its sovereignty has achieved full completion – the forms and limits of a coming political community. It is even possible that, if we want to be equal to the absolutely new tasks ahead, we will have to abandon decidedly, without reservation, the fundamental concepts through which we have so far represented the subjects of the political (Man, the Citizen and its rights, but also the sovereign

\textsuperscript{1} In this claim, Agamben essentially follows Hannah Arendt’s (1996; 1968) work on refugees.
people, the worker, and so forth) and build our political philosophy anew starting from the one and only figure of the refugee. (16)

This dissertation takes up this challenge. First, by attempting to reconceptualize what the “process of the dissolution of the nation-state and its sovereignty” means, notably in light of the fact that it appears that neither the nation-state nor sovereignty are dissolving in the way Agamben asserted in 1993 when the essay was written. In this dissertation we will see that the nation-state is reconfiguring, not dissolving. Second, by trying to conceive what it means that “traditional political-juridical categories” are corroding. And finally, by trying to grasp just what “the figure of the refugee” means and how it does or does not function in the ways in which Agamben has claimed.

The field of Refugee Studies is first and foremost a political and technological economy of management, predicated upon an understanding that “refugeeness” is a temporary condition resulting from a momentary “madness” in the nation-state system. The key debates in Refugee Studies are primarily limited to discursive arguments over labeling (who is a “proper” refugee?), the distribution of aid (what do “proper” refugees get?), and placement (where do “proper” refugees go?). Betts (2010) describes three “ideal-type” contemporary projects of Forced Migration Studies—legal-institutional, empirical, and critical:

firstly, the legal-institutional which works predominantly with existing institutional categories to inform policy and practice; secondly, a critical approach, which explores and challenges the power, interests, and discourse underlying policy and practice; thirdly, an empirical approach, which works to identify what is actually happening, outside the prevailing concepts, categories and labels. (268)
In his reflections on the 12th meeting of the International Association for the Study of Forced Migration, the examples cited by Betts remain largely managerial in nature, in that their primary purpose is to make the provision of services and protections more efficient, or more inclusive, or more consistent (logically and practically). Even the “critical” examples he cites are oriented towards improving policy responses and reforming the refugee regime given new patterns of global forced migration. Favell (2009) also notes that Refugee Studies is “dominated by a mix of short-term pragmatic policy imperatives and a naturally defensive humanitarian bias that seeks to protect the claims of ‘true’ refugees from contamination with those of other migrants…” (209). The “gravitational center” of the field retains an assumption of stability in the relation of “a people,” “a politics,” and “a place,” with a methodological nationalism serving as the underlying norm of the field.

A number of scholars have taken up the challenge of providing critical historical responses to the emergence of the refugee regime (Tabori 1972; Marrus 1985; Skran 1995), or Foucaultian genealogies of the refugee regime as an aspect of statecraft (Soguk 1999). Further, scholars have explored how humanitarian politics assist in the management of refugees (Hyndman 1999), how refugee identity is a limit-concept of modern accounts of the political, and how certain refugee subjectivities – such as the refugee warrior – can re-shape politics (Nyers 2006). Soguk, Hyndman, and Nyers in particular represent projects that constitute a critical set of responses to the norms of Refugee Studies and provide key tools with which to challenge the field from within.
The field of Refugee Studies has developed from the 1980s to the present along two primary paths of inquiry, both of which require challenging. First and foremost has been a managerial-administrative discourse, focused on identifying refugee populations, identifying the needs of those populations, and suggesting solutions either to specific refugee crises or to “the problem of refugees” in general. The second path of inquiry has been doggedly reflexive in nature (a reflexive discourse), concerned with identifying the assumptions of the field, providing various “state of the field” overviews, questioning labels and the labeling process, and troubling the foundations of the managerial-administrative discourse. In fact, the reflexive discourse has largely been subsumed under the managerial-administrative discourse from the field’s inception. Even Betts’ “critical” ideal-type is still largely confined to this managerial-administrative discourse. In fact, today, the newer “Critical Refugee Studies” field can be defined as primarily reflexive in nature, and it seems to be more about alleviating the conscience of the so-called Global North than it is about making the world amenable to difference and mobility (see Williams 2010). Disregarding a few notable exceptions, Refugee Studies has not undergone a truly critical turn – if we understand “critical” to mean a rejection of both the managerial-administrative and reflexive discourses in order to insist and act upon a radical transformation of political order. To put it another way, Refugee Studies has not yet moved beyond its historical status as either territorially restorative or as fundamentally tied to liberal political thought and practice. By refusing to engage with a discourse of “solutions,” this dissertation seeks to move the discussion in new directions,
displacing the configuration of the refugee as a crisis and thus toward the figuration of
the refugee as a threshold to a future politics.

This refusal and displacement puts this dissertation in a critical relation with some
scholars who have tried to move the field in different directions (e.g. Soguk 1999;
Hyndman 2000; Nyers 2006; Chimni 2009). B. S. Chimni (1998; 2009), for example, has
shown how academic Refugee Studies, along with the institutions and processes of
refugee governance, are both implicated in the extension of colonial paternalism into the
20th and 21st centuries. He argues:

The move from Refugee Studies to Forced Migration Studies should in my view
be explored against the backdrop of a western strategy to employ political
humanitarianism to legitimize a new imperial world order. There is continuity
here between the colonial era and the present that was only interrupted by the
imperatives of cold war politics. The meaning of the turn to Forced Migration
Studies, I therefore make bold to suggest, has to be examined in the matrix of the
history of humanitarianism in and since the era of colonialism. (2009, 13)

This is an important observation, as it performs a necessary move uncommon in the
Refugee Studies literature: Chimni calls into question the humanitarian and apolitical
assumptions of the field and places it directly within a political register that is deeply
marked by a history of violence.

Chimni admits that this implication does not mean that Refugee Studies has not
benefitted some, perhaps even many, refugees. He argues that, like all knowledge,
Refugee Studies is “dual use” (14). Indeed,

Refugee Studies helped counter the image of refugee as a parasite, critiqued the
practice of imposed aid, underlined the need for listening to refugee voices and

2 Also see Williams (2010) for a more detailed account of how concepts such as “human
rights” and “humanitarianism” are often mobilized in service of the centers of global
power, especially the US.
adopting participatory approaches, elaborated the rights of refugees, highlighted the special needs of refugee women and children, paid attention to the psychosocial health of refugees, pointed to the dangers of involuntary repatriation, and identified the institutional and democracy deficits in intergovernmental and non-governmental agencies concerned with the welfare of refugees. (2009, 15)

This is a record any academic field can be proud of, but as he presses us to understand, it does not mean it should be sufficient justification for continuing with the status quo. Indeed, Chimni’s work is, in part, a critical source for scholars wishing to push beyond the traditional boundaries of Refugee Studies while still being able to undertake the study of refugees:

As for Refugee Studies, it must be remembered that even when restrictive measures of Western states are criticized, what are validated are often particular philosophical and political ideas about what kind of boundaries western states may legislate… Invariably methodological nationalism carries the day, even when the turn to Forced Migration Studies is legitimized on the basis of a growing democratic space. The world of displacement has thus become a site of power to embed selective humanitarian practices that facilitate the exercise of hegemony. (2009, 24, emphasis mine)

This dissertation project takes up Chimni’s claim precisely at the point at which human displacement becomes a site for the contestation of power.

The dissertation thus develops a “line of flight” away from Refugee Studies, traditionally conceived, and so moves towards an exploration of the figure of the refugee. Rather than take the administrative standpoint and further facilitate the exercise of liberal political hegemony, the dissertation argues that the figure of the refugee expresses the political potential [potenza] of statelessness, mobility, and autonomous forms-of-life.

The term “regime” appears throughout this dissertation, and for the purposes of this project describes “the formal or informal arrangements created by states to deal with
a particular issue” (Skran 1995, 7). However, regimes are not necessarily comprehensive or coherent, thus the important point that they are effective in particular ways. In a sense, then, the effects define the regime rather than the stated purpose of the network of laws, policies, and practices that are identified as aspects of the regime. As Giuseppe Sciortino (2004) suggests, the “notion of a migration regime allows room for gaps, ambiguities and outright strain: the life of a regime is the result of continuous repair work through practices” (32, quoted in Mezzadra and Neilson 2013a, 178-179). In the case of this dissertation, the overlap of migration regimes and refugee regimes is significant, and the difficulty of separating these regimes is a decisive problem that appears with some frequency in the pages that follow (and notably in Chapter 3). Another, increasingly common name for these overlapping regimes is “migration management” (Geiger and Pécoud 2010, 2012a, 2012b; Mezzadra and Neilson 2013a).

As Geiger and Pécoud (2012b) note, “migration management” has “become a catchword for a range of new initiatives pertaining to international migration and human mobility” (11). One of the most important aspects of this regime “is the recognition of migration as a normal process,” which thus requires interested parties (e.g. governments, non-governmental organizations, and even private citizens) “to go beyond the mere control of human mobility and proactively seek to organize and steer migration for the benefit of all” (11). Migration management rejects a “nation-first” attitude of closing borders, at the same time rejecting even the most economically liberal calls for “open borders” (e.g. Carens 1987). It is perhaps unsurprising that a regime of migration management has emerged, because it is absolutely complementary to other, “third way”
approaches common to neoliberal rationality, especially because it seems to “embody a managerial approach that negates the fundamental political issues raised by migration” (12). This dissertation is an attempt to keep the political issues raised by migration – especially forced migration – in a critical relation with the managerial approaches common to migration management regimes.

Skran (1995) summarizes the historical emergence of “the refugee” in the following way:

People who flee their homes to seek safety elsewhere are not new to the twentieth century: they have existed since the dawn of time. Yet the application of the term ‘refugee’ to people who flee their home countries for another is only as old as the international state system – about 400 years old. According to the OED [nb. Oxford English Dictionary], the term ‘refugee’ was first applied to the French Huguenots, victims of religious persecution who fled France after the revocation of the Edict of Nantes in 1695 – only one group among the many victims of religious persecution of the early modern period. A century later the same term was applied to British loyalists after the American Revolution. In the nineteenth century political exiles from Tsarist Russia, known by the fashionable term émigrés, populated the cities of Europe. The forced population movements of the early twentieth century brought the word ‘refugee’ back into popular use, partly because it became the preferred term used by the vast array of international and national relief agencies. The term has continued to be used for the millions uprooted in the post-1945 period. (13)

This thumbnail sketch of the term refugee is important because it ties the term specifically to the modern nation-state, even as it recognizes that the phenomenon of seeking refuge is not new at all. The tension between the “universality” of forced displacement and the “specificity” of the refugee as a problem of the nation-state marks the field of Refugee Studies and its overlapping related fields, Forced Migration Studies, and Migration and Refugee Studies. These labels are the product of differing emphases in
research, the influence of critical research centers at prominent universities (such as Oxford University’s Refugee Studies Centre and its influential degree programs), and geographical location. Generally, though, they share a common commitment to the improvement of the living conditions and experiences of refugees or forced migrants through more and better governance.

What this dissertation insists on holding in critical tension is the very problem of definition, whether refugee, asylum seeker, forced migrant, internally displaced person, economic migrant, climate refugee, and so on. In general, all of these labels are problems of policy, and analyses of each of them tend to fall into an agency/structure binary in which causality and motivation are the key grounds for differentiation (Castles, de Haas, and Miller 2014, 221-222). For the purposes of this project, the label “refugee” is adopted with little consideration for the official definition provided in the 1951 United Nations Convention Relating to the Status of Refugees. In this sense, we follow Agamben’s claim in “Beyond Human Rights” (2000b) that “we are used to distinguishing between refugees and stateless people, but this distinction was not then as simple as it may seem at first glance, nor is it even today” (17). Indeed, in the pages that follow there is a purposeful conflation of many “types” of migrant under the umbrella term refugee, in part to signify the fact that many migrants articulate a mixture of experiences that do not map easily into prescribed policy labels, and in part to perform the very problematic of this dissertation: the challenge posed by thinking the figure of the refugee.

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In much of the scholarship on refugees and asylum seekers, migrants and those made mobile through some force other than “free choice,” there is a reliance on discussions of “figures” that stand in for the representation of refugees in policy and in practice (Malkki 1995; Dyrenfurth 2005; Tyler 2006; Owens 2009; Mason 2011). Rarely, though, is there sustained analysis of just what the “figure” of the “figure of the refugee” or the “figure of the asylum-seeker” (Tyler 2006) is or means (curiously, Agamben does not offer us any argument concerning its significance either). It is a significant oversight in the literature that the figure is invariably assumed, so that the task of scholarship is left to focus on locating where the figure simply appears – whether rhetorically or in physical space – rather than to focus on how the argument is shaped by the appeal to such a figure, or what such a figure is, means, and does.

An equally strong narrative has emerged critiquing the “romanticization” of the figure of the refugee (Tyler 2006) or the figure of the migrant (Hoofd 2005). Tyler, for example, criticizes Agamben’s essay “We Refugees” (1995) as a “utopian” (198), “incredibly simplistic,” “Wizard of Oz scenario” (197). Critiques of this kind are primarily concerned with the ways in which the figure is abstracted and disembodied “from any embodied referent (actual refugees)” (Tyler 2006, 197). The primacy of “experience” is asserted here quite forcefully:

Such theoretical accounts fetishize the refugee by universalizing the condition of displacement as something we all experience. In embracing this figure as a site of radical political potential, does Agamben in fact sustain the figure of the refugee, a figure who is a key trope of hegemonic politics, in a way that contributes to their invisibility? That is, while Agamben sets out to contest exclusion, by revealing how it is constitutive of inclusion, does he fetishize the figure of the refugee as exceptional in ways that are akin to (and complicit with) governmental strategies? (Tyler 2006, 197-198)
Claims such as these are certainly important within a regime of representation that remains within the scope of hegemonic notions of politics as being primarily concerned with visibility, voice, and participation. Agamben’s challenge to us in “Beyond Human Rights” (2000b), and indeed throughout his oeuvre, is precisely to this vision of politics.

In addition, Mezzadra and Neilson (2013a) claim: “to understand migration, border, and labor struggles as producing” alternatives to established ways of being “does not imply a romanticization of migration” (54). Rather, they insist that “it means working through the ambivalences that characterize practices of mobility: the forms of domination, dispossession, and exploitation forged within them as well as the desires for liberty and equality they often express” (54). This dissertation seeks to work through the same ambivalences, in that it recognizes the experiences of refugees and forced migrants, but it refuses to fall prey to a kind of “emergency thinking” that enables the pathos of the refugee experience to perpetuate or facilitate a politics that in fact reinforces the conditions of forced migration to begin with.

Indeed, it is possible to see what refugees can offer us regarding politics in a non-romanticized way. Žižek (2000), for example, states:

I perceive the shadowy existence of those who are condemned to lead a spectral life outside the domain of the global order, blurred in the background, unmentionable, submerged in the formless mass of “population,” without even a proper particular place of their own… I am tempted to claim that this shadowy existence is the very site of political universality: in politics, universality is asserted when such an agent with no proper place, “out of joint,” posits itself as the direct embodiment of universality against all those who do not have a place within the global order. (313, quoted in Vighi 2003, 101-102).
There is no claim here that says: “look at the miserable experience of refugees and see how everyone has the same experience whether due to the functioning of capitalism or the nation-state.” Instead, Žižek insists that the demand to be included, made by those who are kept outside, is politics. Here, universality, or politics, is identified with the excluded. As Vighi (2003) summarizes:

The political force of this identification lies in the uncompromising challenge it poses to the liberal-democratic, late-capitalist hegemony: it does not say to the sub-proletariat ‘I will fight for your rights to be recognized by the existing hierarchy’ (liberal leftist); but rather it says ‘You, the displaced and exploited, are the universal measure of progress insofar as you are excluded.’ (102)

Claims such as Vighi’s fundamentally challenge the foundation of politics itself, not the allocation and placement of rights within a given regime of representation.

This dissertation is neither a “defense” of Agamben against his critics nor is it “Agambenian” in its method or approach, although it does engage closely with aspects of his political thought. Instead, it is an attempt to begin to make some inroads on what it might mean to re-think political theory beginning from “the figure of the refugee,” at least as Agamben encourages us to think in his influential essay, “Beyond Human Rights” (2000b). Indeed, it would be erroneous to imagine this dissertation as somehow in opposition to the critics of Agamben mentioned above; together, we share common ground and, mostly, a desire to affect real, material political change. Yet there is something about the “figure of the refugee” that remains undisclosed and unexplored due to the complexity of Agamben’s writing style, method, and concept of politics, and it is

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3 In this, Žižek concurs with Rancière (2004), Honig (2003), and Isin and Nielson (2008).
precisely this complexity that, at least in part, motivates the argument in the pages that follow.

And yet, unlike many of those who write on refugees, forced migration, and economic migration, the present project is not driven by concerns over “exclusion.” As will become increasingly clear, the challenge confronting the displaced and the mobile is one of *inclusion*, not exclusion – what is the role of the displaced and the mobile in the “world’s interior?” There are thus two conceptual problematics driving this dissertation, both of which open onto questions of interiority rather than exteriority. First is the emergence of the problem of “life,” especially as “life” is elaborated in discussions of biopolitics. And the second is the emergence of a phenomenon we call globalization. Both of these conceptual problematics re-frame issues of interiority and exteriority, inclusion and exclusion, intensivity and extensivity in novel ways, a re-framing that is also a central part of the argument in the pages that follow.

What, then, is the boundary of *life*? Where does it begin and end? Is there a critical difference between *life itself* and the forms in which life is expressed? There are two prominent lines of thinking that should guide our way forward. First, Gilles Deleuze (2001) describes life in relation to immanence, a key relation that also underpins this dissertation:

*We will say of pure immanence that it is A LIFE, and nothing else. It is not immanence to life, but the immanent that is in nothing is itself a life. A life is the immanence of immanence, absolute immanence: it is complete power, complete bliss.* (27)
Life, for Deleuze, is the immanent plane, at once the foundation upon which any expression or form of life is built as well as that which provides the unbounded plane in which all life is immediately implicated in itself. Significantly, life as absolute immanence means there is no outside to life, so that everything happens within the interiority of life itself.

The second line of thinking is found in Giorgio Agamben’s (2000a) distinction between biological life, zoë, and “the form or manner of living peculiar to a single individual or group,” bios (3). He describes this distinction as being first articulated in ancient Greek thought, but modern languages have largely blurred or even effaced the distinction altogether. For politics, and here he is following Arendt (1958), the separation of bios or “form-of-life” from zoë, biological life, is essential. The mere fact of biological life is common to all animals and all humans, but the realm of politics presupposes biological life and posits that a “full” life is a life of power. Agamben (2000a) sees the collapse of bios into zoë as a decisive problem, defining this condition as “the state of exception”:

Life – in its state of exception that has now become the norm – is the naked life that in every context separates the forms of life from their cohering into a form-of-life. The Marxian scission between man and citizen is thus superseded by the division between naked life (ultimate and opaque bearer of sovereignty) and the multifarious forms of life abstractly recodified as social-juridical identities (the voter, the worker, the journalist, the student, but also the HIV-positive, the transvestite, the porno star, the elderly, the parent, the woman) that all rest on naked life. (6-7)

This problematic – what we call biopolitics – is essentially a question of what happens when the particular, the form-of-life, becomes indistinguishable from the universal, biological life, the life common to all living things. Biopolitics erases the possibility of
distinguishing between different versions of “the good life,” rendering all political conflict immediately a question of survival. In short, biopolitics puts the extensive problem of bounding the political under erasure, because life as the immanent field is primarily an intensive problem.

The inability to separate an interior from an exterior in life is replicated in the phenomenon we call globalization. As Hardt and Negri (2000) repeatedly assert, there is no “outside”: “One primary effect of globalization…is the creation of a common world, a world that, for better or worse, we all share, a world that has no ‘outside’” (2009, vii). This can be understood, quite literally, as a world that is “full” (Bauman 2004). There are no viable spaces left on the planet for the expansion of human occupation, and thus any attempt at creating a space of one’s own requires an intrusion in space that ostensibly belongs to one of the many entities that we call states. But Hardt and Negri’s assertion can be read relationally as well, in that globalization creates a world in which we – humanity – are always already in relation to one another, even if there is no possibility that one will ever meet or interact with every other human on the planet. Thus, we are thrust back onto the plane of life.

Both life and globalization articulate the problem of intensivity and extensivity. Intensivity in this context relates to both the territorial “fullness” of the world and to the Marxist concept of real subsumption. Bauman (2004) has stated this quite simply when he writes, “The world is full” (1). This is not a reference to Malthusian arguments regarding overpopulation (as he notes, there aren’t too many poor people, just the opposite, there are too many rich ones!), but instead it is a reference to the political filling
up of space. The nation-state-form, codified as a European international order in 1648, followed an extensive growth through colonialism to pervade essentially all of the earth’s landmass. During the era of colonial conquest and occupation, much of that landmass was deemed essentially empty or unproductive, and the flow of global migration was largely from the colonial centers to the colonized periphery. The colonies functioned as a spatial fix to many of the problems that became apparent in the establishment of the nation-state system and the growth of capitalism, including serving as an outlet for overcrowded prisons and a solution for the problem of “unproductive” bodies. Bauman notes that once such territorial fullness was achieved, during the postcolonial revolutions and independence movements of the mid-20th century, the newly independent former colonies no longer served as territorial outlets for Europe’s excess population. Many of the social, economic, and political crises that could formerly be shunted to the “periphery” rebounded to the “centers.” In a world considered “full,” issues that were solved by looking outwards to new territories were folded back into the interior spaces of the former colonial powers, thus rendering formerly extensive solutions into intensive crises.  

The other aspect at work here is the Marxist concept of real subsumption. Marx elaborated two forms of subsumption, formal and real. Formal subsumption is the process in which capitalists take control of forms of production and labor that exist outside of capitalism and submit them to the wage system. The classic example of this process are

4 The most provocative example of this intensive rebounding is in Aime Cesaire’s (2000) *Discourse on Colonialism*, in which he describes the Jewish Holocaust as the culmination of practices perfected in the colonies. Frantz Fanon (2004) makes a similar argument in *The Wretched of the Earth*, as does W. E. B. Dubois (1992) in *The World and Africa*.  

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the weavers in England who had their looms confiscated and were subsequently forced to work in the newly built textile factories, making independent production impossible. Real subsumption is the process of subsuming the entirety of society into the capitalist system – the entire environment becomes the new site of production (as in the Autonomist notion of the “social factory”). This is not a quantitative statement, as if we cannot find some example somewhere of individuals or modes of production outside of capitalism; instead, this is a qualitative description of the tendency of all of society to conform to the demands of capitalism, rendering those examples outside of capital increasingly rare, yet always in direct relation to the pull of capital.

Both life and globalization, then, force us to fundamentally reconsider what it means to be in relation to one another within a world-space that is intensive. This does not mean that a process of homogenization is occurring, of becoming one, as some notions of cosmopolitanism might imply. Instead, the intensive space of the globe is one in which differentiation has taken on a new salience. Zygmunt Bauman (1998) notes this process in his book on globalization when he argues: “Globalization divides as much as it unites; it divides as it unites” (2). What follows in this dissertation is an elaboration on what it means for the figure of the refugee if life becomes the horizon for politics, thus rendering politics, a historically extensive phenomenon, to become intensive without becoming homogenizing.

Describing a global regime of governance is a nearly impossible task. Generalizations about the way a global regime works are invariably met with counter-
examples that point in a completely new or different direction than the stated example. However, if a global regime can be defined by its ability to allow difference, or indeed be characterized by its production and management of difference, then it is possible to discern the existence of a regime. Thus, this dissertation mobilizes examples from the United States, the European Union, Australia, New Zealand, Dubai, Canada, Israel, and other places that are made to speak in a kind of discontinuous unison. Mezzadra and Neilson (2012a) describe their own work in a manner congruent with this dissertation:

Our primary interest is not in comparing different instances or techniques of bordering but rather in interlacing, juxtaposing and superimposing the practices, techniques and sites in question, highlighting their mutual implications and consonances as well as their differences and dissonances, their commonalities and their singularities. The result is a different means of knowledge production… Part of our approach involves discerning these kinds of propinquity between various material instantiations of borders, keeping in mind that these instantiations are themselves made possible by the cognitive operation of border devices. (65)

This dissertation employs a similar approach, seeking “propinquity between various material instantiations” of borders, categorization or identification regimes, and regimes of what we will term “differential inclusion,” a key term in the pages that follow. This project thus also relies on “interlacing, juxtaposing and superimposing” various practices, technologies, and geographical locations, also with the hope that a new form of knowledge about globalization and the figure of the refugee is produced.

Stated simply, there are eight overarching problematics that the dissertation seeks to address. On the descriptive level, this dissertation first explores significant changes in practices in international bordering that move away from the traditional zones between two sovereign countries (Chapter 2). A focus on state-level bordering practices is essential because the refugee is inextricable from the state (Skran 1995). While the act of
seeking safety may be a universal human practice, the act of seeking asylum and being recognized as a refugee is not. Thus, by focusing on changes in the practices by which states enforce their borders, we can better understand what it means for the refugee to be “out of place.”

Second, also on the descriptive level, the dissertation will explore changing norms regarding the RSD process and the logic underneath the labeling of mobile peoples (Chapter 3). These are identities that are assigned by those wishing to “manage” human mobility, therefore, readers should not mistake the term *identity* as it is used in this dissertation to mean something similar to the identity of identity-based politics. The identity categories related to the determination and labeling of refugees are empty, designed to facilitate state governance and in fact de-politicize the refugee phenomenon.

Third, and overlapping the argument raised in the first two chapters, is that the methodological point of view this dissertation adopts is unapologetically from the standpoint of mobile people. However, it cannot be reduced to the experiences or subject positions of any particular group of refugees or migrants. In this way, the dissertation adopts the framework of the concept of the “autonomy of migration,” a concept that refuses the state’s own conception of “legitimate” or “illegitimate” mobility (Papadopoulos and Tsianos 2007). At the same time, the autonomy of migration is taken to be an ontological politics in which subjectivity is *figured* in certain ways, but is not identitarian. By enforcing a politics of dis-identification, novel aspects of global politics are exposed. This is not to say that we should ignore the identity of individual refugees or disavow the importance of experience in articulating politics; rather, this is to say that for
this particular project, it is politically and analytically useful to try to resist equating *the figure of the refugee* with *actually existing refugees*.

A further methodological point brings us to the fourth aspect of this dissertation: to break with the dominant forms of scholarship in Refugee Studies, whether historical-genealogical approaches or policy analysis. This dissertation is concerned with the theoretical possibilities of a potential politics, not with “solving the problem of refugees.”

Fifth, this dissertation supplements much of the “autonomy of migration” literature, but does so by focusing on the question of refugees and forced migration in ways that exceed political-economic analysis. By resisting an analysis that posits human mobility as a problem of labor migration, dictated by demands of the market, I try to show how global governance is a governmentality of “control.” Significantly, control does not preclude market forces; in this dissertation, however, it is important to insist on the impossibility of reducing the analysis to the political-economic.

Sixth, this dissertation assembles disparate aspects of the global border and refugee regimes and theorizes a coherent, even if uneven and discontinuous, system of global order. We term this global order “Global Apartheid” (Chapter 4). Global Apartheid is in conversation with other forms of social hierarchy, such as Jim Crow in the US and Apartheid in South Africa, but is oriented around the concept of differential inclusion rather than race. Differential inclusion thus characterizes global order, in contrast to the numerous discourses of exclusion that are emerging in many academic fields.
Seventh, by reconceptualizing the relationship between borders, state identification, and relations of inclusion, this dissertation re-frames debates surrounding the concept of precarity.

Finally, this dissertation begins to grasp the relation between the “figure” or figuration and political thought and practice (Chapter 5). The figure of the refugee is cast in a new light by taking seriously the importance of figuration. Not simply another term for “representation,” the figure of the refugee points toward a coming politics, perhaps one in which mobility is taken to be the central pillar or even foundation, rather than territorial stasis. Taken together, the chapters that follow offer a renewed understanding of what we have come to term “the figure of the refugee.”
Hazleton is a town of approximately 25,000 people in Eastern Pennsylvania, roughly 1800 miles from the point where Texas meets Mexico on the Gulf of Mexico. According to the 2000 census, only 4.9% of the population was Latino; in 2010, that number was 37.3%. Responding in the midst of these changing demographics – in 2006 – Mayor Lou Barletta fought to pass an “Illegal Immigration Relief Act” ordinance aimed at the growing population of undocumented migrants.\(^5\) He wrote an open letter on the township’s website that stated, "Let me be clear, this ordinance is intended to make Hazleton one of the most difficult places in the U.S. for illegal immigrants" (Bykowicz 2006). The language of the ordinance insisted that undocumented migration leads to higher crime rates, places burdens on public services, subjects medical services to undue financial hardship, and generally erodes the quality of life for residents. When asked to provide evidence for such claims, the mayor conflated the municipality’s general responsibilities to be fiscally prudent and to improve the quality of life for residents with its role in abating “public nuisances.” Migrants, he declared, are a nuisance and a drain on public resources: "Illegal aliens are a drain on our resources, and they are not welcome here" (Bykowicz 2006). The “Illegal Immigration Relief Act” ordinance made it unlawful

\(^5\) Barletta is now a US Congressman representing the 11\(^{\text{th}}\) District of Pennsylvania.
to hire and/or harbor an undocumented migrant. Further, an English only ordinance was passed and a tenant registration program was initiated, in which dwellers were required to prove their legal status in the United States. The mayor’s explicit goal was “to have a city of legal immigrants who are all paying taxes” (Gilbert 2009, 34).⁶

In August 2001, a Norwegian container ship, the *MV Tampa*, rescued over 400 people from drowning in the waters near Christmas Island, one of the northern islands that are considered part of Australian territory but are very distant from the Australian mainland. In fact, Christmas Island is only 300 miles due south of Jakarta but over 1000 miles northeast of either Port Hedland or Darwin, the closest mainland Australian ports. The *Tampa*’s new passengers were mostly fleeing the Taliban in Afghanistan, many by way of lengthy stays in Pakistan (Burke, Brace, and Jordan 2001). Moreover, the *Tampa* was refused entry into any Australian territorial ports and was instead redirected to a port in Indonesia, roughly twice the distance from the rescue location than Christmas Island. Claiming that the lack of lifeboats and other safety equipment made the *Tampa* ill-equipped to safely transport so many people, the captain requested permission to unload the asylum seekers at Christmas Island. The Australian government responded by refusing entry into their territorial waters, even going so far as to threaten the *Tampa*’s captain, Arne Rinnan, with charges of human trafficking if he disobeyed and tried to

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⁶ After being challenged by the Puerto Rican Legal Defense and Education Fund and the American Civil Liberties Union the ordinances were eventually overturned, because they were found to be based on and actively promoting the racial profiling of Latino residents, and because they contradicted federal statues regarding migrant and citizenship rights.
enter Australian territory. With several of the asylum seekers experiencing medical
distress, Rinnan declared a state of emergency and proceeded to enter the Australian
territorial waters near Christmas Island without authorization. Eventually, most of the
asylum seekers were boarded onto an Australian naval vessel and transported to Nauru.
About 150 of the asylum seekers were ultimately re-settled in New Zealand, and
approximately another 100 were granted entry into Australia (“Most Nauru Refugees”
2004).

These two events open up a number of issues for understanding changes in the
locations and intensity of international bordering. Local jurisdictions such as Hazleton,
PA are increasingly interested in policing the border even when they are located deep into
the interior of the nation-state. While they are not always successful because national
courts often overturn such local ordinances, it is significant that local jurisdictions are
undertaking the policing of citizenship status at all. What the Hazleton example
demonstrates is that the number and kind of actors who participate in international
bordering are today multiplying, especially once we consider the growing role played by
private enterprise, non-governmental organizations, and vigilante citizens’ groups.7 We
are also seeing “the border” move farther and farther away from the “line in the sand”
drawn between two neighboring political entities, as exemplified in the Tampa incident.

7 These actors are more closely considered elsewhere (e.g. Hyndman 2000; Chacon and
Davis 2006; Sharma 2005; Doty 2007; Agier 2008; Agier 2011; Georgi and Schatral
In general, the examples of Hazleton and the Tampa incident open up significant questions about what a border is and what it does today.

Both the Hazleton and Tampa examples draw attention to the ways in which “the border,” which is typically conceived as the line that separates two sovereign territories, is being articulated both within the interior and to the exterior of the state. Such movement away from the “borderline” forces us to reconceptualize what is meant by bordering. Ultimately, in the interest of bolstering the authority of the state, the state itself deforms and disfigures both its spatial dimension and the authority it sought to bolster in the first place. As will become apparent, the result of such a disfiguration is a condition in which the state subverts its own ability to secure a space for its own members. In short, by extending the border to the interior and the exterior, and otherwise excising and manipulating its territory, the state externalizes its own population, treating everyone as a suspect, a potentially illegitimate resident.

In “What is a Border?” Étienne Balibar (2002) explores the difficulty in providing a “simple” answer to the question. In his view, there is no essence of borders that “would be valid in all places and at all times, for all physical scales and time periods, and which would be included in the same way in all individual and collective experience” (73). The impossibility of reducing a border to an essence is one way to understand what he calls the “heterogeneity of borders”: there are many borders operating in various registers, scales, locations, histories. Borders also exist between concepts, marking one idea off from another. Borders further exist between neighborhoods, states, nations, and regions.
Physically, borders can be a “line in the sand” (Nyers 2012) or they can be a zone (Squire 2011) or a “scape” (Rajaram and Grundy-Warr 2007). In the popular political imagination, borders can be fixed like (or with) a wall. More significantly for the present project, they are in a continual process of demarcation, an active practice of division and delimitation. Such heterogeneity requires an act of bordering of its own, in order to bring into focus the problem that exists in the realm of the spatial ordering of the world.

First, what is a territorial border?

In addressing this question in “What is a Border?”, Balibar begins by outlining the problem with what he terms a “simple” definition of borders:

The idea of a simple definition of what constitutes a border is, by definition, absurd: to mark out a border is, precisely, to define a territory, to delimit it, and so to register the identity of that territory, or confer one upon it. Conversely, however, to define or identify in general is nothing other than to trace a border, to assign boundaries or borders (in Greek, horos; in Latin, finis or terminus; in German, Grenze; in French, borne). The theorist who attempts to define what a border is is in danger of going round in circles, as the very representation of the border is the precondition for any definition. (Balibar 2002, 76)

Balibar thus describes an aporia at the heart of the problem: in defining a border, one defines a territory, and vice versa. Territory is psychic and physical, emotional and material. But, if there is no essence of all borders, neither is there an essence to territory.8 And thus, when it comes to territorial borders, historical contingency has altered the particular meanings and functions of actually existing borders:

Since earliest Antiquity, since the ‘origins’ of the state, of city-states and empires, there have been ‘borders’ and ‘marches’ – that is to say, lines or zones, strips of

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8 Stuart Elden (2013) provides a very detailed history of the concept of “territory” in The Birth of Territory. This conceptual history is punctuated by drastically different uses of the term conditioned by geography and historical circumstance.
land, which are places of separation and contact or confrontation, areas of blockage and passage (or passage on payment of a toll). Fixed or shifting zones, continuous or broken lines. But these borders have never had exactly the same function – not even over the last two or three centuries, despite the continuous effort of codification put in by nation-states. (Balibar 2002, 77)

The specificity of any particular border is recognized here to be essential, especially for the understanding of any identity and its relation to other identities. Yet, there are consistencies that can be identified that form patterns of international bordering, and which enable us to distinguish between different border regimes. In exposing these aspects of bordering, Balibar is shifting our focus from the question of “what is a border” to “how does a border or a set of borders work”?

A related question that Balibar opens up is whether territorial borders are necessary if they represent a human need to distinguish between and amongst different entities. Territorial borders, the thinking goes, are as necessary as the borders between concepts because territory is simply a larger scale of difference. Concept, identity, and territory are thus all marked by the same process of differentiation. The question is articulated differently in Peter Sloterdijk’s Bubbles (2011), the first volume of his Spheres trilogy. He argues that human beings create “spheres,” in which different ways of being and thinking exist. Sloterdijk does not address territorial borders between spheres directly, but the problem he sets forth does repeatedly raise the question of boundaries. He naturalizes these boundaries by recourse to a kind of biological regression. In his view, human beings create “spheres” in an attempt to recapture the feelings of enclosure and security felt in the mother’s womb. No doubt the connection between territorial borders and such biological enclosures in Sloterdijk’s argument
suggest perhaps a more insidious slippage between the mother’s womb and the concept of the motherland. Indeed, it is unsurprising that Sloterdijk’s politics are considered “immunological,” in which a distinction between inside and outside is not only necessary but is perhaps violently reinforced when a threat to the health of the social body is seen to come from the outside. In comparison with Balibar, then, the politics of Sloterdijk’s *Bubbles* has the potential to be radically more exclusionary due to the supposed biological imperative for the human need to equate security with birth and survival. Thus, both Balibar and Sloterdijk presuppose that spatial/territorial borders are natural extensions of more fundamental human needs or capacities for boundary making, but they do so in different ways and with the potential for dramatically different outcomes.

In sum, Balibar and Sloterdijk present us with a problem: to what degree are borders necessary? Both answer that borders of some kind are absolutely necessary, because in a fundamental and material way, *borders produce worlds*. Borders are essential aspects of the ontological production of world-space and world-time; our actions, thoughts, and relations are all predicated upon the existence of a world. Unlike Sloterdijk, though – who locates the process of *worlding* as an extension of biological security or immunity – Balibar tells us that borders may indeed be necessary, but that their specificity is historically contingent. The question that we must approach, then, is how do borders function today and what kind of world are they integral in producing?

Conceptually re-framing territorial borders away from an immunological paradigm and toward a functional paradigm is an important first step in our ability to take seriously the incitement to re-think the figure of the refugee, the project of this
dissertation. It is crucial to move away from the idea that borders are entities that divide an already existing world and toward the notion that borders “make” a world (Mezzadra and Neilson 2013a). Borders, while localizable, are not locations as much as they are agents (Donnan and Wilson 1999). They have real effects, and function in at least two ways: as “discursive landscapes of social power” and as “technical landscapes of social control” (Paasi 2013, 484).

The border as a discursive landscape of social power is similar to what Balibar means when he locates bordering as a phenomenon related to identity. International borders help to produce and locate in space a distinction between a privileged “us” and an othered “them,” and can be associated with cultural phenomena from language to costume, religious practice to political institutions. Such discursive landscapes are gradually institutionalized over time through memorials, symbols of national history, commemorations of events, and flag displays. They “literally transform borders into part of the territory’s heritage and iconography and contribute to the production and reproduction of collective identities” (Paasi 2013, 485).

As technical landscapes of social control, though, borders can function in a number of ways that do not easily map onto questions of identity or even territorial space. Paasi describes this landscape when he argues that, “Borders have become increasingly complex elements of control in a contemporary world characterized by various flows of people, ideas, ideologies, and goods and by a fluctuating fear of terrorism” (488). In this sense, borders have quite literally become landscapes so that, “Emerging control
mechanisms...stretch borders beyond state territories and transform borders into networks with state-centric nodes” (489).

What must be traced here is thus a technical landscape of social control. Because we are not concerned with the production of this or that identity or imagined community, we will proceed by bracketing the discursive landscape of social control. Instead, we seek to grasp a shift in bordering from what we will term an “extensive” tendency to an “intensive” tendency through the border’s movement to the interior and exterior of state space. Technologies of externalization, internalization, and excision work together to change the border into a technical landscape of social control. Indeed, this shift in emphasis then allows us to map the ways that “borders are no longer the shores of the political, but have indeed become...things within the space of the political itself” (Balibar 2002, 92). In other words, there has been a qualitative shift in the way we experience our world that frames any particular identities that emerge from it. The possibility of a “world interior” (Sloterdijk 2013), or a world with “no outside” (Hardt and Negri 2000), was barely thinkable, let alone livable, until very recently. Unlike the cosmopolitan imaginaries that stated the inevitability of the rise of a single “people,” such as Kant’s cosmopolitan vision, globalization has produced a “world interior” that is marked by a proliferation of borders and borderings rather than by their disappearance. We can call this phenomenon intensive bordering.

The emergence of “life” as the basis of politics (discussed in Chapter 1) has created a set of conditions in which acts of bordering no long separate one vision of “the good life” from another, but in fact constitute a life-struggle. In this sense, Huntington’s
(1993) “clash of civilizations” thesis was correct (but for all the wrong reasons). Indeed, the rise of “security” as the watchword of contemporary global and local politics is not due to a fear of the outside, but precisely because there is no longer an outside. Rich and poor, citizen and non-citizen, we are all “immanent outsiders” (McNevin 2011), but because we have not fully broken with the institutions, epistemologies, value systems, and modes of exchange that are predicated on the interior/exterior dialectic, we are engaged in a constant process of externalizing the population in order to find new methods of re-interiorizing it. With no territorial frontiers left to conquer – unless you follow Paul Virilio (2010), who seems convinced that we will colonize space in the near future – conflicts have been rendered increasingly intensive: civil wars over inter-state wars, police and military become inseparable, and an intensification of the claims to sovereignty in light of their increasing impotence. The image of the wall retains such power and popular support precisely because it is a stubborn insistence that we can shut out the outside.

Walls and the Fantasy of Sovereignty

How do we reconcile the proliferation of border walls and fences at the exterior of the state with the practices of intensive bordering? In other words, if the “core” of bordering happens elsewhere, why are walls gaining in popularity all around the world? A number of scholars have begun to draw attention to walls as both a practice of bordering and a performance of sovereign power (Jones 2012; Loyd, Mitchelson, and
Burridge 2012; Dear 2013), but Wendy Brown (2010) has provided the most sophisticated political theory of the wall to date. Brown poses an important question: why are border walls increasingly fetishized? Or, in other words, why do we persist in building walls, a seemingly medieval technology of bordering, in the context of liberal (or neoliberal) globalization? As she demonstrates, the walls proliferating in border spaces around the globe are inefficient, in that they do not do what they purport to do: in fact, they do are almost completely ineffective in actually stopping the movement of bodies (also see Dear 2013).

Brown argues that, in light of their material failure, border walls can really only serve a psychological purpose. Indeed, a wall is more a message to “insiders” (citizens) than it is to “outsiders” (refugees and migrants). The psychoanalytic notion of “the fetish” helps to explain the phenomenon of walling (2010, 114). Brown claims that walls are physical objects that obtain “mystical powers” and become a kind of cure-all for the movement of people. Walls are the nexus of numerous fantasies: of the dangerous alien; of the possibility of containment; of the desire for impermeability; and of the purity, innocence, and goodness of “us” on the inside versus the impurity, danger, and salaciousness of “them” on the outside.

Brown’s analysis is a significant step forward in thinking about walls, especially in how they are becoming more popular even while the interiors and exteriors of states are blurring together, producing a novel form of policing:

insofar as the new walls at the edges of nation-states articulate with other barriers and forms of surveillance, private and public, they signal the existence of a corrupted divide between internal and external policing and between the police
and the military. This, in turn, suggests an increasingly blurred distinction between the inside and outside of the nation itself… Thus, one irony of late modern walling is that a structure taken to mark and enforce an inside/outside distinction – a boundary between ‘us’ and ‘them’ and between friend and enemy – appears as precisely the opposite when grasped as part of a complex of eroding lines between the police and the military, subject and patria, vigilante and state, law and lawlessness. (2010, 24-25)

As Brown is acutely aware, walls are thus remnants of the fantasies of sovereignty.⁹ That the world has been divided spatially between competing political, economic, and religious orders is incontestable (Albert, Jacobson, and Lapid 2001). The dominant ordering of the world has been the Westphalian system of states. However, as Walker (1993) notes, there has been much debate over the origins of this global order:

> the precise timetable of the emergence of state sovereignty is contested in the literature. Some writers focus on the late fifteenth century and the emergence of a recognizably coherent system of states. Here the Franco-Spanish struggle over Italy in 1494 or Columbus’ meeting with the Americas in 1492 becomes symbolic. Others focus on the formalizations of legal theory symbolized by the Peace of Augsburg (1515), the Treaty of Westphalia (1648), and the writings of Vattel. Others, like F. H. Hinsley, stress later dates on the grounds that only in the eighteenth or nineteenth centuries are there clearly cohesive nation-states in the modern sense, or a clearly cohesive states-system, such as was defined by the Congress of Vienna of 1815; or that only in the twentieth century does the principle of sovereign statehood become universalized with the ending of formal colonialism. (168)

For the purposes of the argument at hand, it is useful to view the sovereign nation-state system *paradigmatically* – in this case, the paradigm of Westphalia. Understanding 1648 as *paradigm* rather than as *origin* reorients the discussion away from the empirical dispute over whether “the state” existed before or after the mid-1600s. This is

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⁹ Of course, walls long predate the modern concept of sovereignty. In light of the following argument, however, walls refer to those barriers built at the limits of political territory, such as those between the US and Mexico, Israel and Egypt, Israel and Palestine, India and Pakistan, and others.
undoubtedly an important historical question. What is essential for our purposes, though, is that the Peace of Westphalia signals a shift in the *ordering* of the world, initiating a long, slow march toward the current condition in which it is impossible to think beyond the state-form for large-scale political relations. This has a significant impact on our understanding of borders because, as will become clear throughout this dissertation, we may have shifted to a different paradigm of global order, one in which borders function very differently than they do in the Westphalian paradigm.

Returning to Westphalia, it is not so important whether or not the Westphalian Peace was the *origin* of global order as it is to understand that the European powers – and soon the world – would adopt a set of conditions that included: 1) a formal recognition that there will be more than one governing body existing in the world, or an assumption of pluralism; 2) a formal recognition that the territories in dispute in the Thirty Years War would be considered inviolable after the 1648 Peace, or an assumption of territorial integrity; 3) a formal recognition that within each territory only one authorized ruler or ruling body would exert control, or an assumption of sovereignty; and 4) a formal recognition that, across territorial boundaries, competing sovereigns had no say in local affairs, or an assumption of non-interference. Each of these assumptions, of course, has its own genealogy. What is important, here, is that the *Westphalian paradigm assembles them in a particularly novel way* (Sassen 2006).

Extending from, integral to, and perhaps the basis for the assumptions of the 1648 paradigm is the concept of sovereignty. As Brown (2010) notes, what have come to be known as the features of sovereignty can be drawn from Hobbes, Bodin, and Schmitt.
Extrapolating from these thinkers, sovereignty is: 1) the exercise of supremacy, in that there cannot be any other higher power; 2) perpetuity over time, in that there are no term limits imposed on the sovereign, which would imply the existence of a higher, more supreme, ruler; 3) decisionism, in that the sovereign is not bound by law, but instead decides on the application of the law; 4) absoluteness and completeness, in that sovereign power cannot be partial, as any abrogation of that power would imply the existence of a higher, more supreme, ruler; 5) nontransferability, in that the sovereign cannot transfer such power to another without acceding power entirely; and 6) the existence of a specified jurisdiction, in that without some set of boundaries on sovereign power only two possible conditions could exist: the first being total war where no authority is recognized, the second being a single world-state with one sovereign (22). Already one can see a potential conflict between the principles of supremacy, absoluteness, and jurisdiction when two sovereigns claim overlapping space. The concretization of international borders thus seems an obvious solution to potential conflicts, although this was not necessarily the case everywhere. Sovereignty and territoriality are then logically and legally bound together in the Westphalian paradigm in ways that did not quite exist in previous political orderings, especially when one looks beyond Europe, and the conditions by which the European nation-state-form came to be exported and translated around the globe (Anderson 2006).

The Peace of Westphalia became the paradigm around which order was constructed in the Modern era – even if it was not the origin of such an order – which entailed the attempts to fix borders and identities in time and space, and to homogenize
the relation among a ‘people,’ a ‘place,’ and a ‘politics.’ It hardened distinctions between inside and outside, forcing institutions such as the Catholic Church to cede authority. In addition, many people were forced to flee because they became known as newly constituted minorities (i.e. French Huguenots), outsiders, “unnaturally” present (Sahlins 2004; Sassen 2006). Indeed, within this paradigm, sovereignty in the wake of Westphalia became a necessary fantasy: sovereignty “carries the fantasy of an absolute and enforceable distinction between inside and outside. This distinction in turn depends upon sovereignty’s defiance of spatial or boundary porousness and of temporal interruption or multivalence” (Brown 2010, 119). It is precisely this sovereign fantasy that brought together notions of governance, identity, and territory. Borders, in the Westphalian paradigm, became a limit that bounded a calculable territory, within which a governing entity (the state), exerted influence over a people (with an imagined unity of identity).

Conceptually, then, there has been an elision between the state, sovereignty, and violence. Max Weber’s famous definition of the state as the entity that successfully monopolizes the use of violence within a given territory brings together many aspects of sovereignty (supremacy, absoluteness, specified jurisdiction) and directly ties violence to territory. Stuart Elden (2009) further explains that

Sovereignty is an issue at the intersection of terror and territory; it operates as the crucial bridge between terror and the state and is integral to the state of territory. Those who have sovereignty – recognized states – are able to exercise a violence within their territory that they claim is legitimate. Those who are deemed not to have sovereign power...are in a different position. Their violence is seen as illegitimate by definition, as ‘terror’. (171)
Elden brings together violence and territory under the rubric of sovereignty, rather than the state, which in this equation is the entity that has sovereignty. Connolly (1996) simplifies the equation in stating that, “Territory is land occupied by violence” (144). Brown (2010), alternatively, is not as direct in discussing the role of violence as either Elden, Weber, or Connolly; instead, she accounts for the birth of sovereignty by looking to the first land enclosures, the first transformation of common land into private property, a different kind of violence than the direct management of terror. Here she relies on Carl Schmitt’s elaboration of nomos, that which “expresses the production of (political) order through spatial orientation” (Brown 2010, 45). The bundling of violence, territory, and sovereignty is thus integral to the 1648 paradigm. The wall can be seen as a symbol that divides a legitimate form of violence from the inside, the police, from an illegitimate form of violence from the outside, terrorism. It also signifies a clear distinction between those who belong and those who do not, and thus authorizes state violence exerted on bodies deemed “out of place.”

Regarding the relationship of walls to sovereignty, there are a few basic points we should hold on to from Brown’s work. First, it is uncontestable that border walls are simultaneously proliferating and being proven ineffective as a stand-alone tool for halting the movement of bodies across borders. Second, she makes a powerful case for the psychology of walls and fences that must be separated from their actual function. Walls effectively paint an outside/inside division – draw a line in the sand – between a lawless and barbarian exterior and the rule of law and civilized populace on the interior. An analysis of walls that claims to characterize global space or global order through walls,
and therefore concludes that what characterizes global order is exclusion, misses the key aspect of Brown’s work, that walls are at best a “psychoanalysis of defense” (123).

Walls draw hard lines between sovereign territories and allow for a kind of opacity at the border toward issues of inequality or injustice:

Mobilized to depict discursively what it blocks as lawless invaders, walling literally screens out a confrontation with global inequality or local colonial domination. It facilitates denial of the dependency of the privileged on the exploited and of the agency of the dominant in producing the resistance of the oppressed. (Brown 2010, 122)

Reece Jones (2012) develops this further when referring to walls in the US, India, and Israel:

In all three cases, the territory on the other side of these borders was described as an ungoverned space, where modern sovereign-state practices that bring order and stability were absent or incomplete. Narratives of civilization and wilderness are not a novel aspect of the discourse of the global war on terror but, rather, are emblematic of the expansion of the sovereign-state system around the world throughout the modern era… (12)

Walls exist precisely because of their psychological effect. For Brown (2010), “Nation-state walls are modern-day temples housing the ghost of political sovereignty. … They produce not the future of an illusion, but the illusion of a future aligned with an idealized past” (133). It is this disjuncture between the ghost of sovereignty’s past and the reality of the reconfiguration of political sovereignty under conditions of globalization that is at stake. In other words, walls must be taken into consideration for what they do in relation to other technologies of bordering, especially those that extend the border away from the borderline at which the wall stands.
The relationship between walls and other bordering practices is such that walls, by shoring up the fantasy of sovereignty, legitimize exclusion and therefore authorize the intensification of policing methods away from the border. Jones (2012) elaborates:

…the construction of a barrier on the border simultaneously legitimates and intensifies…other exclusionary practices of the sovereign state. It legitimizes exclusion by providing a material manifestation of the abstract idea of sovereignty, which brings the claim of territorial difference into being. The barrier also intensifies these exclusionary practices, because once the boundary is marked and ‘the container’ of the state takes form, the perception of difference between the two places becomes stronger. By performing sovereign control, the state simultaneously reifies authority over that territory and defines the limits of the people that belong there. These perceived differences then fuel more passionate feelings of belonging to the in-group and distinction from the other on the outside. (171)

This is an important distinction: the psychological effect of and desire for walls is a fundamental aspect of the emergence of a border regime dislocated from the borderline itself.

Walls, then, are a technology that provides an image of Westphalian sovereignty at the location and during an era in which sovereignty has become otherwise. It is a fantasy of control, if control is understood here as the ability to actually affect the movement of people across international lines in such a way that the state can start or stop such movement at will. This has never been truly possible, but Westphalian sovereignty was built on such a fantasy. The hard distinction between inside and outside that characterizes Westphalian order, though, is being undermined by the actions of the state that are attempting to reinforce the fantasy of Westphalian sovereignty. The world does not cooperate with walls, nor can walls exert a disciplinary force on patterns of
mobility that do not approach them to begin with. Neither the Hazleton, PA case nor the Tampa incident can be thought through an order characterized by walls. Indeed, states have already widely recognized this, and rather than try to enforce Westphalian sovereignty so that the wall is able to internalize its power in every individual, thus producing ideal national citizens, states now take the world “as it is” and attempt to influence behavior in the present. This opens onto the technologies of border control that attempt to deal with mobility away from the borderline itself, ideally keeping mobile bodies from reaching the walls in the first place.

It is precisely this very problematic that Balibar is addressing in his essay “What is a Border?”. Territorial borders no longer symbolize the division of one people from another at the limits of political space. Borders are increasingly at the center of political space, and thus are increasingly incapable of defining a territory, as Balibar notes in his discussion of a “simple definition” of borders. Increasingly, borders do not define a territory as much as they enable access to certain legal regimes (addressed later in this chapter in the “Internalization” section, as well as in Chapters 3 and 4), privileged categories of mobility (Chapter 3), and differentiated access to safe and secure space (this chapter and Chapter 4). Westphalian order, and the wall that symbolizes it, is insufficient for understanding contemporary mobility.
As discussed in the first chapter, there has been an increasing emphasis on taking the world “as it is” rather than in trying to continue the project of shaping the world in the image of sovereignty. The intensification of bordering practices far away from the actual borderlines that separate one political territory from another is part of this attempt to deal with the world “as it is.” Indeed, there are numerous options available for states to push their borders outwards into the ostensibly sovereign spaces of other states, variously referred to as “policing at a distance” (Bigo and Guild 2005), “remote control” (Zolberg 2003), or, more generally, externalization or extraterritorialization (Boswell 2003; Afeef 2006; Haddad 2008). Some of the most significant ways in which such externalization takes place are: 1) the international visa regime, 2) carrier sanctions, 3) bilateral agreements (which themselves employ many particular bordering technologies), and 4) “safe third country” agreements. All of these phenomena are attempts at preventing migrants and refugees from reaching the state.

The first technology of externalization is the visa, which is granted as part of the international passport regime developed in large part after World War I. Passports are the basic document for international travel, and they have their own interesting history of development (Torpey 2000). However, relevant to the present discussion, there are often disputes regarding the granting of passports to specific individuals or groups of people that prompt many states to issue visa restrictions on passport holders. To receive a passport, a citizen of a state submits an application and in many, if not most, cases it is
granted. Few states today maintain restrictions on their citizens’ ability to travel abroad (although this has not been the case historically).\(^{10}\) For many, a passport is all that is needed for international travel. However, if for example a state, the US, has concerns about the effectiveness of the screening process in another state such as Somalia – concerns for any number of reasons ranging from economic instability to famine or outright racism – they may require that anyone from Somalia obtain a visa before being allowed to travel to the US. Visas are typically controlled by the embassies and consulates that form the core of the international diplomatic network. Visas are also usually aimed at entire states, regions, or ethnicities – although state citizenship is usually used as a proxy for any outright concerns over ethnic mobility. Visas are often an attempt to get ahead of various kinds of migration-related violations of local laws, such as using an easy-to-obtain tourist visa to gain entry to a country with the intent of staying there permanently and working.\(^{11}\) The visa often amounts to a process of increased scrutiny for particular mobile individuals that produces a distinction between legitimate and illegitimate mobility. In other words, the visa is an extension of a state’s border controls deep into the territory of another state, and assigns a suspicion of illegitimacy on all

\(^{10}\) There are states without functional passport apparatuses, and these states are frequently the target of visa regimes of the US, EU, and other so-called migration receiving countries (Castles, de Haas, and Miller 2014).

\(^{11}\) Many states encourage tourism by waiving visa requirements for stays shorter than 90 days. For example, US citizens can stay in any EU country for up to 90 days without requiring a visa, but cannot work or attempt to gain residence. Alternatively, citizens of Sudan require a visa to enter the EU even if the intention is simply to visit relatives for a few days.
individuals from particular places in advance of any violation of the law or behavioral norm. As Bigo and Guild (2005) note:

It is the visa process, more than the passport, which allows a selective sorting of those who will or will not be allowed to move ‘freely’. The visa obligation denotes a suspicion towards a country or a nationality as a whole. The granting of the visa is an exception to the exclusion. It is a re-establishment of confidence in an individual notwithstanding that his or her country of nationality is one which as a whole has been designated suspect. (236)

It is in this sense that a visa requirement “externalizes” the border.

The second technology used to externalize borders are the “carrier sanctions” levied on airlines and other transportation companies if they do not sufficiently monitor their passengers’ travel and/or migration documentation (Popescu 2012, 100). For example, the European Council Directive 2001/51/EC of 28 June 2001 (OJ L 187) states that,

This directive is intended to combat illegal immigration through the harmonization of financial penalties imposed by European Union (EU) countries on carriers who are breaching their obligations. In particular, it supplements Article 26 of the Convention implementing the Schengen Agreement concerning carriers’ liability and defines its application as a tool for combating illegal immigration. (45–46)

The directive does this by requiring carriers to “ensure that non-EU nationals who intend to enter the territories of EU countries possess the necessary travel documents and, where appropriate, visas” (46). The carrier is further responsible for providing transportation back outside of EU territory for the migrant denied entry, or to provide the funds for alternative transportation. The fines can be heavy: between 3,000 and 5,000 euros per individual migrant, and at least 500,000 euros per infraction. The law lists an exemption for those seeking international protection (i.e. refugees and asylum seekers), but
numerous organizations and activists have claimed that in practice airlines often screen out potential asylum seekers to avoid the possibility of fines (Ericsson 2000).

The third technology of externalization are the use of bilateral agreements. Such agreements are usually structured around zones of perceived crisis, usually between unequal partner states. There are many kinds of bilateral agreements, but we will address only a well-known example specifically oriented towards the mobility of persons: the recent agreements between Italy and Libya. These bilateral agreements have generally stressed the use of Libya’s military to intercept clandestine migrants in the Mediterranean (Hamood 2008; Adepoju, van Noorloos, and Zoomers 2009; Andrijasevic 2009a). A 2003 agreement placed Italian police officers in Tripoli full-time to provide Libya with “training and equipment, in particular to assist border surveillance and management” (Hamood 2008, 32). A 2008 deal between the countries included a provision that allowed Italy to return migrants intercepted in the Mediterranean Sea to Libya regardless of their point of origin. These agreements have been widely criticized for allowing Italy (and the rest of the EU, due to the way that the Schengen Agreements function) to avoid its refugee and human rights obligations, thus preventing potential asylum seekers from reaching Italian soil in the first place (Hamood 2008). Like visas and carrier sanctions, the Italy/Libya bilateral agreements have externalized the border, so that Libya’s borders effectively became the point of enforcement for migrants and refugees on their way to the EU. Since the fall of Gaddaffi’s Libya, the official status of bilateral agreements has shifted from Italy to the EU via Frontex, its relatively new border agency. Frontex strategy relies on bilateral agreements (Kasparek and Wagner 2012, 180), so while it is
ostensibly a transnational strategy (at the level of the EU entering agreements with other states), it relies on EU member-state initiatives to “externalize” their own particular borders and thereby extending beyond existing “EU borders.”

Lastly, Safe Third Country (STC) agreements are similar to bilateral agreements, but have a much more specific target than generalized migration: preventing asylum seekers from claiming asylum in a “desirable” country rather than a “safe” country (Harlbronner 1993; Acherman and Gattiker 1995). An STC agreement basically states that if a person flees a conflict in one state and passes through multiple countries in the process of their escape, to be considered “legitimate” they must request asylum at the first safe country they enter. And if they do not do this, they are considered to be in the country illegitimately and thus returned to the “safe third country” for processing and potential asylum. These agreements are called “safe” in that certain countries are designated to be sufficient places of refuge during the asylum determination process. In other words, if an asylum seeker leaves her country of origin and passes into a neighboring state where, due to her ethnicity, for example, she would continue to be in danger, that state is deemed unsafe. If, however, the asylum seeker would not continue to be in danger, the country is deemed safe. The agreements then refer to a “third country” because it is neither the country of origin, which they are fleeing, nor is it the desired country of destination. The reasoning behind these types of agreements is that if a person

12 Indeed, this bilateral agreement system has effectively pushed EU borders well into North Africa. According to Levy (2010): “…the North African States effectively have become ad hoc Schengen members although lacking the possibility to become Member States of the EU. A Euro-Mediterranean system of managed migration, thus, has come into effect without a full acknowledgement of it” (114).
has a legitimate need to flee, the purpose of the movement is to attain personal safety, and so the only destination that is deemed legitimate is the first safe place they enter. Therefore, if a refugee fleeing Syria is seeking safety, she should do it by declaring asylum in the first place deemed safe, perhaps Turkey or Greece (a legitimate claim), but should not traverse the entirety of the EU in order to reach Germany (an illegitimate claim). For Germany, having a number of STC agreements, would then transfer the asylum seeker back to the first place through which the asylum seeker travelled that Germany deems sufficiently safe.

A clear refrain throughout each of these “technologies of externalization” (visas, carrier sanctions, bilateral and STC agreements) is the attempt to slow down, suspend, and redirect migratory movements before they reach the territory of the state in the first place. A second refrain is the (sometimes explicitly stated) attempt to displace the perceived costs of undocumented labor migration and the granting of asylum by not allowing migrants and refugees access to the territorial spaces where those obligations would apply.

Externalizing borders is the first step in the filtering of mobile bodies that serves to differentiate between the proper from the improper, the legitimate from the illegitimate, the worthy from the unworthy, and the motivated from the unmotivated.
Border Control: Internalization

As seen in Hazleton, PA, there is also a tendency towards border internalization, where the international border is moved deep into the interior of the state. Internalization, unlike externalization, is not as ‘categorizable’ across national contexts, because internalization tends to follow various policy and populist pressures that focus in particular ways on police forces and extra-legal enforcement tactics that do not map easily onto “types.”

There are many technologies through which border internalization occurs, from employer programs to verify the citizenship status of employees to sanctions levied on landlords for failing to register all foreign nationals with local authorities (Popescu 2012, 99). Universities in the US and UK have recently been required to report on the status of their foreign students (Popescu 2012; Ingham 2012). Border internalization also includes privatization efforts, such as the Corrections Corporation of America holding contracts to run immigration detention facilities in the US, and new regulations requiring online travel sites such as Orbitz and Expedia to collect more information regarding passenger identities (Popescu 2012). To demonstrate this emergent global trend toward internalization, two national contexts will be explored in some depth. The first is the combination of the 287(g) agreements and the Secure Communities program in the United States. The second is the policing of Parisian banlieues, or suburbs, especially their migrant populations. Clearly, these examples are not exhaustive, nor are they intended to represent “dominant” trends in domestic policing in every country around the
globe. Instead, they serve as suggestive examples that point to a tendency emerging in many countries as they grapple with the conditions of globalization.

The United States has a long history of tension regarding who polices its national space, especially along the US-Mexico border (Chacon and Davis 2006; Nevins 2010). The Chinese Exclusion Acts and numerous court cases through the period from the 1880s to the early 1900s led to the consolidation of migration policing at the federal level (Coleman 2012a). It was primarily in the 1980s and 1990s, though, that significant federal funding began to be directed towards the US-Mexico border in terms of its securitization and militarization (Dunn 1996; Nevins 2010). In 2005, the borderline transformed into an internal 100-mile border zone, wherein law enforcement is authorized to check migration status without cause (Davidson and Kim 2009).

It was the Clinton and G. W. Bush administrations bookending the turn of the century that most significantly altered the US-Mexico borderscape. Both administrations increased funding for the patrolling of the border, added border patrol agents, and constructed fences and walls to try to prevent the flow of undocumented crossings at specific areas of the border. After the events of September 11, 2001, the border took on a different role in national security discussions, as the fear shifted from strictly economic terms to the anxiety surrounding the possibility of terrorists, or potential terrorists, crossing the southern border of the US. The combination of these anxieties has produced a infectious mélange of fear that has resulted in the massive expansion of attention to the
US-Mexico border and the drastic shift in tactics that has moved the border further and further into the interior of the US.

A significant technology of border internalization has been the 287(g) program, which is named after the section of the Immigration and Nationality Act in which it appears (Coleman and Kocher 2011). The program, allows state and local police to investigate immigration cases and ultimately make immigration arrests on behalf of federal authorities. There are two basic types of 287(g) authority… the jail enforcement model and the task force model. … Under the jail enforcement model, federally trained local law enforcement agents and/or locally based federal immigration officers check for immigration status as part of the general booking process. … The second form of 287(g) is the task force program. Unlike the jail model, the task force 287(g) does not require a criminal arrest per se in order to determine immigration status. (Coleman and Kocher 2011, 231)

Currently, the task force model has been phased out, and the newer, Obama-backed Secure Communities program functions almost identically to the jail enforcement model. Coleman and Kocher’s most important point in their analysis of the 287(g) and Secure Communities programs is the way in which they contribute not to more secure borders or to a more “rationalized” migration enforcement system, but how they incapacitate migrants who are “disciplined” by the regime of internal enforcement. They describe “a geopolitics of civic stratification” that results in “immigrant incapacitation,” as “detention and deportation practice as a ‘management of populations’…is not tethered explicitly to the ‘management of territory’ in terms of physically removing non-citizen individuals” from the interior of the state (234).

What 287(g) and Secure Communities do, in broad strokes, is contribute to a border policing regime that “suggest that the border – and border enforcement – is
increasingly *everywhere*” (Coleman 2007, 64). However, “everywhere” is not as general as the term seems. Primarily, immigrant policing in the US is happening in sites that are localizable and selective. For example, a primary tool of law enforcement is the traffic stop, especially in the form of license checkpoints. These checkpoints are mobilized ostensibly to screen every vehicle and driver passing through the checkpoint for a valid license; routinely, however, this is used as an excuse in order to facilitate the policing of migration status. Since these stops are often limited to roads that lead from large workplaces to domestic areas with high immigrant populations, they qualify as a selective technology that has the effect of disciplining large numbers of immigrants without physically encountering each of them.

When the traffic stop is combined with the growth in the number of local law enforcement officers charged with immigration policing responsibilities, the result is non-immigration related offenses leading to immediate or delayed, but almost inevitable, contact with federal databases, which results in an increase in deportations that do not originate at either the international border or other official ports of entry. Databases increasingly form part of the “everywhere and nowhere” character of border internalization, because federal programs such as the 287(g) and Secure Communities programs effectively deputize local law enforcement officials, allowing them to access federal databases otherwise closed to them, and at other times obligating police to detain migrants indefinitely until their status can be verified. Coleman and Kocher (2011) argue that this assemblage of technologies results in a form of discipline that results in the “production of a docile population of ‘territorially present’ residents” who are not
“legally present” (235). In other words, they can be deported but they cannot, for example, take an employer to court to claim lost wages. They further propose that “in the abstract immigration enforcement works through the production of an exemplary migrant precarity, i.e. an amplification of socio-economic and legal insecurities for certain immigrant bodies” (235). This uneven and selective enforcement helps explain why, for example, there is such a contradictory presence of “illegal” migrants even after a meteoric rise in spending on, ostensibly, keeping them out (raising, once again, the specter of walls and their ineffectiveness).

There has been a long-standing and strained relationship between the French police and migrant youth in the banlieues:

In 1999, the European Court of Human Rights ordered France to compensate a convicted Dutch-Moroccan drug dealer for torture he had suffered at the hands of the police in order to extract a confession, in the case of Selmouni v. France. Only three years later, in 2002, the ECHR censured France for police torture again, this time in the case of Mouisel v. France. In 2005 alone, a number of organizations, both in France and abroad, published damning reports on racism in the French judicial system. In February of that year, the European Commission Against Racism and Intolerance issued its Third Report on France, in which it expressed “anxiety that complaints persist concerning ill-treatment inflicted by law enforcement officials on members of minority groups”; this was followed in April by Amnesty International’s 80-page report criticizing police brutality and endemic racism in the French criminal justice system. That same month, France’s National Commission on Ethics in the Security Services reported that nearly half of the 78 police abuse complaints made to the ethics commission in 2004 involved allegations of racist behavior. (Chelini and Kwan 2008)

Partly in response to the late 1990s and early 2000s cases of police torture, the state introduced community policing in the banlieues in the form of the police de proximité

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13 This will be echoed in Chapter 4’s discussion of Global Apartheid.
(Chelini and Kwan 2008). The stated purpose of this form of policing was to introduce police who acted as both enforcers of the law and as quasi-social workers sensitive to the needs of a population consisting of a high concentration of migrants. As described above, however, the allegations of police brutality and outright torture continued. Chelini and Kwan (2008) have found that “nearly a decade after the creation of the police de proximité, however, it appears that a relationship of mistrust, fear—and even hatred, at times—is still prevalent among police officers and banlieue youth today.” While the police de proximité concept and practice was being implemented, and even after it had time to take root, a fundamental antagonism remains.

A conceptual and practical issue at the core of this antagonism is the “logic of occupation” (Bonelli 2005) that was perfected in the former colonial territories and has been incorporated into the interior of the French state alongside the community policing orientation. Not only is this internalization in the sense of “policing migration status in the interior,” but it is also internalization of a different kind, the movement of a military concept into the realm of domestic policing. As Bonelli describes, the institution of the police in France has historically had three distinct structures: an urban police force, the criminal police, and the intelligence service. The shifting terrain of issues in France, especially after the banlieue riots in 2005 that demonstrated extreme forms of youth “disaffiliation” and migrant and refugee alienation in both the social and economic spheres, has focused police attention on the suburbs and turned such issues of disaffiliation and alienation into criminal, political, and security threats requiring police intervention. This has led, according to Bonelli, to an increase in the language and tactics
of “occupation” in policing the suburbs. A former home office minister thus talks of “surgical strikes,” a police chief discusses “zones of security,” and a Präfet of a Paris suburb calls in “the cavalry” in response to everyday issues from domestic disputes to gang violence. The central police chief sums it up as a “pacification mission” with the use of “shock grenades” and other military weapons in an attempt to “hold the place at all costs” (Bonelli 2005, 202). This logic of occupation sheds light on the cases in which police brutality has slid into outright torture discussed above.

The rise of community policing in France seems to be both a rejection of and a strengthening of territorially based policing: a rejection in favor of a policing of population rather than space, and a strengthening in terms of redefining the territory from “the state” to the banlieues. A focus on protecting the government from the crowd, which has been the approach of the French police since World War II, is clearly tied directly to the notion of Westphalian sovereign territoriality discussed earlier in this chapter. In this case, however, the police now serve to protect the sovereignty and territoriality of the state from the population itself. Community policing is an extension of this, but one that severs the state from the banlieues, and therefore breaks up any notion of the “population” in favor of various, differentially policed “communities.” Internalization here occurs not only through the importation of a logic of occupation, but also through the turning of the banlieues into enclaves of “the outside” (especially the former colonies) within the interior of French territorial space.

Implemented by the Socialist government elected in 1997, by 1999 the police de proximité was operating in almost 70 cities (by 2001 the program was expanded to the
entire country). In the process of its expansion, the police de proximité had adopted five new “modes of action”:

It sought to 1) produce a partnership between the police de proximité and other local actors in the designated cities, such as neighborhood councils and youth recreation centers, 2) clearly identify and demarcate certain neighborhoods for the police de proximité to patrol regularly, allowing for a visible police presence and for relationships to develop between the police and the neighborhood’s inhabitants, 3) implement greater accountability for the police, whose actions would be subject to evaluations and other monitoring mechanisms, 4) expand the skill set and versatility of the police de proximité, and 5) establish a lasting bond with the local population that would be based on dialogue and the spirit of public service. As André Vallet, a special rapporteur, wrote in a 1999 Finance Committee report for the National Assembly, the police de proximité can be summed up as thus: territorialized, accountable, and in partnership with the people. Matthieu Zagrodski characterizes this as “problem-oriented and proactive” community policing, serving not only a responsive but also preventative function. (Chelini and Kwan 2008)

This preventative aspect illuminates how a logic of occupation can carry with it the ostensibly humanitarian method of community policing. And it also sheds light on how the police de proximité has reterritorialized the interior of the state. The territoriality of policing has shifted away from the international border – in part because the steady expansion of the EU has deemphasized France’s international borders – and towards the policing of “immanent outsiders” in order to “protect” the state and the native-born or ethnically French population. The police de proximité program has drawn together policing in France and counter insurgency tactics learned in various colonial conflicts and contemporary wars of neo-imperialism.

In light of this transition, Cathy Lisa Schneider has detailed the co-incidence of neo-imperialism and policing in her interview with a high-ranking member of a left-leaning police union. She describes the following:
The problem here began after the war in Algeria. The Arabs could not stay there because they had collaborated with France. They ended up congregating in small areas. Housing prices went down, and black immigrants now found it very cheap and gathered there too. This concentration created an underground world. … Yet for us as police, it is good, things easier to bust. If they were spread around the city, it would be difficult to police. If you let them live together, you do not even have to go into the cité. You can put police at either end and close it. It is a way to localize and crystallize delinquency in a single place. But if you live there and see all blacks and Arabic on the pavement, you can imagine people say “what are the police doing?” (Schneider 2008, 139, *sic*)

While this is not a direct importation of either the counter-insurgency model increasingly deployed in Iraq and Afghanistan (indeed, the *police de proximité* program predates both 9/11 and the invasion of Iraq), we can draw some increasingly clear connections to the logic of occupation and the control of migrants in the French *banlieues*. Essential to counterinsurgency (COIN) doctrine is the juxtaposition of “hard” and “soft” power. COIN is a shift in military thinking, as Williams (2011) details:

What sets COIN apart from other theories of repression…is the self-conscious acknowledgement that the state needs legitimacy to stabilize its rule, and that under conditions of insurgency its legitimacy is slipping. In other words, from the perspective of counterinsurgency, resistance is not simply a matter of the population (or portions of it) refusing to cooperate with the state’s agenda; resistance comes as a consequence of the state failing to meet the needs of the population. (84)

COIN, then, is about preserving state authority through the production of legitimacy; the use of violence and the control of territory are secondary (although integral) concerns. “Hard” power refers to those primarily violent and territorial concerns typically

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14 The translation provided by Schneider leaves much to be desired. However, the quote remains highly suggestive.

15 In fact, it is much more likely that the US inherited COIN from the French occupation of Indochina. The point here, though, is that there is a resonance between trends in domestic policing and colonial and postcolonial warfare.
associated with military intervention and occupation; “soft” power includes “the strategic use of concessions, the promise of representation and access, the co-optation of leadership, and, comprising all of these, the institutionalization of dissent” (Williams 2011, 101-102).

Folded on top of the community policing attempts was a zero-tolerance, numbers-based quota program instituted under Nicolas Sarkozy that resembled the infamous New York City Police Department strategy of preemptive enforcement (Schneider 2008). The banlieues continued to be policed by local cadres of officers – remnants of the socialist police de proximité program – but now they were utilizing aggressive “stop and frisk” tactics in order to boost their “clearance rates,” essentially quotas set for the number of tickets issued or arrests made for particular offenses, such as vandalism, loitering, etc. (Chelini and Kwan 2008). The banlieues were particularly ripe zones for boosting clearance rates, because they were zones in which a high concentration of migrants could be easily asked for their identification papers. Anyone who could not produce proof of citizenship on the spot could be arrested, which boosted the likelihood of prosecutable cases. Counterinsurgency, dedicated to the production of legitimacy, meets its limit when “soft” power and the production of legitimacy no longer remain central to policing the banlieues.

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16 Again, this is not an importation of the NYPD model, but there is a striking resemblance to methods initiated by the Giuliani administration in the 1990s and those that recently saw increased public scrutiny under the Bloomberg administration. To reiterate, the point is that such strategies resonate across global space.
Internalization in both the US and French cases transfers the border into various locations within the interior of the state. In the US, the partnership between federal and local law enforcement agencies multiplies the opportunities for the undocumented to come into contact with federal authorities. Traffic stops for completely unrelated reasons, such as drunk driving checkpoints, are turned into a form of migrant policing that can occur over a thousand of miles from an international border, as in the case of Hazleton, PA. In France, a logic of colonial occupation turns police into counter-insurgents, vacillating between the extremes of torture, on the one hand, and de facto social welfare workers, on the other. In both cases, the internalization of the border effectively transforms the interior of the state into its exterior. It presumes that everyone is potentially an outsider until proven otherwise. Internalization produces externalized bodies.

Border Control: Excision

We now turn to the third phenomenon described in this chapter, Excision. Briefly, externalization and internalization work together to produce a global space so densely punctuated with borders that it appears to be a “smooth” space where interior and exterior seamlessly blur together.\textsuperscript{17} Excision is both a territorial strategy and a temporal strategy aimed at the prolongation of conditions of precarity and at slowing down the perceived

\textsuperscript{17} This is an extension of Hardt and Negri’s (2000) claim that the world is so thoroughly riven by divisions and borders that it appears to be a smooth space when viewed from a global scale.
rapidity of cross-border flows of undocumented migrants and asylum seekers. Thus, excision refers to the conscious manipulation of the relationship between territoriality and sovereignty in order to produce “holey spaces” that are fundamentally irresolvable in relation to the question of whether it is inside or outside of a state’s control.18

Specifically, the US, EU, and Australia all engage in the strategic manipulation of territory to create exclusion zones that are formally part of the national territory, but legally outside of the spaces in which migrants can claim workers’ rights or refugees can potentially claim asylum (Mountz 2010). For example, Australia has responded to an influx of asylum seekers, including incidents such as the Tampa affair, by exercising the “power of excision,” or the declaration of “hundreds of islands off the coast of Australia [as] no longer part of Australian territory for the purposes of migration” (Mountz 2010, xviii). Unlike Nauru, Papua New Guinea – where many asylum seekers are detained before processing by Australia – some islands, such as Christmas Island, are in fact part of Australian territory. This territory, however, is excised from sovereign control for the purposes of migration and asylum seeking.

Border externalization is an extension of state sovereignty and territoriality into the space of neighboring (or non-neighboring) countries; however, excision involves the

18 We borrow the language of smooth, striated, and holey space from Deleuze and Guattari, *A Thousand Plateaus* (1987). The significance of these terms can serve as the basis for another complete chapter. In short, then, they claim that the state striates space in order to render it calculable, divisible, uniform, and controllable. Smooth space, on the other hand, is actually more akin to a relation, in that space is heterogeneous and the people moving within/across it make use of the singularities that appear as they appear and to their own ends. Holey spaces are a kind of mixture in which the state has imperfect control. In this dissertation, however, the state is seen to be an active agent in producing smooth spaces as a new territoriality of governance.
inversion of the space/sovereignty relation, creating holes both inside and outside of state space. If internalization and externalization aim to produce a relatively smooth space punctuated by highly mobile, adaptable borders and bordering practices, excision aims to produce “holey spaces” in service to the state’s mission to control movement. These holey spaces allow for exaggerated forms of state opacity, and provide opportunities for which the state to “disappear” migrant and mobile bodies (for a time) in order to slow the flows otherwise flowing rapidly over smooth space.

Excision works in large part by producing extreme forms of isolation. Produced in a variety of ways, geographic isolation can be either relatively quick – leading to rapid deportation, for example – or prolonged, where recorded incidents point to years in detention for some migrants. As Alison Mountz (2012) has noted, detention is always a form of isolation, often employed to reduce asylum claims, to funnel undocumented migrants into the deportation pipeline, or to separate specific individuals – such as those accused of acts terrorism – from the protection of the law. Although this strategy predates the events of September 11, 2001, and is therefore not necessarily tied to the Global War on Terror, it has become increasingly popular since then.

In the late 1990s, for example, Canada employed a strategy of detaining undocumented migrants in an old military base deep in the interior of British Columbia, far away from the immigration lawyers largely based in Vancouver (Mountz 2010). This led to a rather significant discrepancy in the rate of the granting of asylum to those migrants housed in Vancouver, with ready access to lawyers and advocacy groups, and
those located at the military base at Prince George, British Columbia, several hundred kilometers North-northeast of the city (see Mountz 2010, 104-112).

Unlike the Canadian case, which employed an isolation site that merely utilized a long drive and a lack of adequate communication to reduce asylum claims by attrition, Australia has adopted the Pacific Solution, which actively employs the use of offshore detention facilities to further the strategy of attrition to new levels. Alarmed by the unannounced arrivals of “boat people,” the International Organization for Migration was contracted to run processing centers on the Pacific Islands of Nauru and on Manus (Papua New Guinea). Both islands are independent, so that neither are part of Australian territory. Rather than allowing undocumented migrants and asylum seekers from reaching Australian shores, and therefore direct access to labor markets and human rights and refugee obligations, unauthorized migration is held at a distance: “Migratory and refugee movements are thus channeled through holding zones and funnels, where the procedures of selection can be exercised, whether in entirely technocratic ways or through violent interventions” (Mezzadra and Neilson 2012a, 69).

To reiterate, border externalization and internalization are designed to multiply the points of contact with the state, extending the borderline into a broad landscape that cannot be escaped. They function together to create a “smooth” space where individual state powers blur together into a continuous whole. Excision, however, functions differently, by creating zones that sit in an ambiguous relation to the “smooth” space of externalized and internalized borders. Excision creates holes that isolate, hold, funnel, and suspend mobility.
The significance of the four technologies of bordering addressed in this chapter – walls, externalization, internalization, and excision – is that the relation between territory and sovereignty is shifting from territory’s historically extensive role as the “container” of each individual state’s sovereignty to a condition in which sovereignty is the production of a global interior. In other words, sovereignty is no longer the claim over a space, but is instead performed in the policing of a global interior in which territorial space becomes an object of manipulation and control rather than a “container.” What has emerged by this point is a clear erosion of national spaces into a global space without making claims as to the disappearance or even erosion of the power of the nation-state itself. In a way, we have reached a similar conclusion as Hardt and Negri (2000) in their discussion of the space of imperial sovereignty:

The striated space of modernity constructed places that were continually engaged in and founded on a dialectical play with their outsides. The space of imperial sovereignty, in contrast, is smooth. It might appear to be free of the binary divisions or striation of modern boundaries, but really it is crisscrossed by so many fault lines that it only appears as a continuous, uniform space… In this smooth space of Empire, there is no place of power – it is both everywhere and nowhere. (190)

While many of the specific technologies discussed in this chapter have their own histories of development, it is important to note that it is their self-conscious application as aspects of a regime of migration management that makes the current moment unique. The effect of the intentional strategies to move the borders away from the borderlines between countries is to massively dislocate large populations in space. In other words, as a global regime, intensive bordering produces territorial precariousness, a condition in which
individuals can never be certain that they will not be confronted by the state and found to be external to it. Even though this project is undertaken discontinuously around the world, it is a clear tendency among so-called “migrant receiving” countries, and more and more the case in “migrant sending” countries as well. Done in the name of national sovereignty, intensive bordering has an opposite effect: it is facilitating the emergence of a different global order.

Brown (2010) describes the erosion of the “container” of sovereign territory by claiming “that key characteristics of sovereignty are migrating from the nation-state to the unrelieved domination of capital and God-sanctioned violence” (23). For Brown, the proliferation of border walls signifies not the culmination of Westphalian sovereignty, but its crisis: states and sovereignty are coming apart from one another, and border walls provide a theologico-political totem to provide psychoanalytic assurance against the “incomprehensively large, corrosive, and humanly uncontrolled” forces of globalization (Brown 2010, 133).

Ultimately, Brown announces the end of sovereignty as we know it, to the point where “states persist as non-sovereign actors” (23). She contrasts her claims to the work of Agamben, and to that of Hardt and Negri (2000). By focusing on border walls, Brown rightly diagnoses the passionate attachment to performing sovereignty through the building of such walls, but downplays other significant bordering practices. Brown’s claim, that walls are icons of nation-state sovereignty’s erosion rather than assertive expressions of sovereignty, needs to be modified to read that in fact walls are icons of nation-state sovereignty’s reconfiguration or reterritorialization – not its erosion. Walls
focus attention on the exclusionary function of borders, but exclusion is no longer the primary function of state bordering practices. This is due to the fact that border walls are only one technology deployed by states to manage their borders and populations, and by operating as part of a network of technologies, the very ineffectiveness of walls and fences that Brown brings to the center of her discussion becomes overcoded with desires and anxieties that open new spaces for sovereignty to assert itself.

The key arguments made in this chapter are: 1) that borders have moved both conceptually and physically away from the limits of political space to the very center of politics; 2) that the image of the wall should not stand on its own as the descriptive paradigm of contemporary world order; 3) that the technologies of externalization, internalization, and excision are usually mobilized in order to shore up sovereign territory but in fact have the opposite effect, the erosion of Westphalian sovereign territory, 4) that there is an emergent global form of sovereignty (what Hardt and Negri term “Empire”), and 5) that the primary effect of this changing global border regime on the subject is a dislocation of the individual from state space, even if we cannot fully escape the state.

The emergence of intensive bordering described in this chapter thus resonates with the discussion in Chapter 1 on *life* and globalization as problematics of interiority. Due to the inability to bound life or the globe in ways that traditional politics has suggested, a new form of power has emerged that *externalizes* the global population in order to re-draw an exterior that can no longer be mapped clearly between notions of the
good life or between territories. As will become clear in the following chapters, though, this is not a uniform externalization; indeed, it is highly differentiated.

Another critical way to summarize this chapter is to note the ways in which borders have become a key technology in the production of precarious existence. What is decisive here is not that technologies of intensive bordering can, and do, lead to increased numbers of people being deported from specific states – and thus increased exclusion – but that such technologies create a condition of differential precarity as a form of inclusion.

Ultimately, “the refugee” is put into new light by the blurring of clearly defined spatial divisions. As will be discussed in the next chapter, it is becoming increasingly difficult to determine who “belongs” where. And as this chapter amply demonstrates, there are enormous difficulties in the process of being constructed by states to prevent the possibility of moving in the first place, with the explicit aim of making it more difficult to even claim asylum. On top of all of this, we must begin to reconsider what forced migration even means if we are approaching a generalized state in which the global population is experiencing such a degree of precarity.

Returning to the problem of world introduced at the outset of this chapter, we can now see what it means to be bound up in questions that exceed both individuals and states. Borders do not divide an already existing world in which groups of people align their physical spaces of existence with their supposed essential differences from their neighbors. This was, in part, the fantasy of sovereignty, especially when it was expressed in the form of the popular sovereignty of “the people.” Instead, by exploring the ways in
which borders move and adapt to changing conditions, we can see how they in fact are integral in constituting a world. In this case, the kind of world produced is one where fundamental ambiguities exist regarding where one belongs, what kind of security is experienced there, and what relation is between the *where* and the *who* of political order. Intensive bordering may be a response to human mobility that is based in the fantasy of sovereignty, but it is a response that begins to shape a world that is radically other than “modern” in the way that space, subjectivity, security, and thus “belonging” are divided.
3. Subject

Every year, over half a million people request refugee status from either state or UNHCR officials (Jones and Houle 2008). Because individuals seeking asylum are awarded status and privileges not extended to those considered “economic migrants” or “tourists,” it has become a key practice, since the decade immediately following World War II, to differentiate between those “worthy” of asylum and those not, those with access to free movement and those subject to restrictions. Sometimes this process is fairly straightforward and refugee status can be conferred on an entire group, because there is a clearly defined conflict and the movement of people fleeing the conflict is geographically limited. A growing issue, however, are individual asylum seekers who appear as part of the “asylum-migration nexus” within the larger phenomenon of human mobility (Jones and Houle 2008). In particular, it is the growth of the individual refugee or asylum seeker who appears en masse (discussed in Chapter 1).

The 1951 United Nations Convention Relating to the Status of Refugees stipulates that signatory countries must have a process for determining refugee status but it does not stipulate what that process should look like in practice. This has led to a very uneven patchwork of processes around the world. A set of best practices has emerged, although as Jones and Houle (2008) describe, such practices are far from concrete and absolute:
A consensus has emerged concerning the constituent elements and requirements of RSD [Refugee Status Determination]. It should occur after an in-person interview or hearing with a decision maker sensitive to the situation of the refugee claimant. The process should allow for, but not require nor necessarily automatically provide, legal representation; interpretation should be provided as required. A decision should be taken only after the refugee claimant has had an opportunity to present supportive evidence and after the decision maker has undertaken an inquiry into the existence of such evidence. There should be an opportunity for an independent review of the decision and, in normal circumstances, the removal of the refugee claimant should be suspended pending the outcome of such a review. (5)

Almost anywhere one looks, the process is riddled with inconsistencies and a degree of arbitrariness. Complications or outright inaccuracies in language translation are frequent, and given the high degree of importance placed on the asylum claimant’s written and verbal testimony in the determination process, such issues can have significant negative consequences (Bohmer and Shuman 2008; Jones and Houle 2008).

Overall, the RSD process has been described as a lottery due to the great deal of “variation between jurisdictions and within jurisdictions” (Jones and Houle 2008, 7). For example,

Refugee claimants in Iraq provide a good example of the variation in outcome. Within the European Union, the member states of which have accepted common minimum standards with respect to both criteria and process for RSD, acceptance ranged from 63% in Germany to 0% in Greece. Within jurisdictions, there was an 1820% variation in asylum acceptance rate between the best and worst immigration judge in the same courthouse. In Canada, 9 in 10 refugee claimants get accepted by one member of the Refugee Protection Division of the Immigration and Refugee Board while a similar proportion of the same claimants get refused by another member. (Jones and Houle 2008, 7)

The variability of this process, even within jurisdictions, reinforces the fact that refugee status determination is not a coherent or uniform set of processes. However, the actual decisions that are made regarding specific asylum claimants in particular areas of
jurisdiction are not necessarily what concerns us here. Instead, we are interested in the logic that underlies this impetus to identify, authorize, and distribute the refugee as a thinkable and manageable identity, especially in relation to other identity categories such as the economic migrant, and the regime of power that is bound up with this logic.

The RSD process is punctuated by moments of almost Kafkaesque bureaucratic absurdity. “For the average person,” write Bohmer and Shuman (2008), “the process of applying for asylum is a bureaucratic maze requiring a native guide and the help of others who have been through it before” (35-36). Largely reliant upon the “best practices” offered by the UNHCR, the process works in similar ways in the United States and the United Kingdom, progressing from the filling out of an initial form to an administrative interview with an asylum officer to a possible court hearing (Bohmer and Shuman 2008). This process is designed to “discriminate between legitimate and false claims” (40).

The I-589 form in the U.S. and the SEF (Statement of Evidence) form in the U.K. are the first steps in the asylum process in the respective countries.19 Both forms require the asylum applicant to answer detailed questions that, on the surface, seem simple enough. For example, the I-589 begins by asking the applicant to provide her or his name, address, and phone number (see Appendix A for the complete form). As Bohmer and Shuman (2008) note, however, even this first portion of the form is full of challenges for many applicants. Asylum applicants frequently reside with family members, friends, or

19 The US I-589 form is easy to access via the internet (and is attached to this dissertation as an appendix) unlike the UK SEF, which has actually been set aside in favor of initial screening interviews since Bohmer and Shuman published their book.
aid organizations for short-term stays, which poses significant challenges in simply receiving mail, the primary form of communication between the U.S. Citizenship and Immigration Services and the applicant. The inability to locate the applicant’s mail has led to numerous instances in which the applicant fails to show up for an administrative interview or a court hearing, at which time the application is often summarily rejected.

Bohmer and Shuman note the importance of proving one’s identity in the process. They describe a disjuncture between the way that many asylum applicants view their identity and the way in which the state compels them to account for it:

The applicants themselves find the whole idea of needing documents to prove identity incomprehensible. For them, identity is about much more than one’s name on an unforged document. It is about how they formed the political identity that led them to flee, why they adhere to the religious beliefs that got them into trouble, how they identify themselves as a member of a particular ethnic group that is persecuted because of it. … In other words, identity is a matter of reputation and relationships rather than a bureaucratic record. (88)

Beyond the basic problem of how identity is understood differently by individuals of various cultural backgrounds is the problem of the ways that identity can become extremely difficult to prove given the circumstances of forced migration. A lost passport or identity card can completely derail an asylum application, even if the reason that the identity documents were lost is directly related to the violence and persecution the person is fleeing. For example, an asylum seeker from Tibet, Teinzin, described the circumstances of his loss of documentation:

I come from a village in Eastern Tibet. … October 1st, 1999 was the forty-year anniversary of the “Liberation of Tibet” by the Communist Chinese, and the fiftieth anniversary of the founding of the Communist Chinese Party. The authorities made our entire town gather together. … I began to shout, “Long live His Holiness the Dalai Lama!” and “Free Tibet!” … They arrested six of us…
When we left [China], our destination was India. I didn’t have any documents because when I got in jail, the police took all my documents and said I couldn’t leave the country. (Bohmer and Shuman 2008, 84-86)

Teinzin’s circumstances are quite common, and such difficulties in proving identity considerably complicates the asylum application process.

On top of the ostensibly “easy” questions, the substantial questions of the I-589 form pose even greater challenges. Questions such as: “Have you, your family, or close friends or colleagues ever experienced harm or mistreatment or threats in the past by anyone?” may seem straightforward, but applicants face a credibility gap in responding to them, which raises once again the problem of proof. It is a perverse reality that the more detail that can be provided, for example, about the exact date and time of torture, the methods used, the interrogators present, and other details, the better the application is considered by asylum case officers. Documentation can be written into the body, in the form of scars and other evidence of torture, or in media sources, especially if the asylum applicant was a public figure. Even in the presence of extensive detail and seemingly valid documentation, though, the slightest inconsistencies in a form or in testimony are latched onto by case officers and frequently used to deny applications. As Bohmer and Shuman (2008) describe, “Legal authorities assume that normal people with normal memories can remember details consistently, and that, if the details they give differ, they are lying” (134). Unfortunately, the realities of Post Traumatic Stress Disorder, and the passage of time, make it extremely difficult for the required precision and consistency.

As is clear, the RFD process privileges a certain kind of applicant: one whose identity is well established and whose story successfully closes the credibility gap. The
refugee is figured in this process to be someone who is an ideal citizen with perfect memory recall and the resilience to flee an emergency without losing official documents, forgetting a specific date, or being traumatized. It is as if the RSD process provides an identity in advance, which the process then asks claimants to record officially and provide proof of that identity, in order for the state to approve of the identity they set out in advance.

Economic Migrant or Refugee?

One of the primary outcomes of the set of processes detailed in the previous chapter was a renewed emphasis on border security, now directed at individual migrants and refugees rather than at preventing interstate military invasion. Another outcome was the RSD process, an obsession with “labeling,” which attempts to sort out “genuine” refugees from those who are merely “economic migrants” (Shacknove 1985; Zetter 1988, 1991, 2007). As noted by both Karatani (2005) and Long (2013), prior to the inter-war period (1918-1938), refugees were considered a sub-category of migration in general, and in fact economic solutions to forced migration were, for a brief time, the preferred method of preventing long-term displacement and facilitating resettlement (especially for the White Russians displaced after the revolution in 1917). This tendency to recognize and act upon the tightly knit issues of economy and mobility, even for those displaced

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20 White Russians refer to those who sided with the anti-Communist forces during the Russian Revolution and ensuing civil war (1917-1923). Between 900,000 and 2 million White Russians fled the country in the period 1917-1920.
due to political persecution or ethnic identity, was eroded through the 1920s and into the 1930s, by which time it became more and more important to carve out a protected “asylum space” separate from labor concerns (Long 2013). This effectively launched the RSD process as one of the primary concerns for both governments, non-governmental organizations and other agencies, and academics studying mobility. A great deal of effort went into developing passport and visa regimes, international migrant and refugee governance institutions (such as the International Refugee Organization (IRO), and others), and, by the 1980s, what has become the intensive border regime.

Situated in this larger context, Long (2013) describes how the IRO helped establish the boundaries between “migrant” and “refugee” in the late 1940s. For example, the IRO facilitated the movement of displaced Central and Eastern Europeans to the UK. The explicit bargain was for the Eastern Europeans to work as cheap labor in rebuilding the UK after WWII in exchange for the potential of long-term resettlement.\(^{21}\) The importance of labeling this *migrant labor regime* as a *refugee resettlement scheme* came into being in part through the combatting of accusations by the Soviets that it was a form of indentured or slave labor. Long (2013) recounts the accusations made by a Soviet representative at the time:

> The [refugee] camps were being turned into a slave market where representatives of the United States, the United Kingdom, France, Australia, and so forth came to recruit cheap labor… The IRO presided over this market, and had been reduced to a mere employment agency, acting in the interests of capitalists, whose only idea was to obtain the labor that they needed at the lowest price. No humanitarian

\(^{21}\) Similar labor recruitment schemes were developed throughout Europe, such as those in Germany and France.
principles inspired the work of the IRO. It was merely a profit-making concern for the capitalists of the beneficiary States. (17)

There is a grain of truth to such accusations, as Karatani (2005) demonstrates. The US, a driver of the creation of the international refugee system, only opened its doors to refugee resettlement in 1948, and the primary motive was not humanitarianism but to help fill a labor shortage, particularly in the agricultural sector. Indeed, Karatani (2005) describes how the US pushed for a system that placed “national interests” at the forefront and thus killed a proposal by the ILO that would have treated all movement, labor and refugee alike, under one umbrella organization. The context of the early Cold War is clearly significant here. To dispel such accusations about the exploitation of labor, Long (2013) explains how the term “refugee” was deployed:

It was in rebutting Soviet charges regarding the exploitative nature of IROs work as a cheap labor exchange that the British state proved most interested in labeling the EVWs [European Voluntary Worker] as refugees, allowing a convenient defence against the USSR’s critiques of capitalist labor exploitation. (15)

The liberal framework that birthed the international refugee system restricts refugee status to a certain set of political concerns, which naturalizes some “causes” of movement, and denaturalizes others. The I-589 form actually provides a series of checkboxes for applicants to select the reason asylum is being sought: “I am seeking asylum or withholding of removal based on: race, religion, nationality, political opinion, membership in a particular social group, or torture convention” (Appendix A). As we will see, the refugee system cannot easily account for either the climate or the economy as catalysts of forced migration, because they are considered to be “natural” phenomena and therefore not “forced” as would be, for example, religious persecution. All of this is to
highlight the fact that the empirical reality of mobility is a difficult, knotty issue, and the *labeling* project of separating “genuine” refugee status from economic migrants has more to do with “policy intentions” than the experience of migration itself (Scalittaris 2007; Karakayali and Rigo 2010; Long 2013).

The separation of the refugee regime from economic and political governance, as enshrined in the 1951 Convention Relating to the Status of Refugees, signaled on the one hand an establishment of a slightly easier set of criteria through which to claim asylum: one no longer had to prove one’s economic worth. On the other hand, it raised the specter of establishing and proving one’s legitimacy through the “objective criteria” of immiseration through administrative procedures such as the I-589 form (Appendix A). This separation was mostly set in place by the 1960s, enshrined in international law and embedded into emerging humanitarian aid practices, and it remained relatively stable until the refugee movements of the post-Soviet era once again raised the specter of who was and was not “genuinely” a refugee from those merely looking for work. Hence the doubling down of the labeling regime in the 1980s and 1990s.

The imperative to identify a clear distinction between economic migration and refugee status requires a sophisticated process. The RSD process, who is labeled a

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22 Long (2013) stresses that there is no one moment that decisively separated refugee and migrant; even so, the tendency set in place by the 1960s has clearly been brought forward into the present as an overdetermining factor in contemporary debates, practices, and policies.

23 It is not insignificant that the very first issue of the *Journal of Refugee Studies* in 1988 includes a significant essay by Roger Zetter on refugee labeling, which is closely followed by another in 1991 that further develops the discussion. These articles significantly shaped the field.
refugee, has little to do with actual, embodied experiences of moving about the world, and more to do with a state system for determining who belongs where, who has a “valid” reason to move, and applying “spatial fixes” to those who do not fit these criteria. The process presumes that a certain set of motivations are legitimate reasons for seeking asylum, and reinforces and reproduces an image of a clear-cut distinction between inside and outside: all people have a “country of origin,” but if conditions there are sufficiently dangerous and an individual can prove her or his persecution, then a “receiving country” will lower their gates and grant the refugee entry. However, the refugee in fact blurs the internal and external bordering processes, as the figure of the refugee cuts across scales and temporalities. As we will see, this practice is a form of control that operates in a tightly coupled way with border policing, and in ways that also exceed internal borderings.

Refugee Control: Labeling

In part, the contemporary refugee regime creates a moral claim that, as Long (2013) asserts (paraphrasing Walzer in *Spheres of Justice*), separates “refugees – who need admission – from migrants – who want admission” (21). This supposed moral division is one of the primary mechanisms for differentiating mobile bodies from one another within a context that naturalizes economic devastation (the “bogus asylum seeker”) and denaturalizes political disagreement (those whose “deserving victimhood” was established by the international community).
Controlling refugee mobilities entails practices of labeling, which opens onto a space that includes both an absolutely determinate project of labeling and an absolute indeterminacy in the assignation of human life to those identity labels. Labeling, in this sense, is in fact the co-existence of and reciprocity between the poles of determinacy and indeterminacy. Indeed, neoliberal globalization requires an absolute fluidity between these poles, for it is this indeterminacy itself that lends itself to more and more refined classification. There is an historical progression from subject to citizen, and from citizen to refugee. The figure of the citizen is birthed from the bourgeois revolutions and the establishing of the rights of citizens. The figure of the refugee is birthed from this process but specifically as a problem of the categorization of those who are deemed not to belong. Citizens have rights, but those rights are bound up with a newly manufactured identity that provides a set of ethno-cultural boundaries that are co-eval with new geographical boundaries; therefore, the refugee is one who is either ethno-culturally or spatially out of place, or both.

And yet, the identity of “refugee” has been fracturing for quite some time. For example, there is the rise of the “internally displaced person” (IDP), a category that must take into account the fact that people are often forced to move but do not actually cross an international border and thus leave their “country of origin” (Agier 2011). The IDP identity ostensibly provides global institutions, such as the Red Cross, the categorization needed to intervene on their behalf; but only so much, as issues of national sovereignty, global geopolitical concerns, or other issues limit the ways in which humanitarian
institutions can intervene. Other identity categories that have begun to fracture away from the uniform identity of “refugee” are “climate refugee” and “economic migrant.”

As climate change continues to ravage areas of the world with extreme drought or “superstorms,” the structures of global governance are forced to consider and create a new identity, the climate or environmental refugee. This new category poses significant challenges to the RSD process because liberal governmental institutions (including the international refugee regime) have very few tools with which to even think this figure, let alone “solve” the conditions that give rise to it. Forced displacement is generally thought to be initiated by a rather narrow set of liberal concerns such as fear of bodily harm, violation of free speech rights, or persecution on religious or ethnic grounds.

An illustrative case of the emergence of “climate refugee” is that of “AF,” who fled the island nation of Kiribati and tried to claim asylum in New Zealand. AF and his family arrived in New Zealand in 2007. The state twice rejected his claims that rising sea levels posed an imminent threat to the safety of his family (Phillips 2013). In October of 2013 his case was heard before New Zealand’s High Court. In this context there are several issues that pose challenges to the granting of asylum according to Bruce Burson, a member of New Zealand’s Immigration and Protection Tribunal. Burson argued in the press that the concept of a refugee requires human interaction because someone must be actively persecuted, and further argued that AF’s dilemma is currently faced by the entire

24 AF is the pseudonym provided in the press and in court documents. It is interesting to note that once the case was decided in the High Court, the press chose to release AF’s real name. I have chosen to simply use the pseudonym, even though his real name is now readily accessible.
population of Kiribati (Phillips 2013). Ultimately, AF’s claim was rejected a third time by the High Court, which sided with Burson and described the case as “novel,” but “unconvincing” (AFP 2013). The argument that AF faced “passive persecution” by climate change was not enough to convince the judges that he qualified as a refugee.

In addition to the emergence of climate refugees, it remains incredibly difficult to tell the difference between an economic migrant and a refugee, as the experience of Mexico’s small farmers in the wake of the North American Free Trade Agreement (NAFTA) demonstrates. To what extent is an economic migrant engaging in a “free and rational choice” to find work in the United States when their livelihood has been destroyed by the opening up of new markets that made small-scale farming impossible? And even though there was a substantial increase in migration into the US after the implementation of NAFTA, from less than 300,000 people to over 500,000 per year, there were also a great many people who were unable to escape Mexico, or those who entered into a cycle of entry and deportation from the United States, the combination of which effectively created a captive labor force in Northern Mexico that was put to work in the maquila factories (Harvey 2005, 169). The cycle of entrapped labor has also been repeated in places like Taiwan, Korea, Honduras, South Africa, Malaysia, and Thailand.

The question we raise here is thus: What is at stake in the impulse to identify refugees against other potential identity categories? In light of the issues raised in this chapter so far, what is at stake is the management of mobility, not in terms of labor migration and political economy but in terms of a liberal rationality of “legitimate” mobility undergirded by a methodological nationalism (as discussed in Chapter 1). What
is unusual about the situation of refugees, and marks the problem very differently than labor migration, is that it is extremely difficult to reduce refugee controls to economic calculations alone. There is an entrenched interest in separating refugee from economic migrant mobility precisely because there are concerns about persecution; however, this concern does not completely eliminate the fact that various forms of forced migration are mutually implicated in one another. In this case, the management of mobility is driven by an imperative to manage as an end in itself, which is in turn an integral aspect of what we are calling a governmentality of control.

The Governmentality of Control

In the previous chapter we discussed sovereignty and its reconfiguration and reterritorialization. A key outcome has been changes in sovereignty that enable and facilitate the territorial precarity of ever-greater numbers of people. Here we explore further some of the implications of territorial precarity together with the RSD process for refugees. We will explore a “prehistory” to the governmentality of control by briefly addressing sovereign power, disciplinary power, and what Deleuze called “control.” Further distinguishing these terms, sovereign power, flourishing from the mid-17th century to the French Revolution, is intimately bound up with land, disciplinary power is bound up with the body, and control is tied to circulation and mobility.25 This discussion

25 For the purposes of this dissertation, sovereignty and sovereign power are differentiated. Sovereignty, as discussed in Chapter 2, refers to a problematic within the
will ultimately reorient the concept of refugee control and open up significant questions regarding global forms of power, the concept of precarity, and the state of exception (Agamben 2005).

The refugee is both a causal agent and product of the shifting regime of international borders discussed in the last chapter. As Agamben has argued, the refugee took on a new role after World War I, becoming a massified figure rather than a figure of singular exile. It is no small thing that the governance institutions set up after World Wars I and II, at least in part, were designed in response to this new form of massive displacement and “correct” it. The refugee in a sense helped usher in a global, post-national world at the same moment that the nuclear bomb and the arms race, supranational legal and economic organizations, the space race, environmental degradation, and other world historical events and institutions produced the framework for what we identify today as processes of globalization. This is a departure from the typical viewpoint of analyses of the refugee system, which by its classical definition was always an emergency response to an exceptional, temporary phenomenon. Rather, reorienting the discussion situates the refugee and the systems produced to “correct” the refugee problem at the very center of the post-World War II development of globalization. It is in this sense that the refugee is a causal agent of the border regimes and new state spaces discussed in the second chapter.

international system of states. Sovereign power, as discussed in this chapter, is a form of social power that describes a relationship among a government, peers, and the self.
Simultaneously, the refugee is also more and more the *product* of new border regimes and new state spaces. Not only has there been a rise in the propensity for classification – refining further and further who is displaced versus those who simply move (Shacknove 1985; Zetter 1988, 2007; kurz *forthcoming*) – but the attempts to govern the mobile bodies that arose out of the world wars have in fact produced more and more bodies thought to be “out of place.” This in fact mirrors what Josiah Heyman (1998; 1991), Kitty Calavita (1998), Christian Joppke (1999), and Joseph Nevins (2010) have called the process of “illegalization,” or what Nicholas De Genova terms “the legal production of immigrant illegality” (2002, 429). Illegalization as a concept flips the discourse surrounding “illegal immigrants” and places emphasis on the fact that people are not inherently legal or illegal, for it is the State that produces these categories of inclusion and exclusion. By multiplying the ways in which a person is out of place, the state then has an incentive to manage that dislocation. What is significant about this displacement is that it fundamentally operates as a mechanism of *inclusion*, operating as a self-justifying rationality. Attempts to provide a spatial fix to the exceptional and temporary problem of human displacement in the wake of major world conflicts have largely produced a permanent class of the displaced and dispossessed. This seems like a form of exclusion, but as will become clear below, as a global phenomenon the pattern reverses itself to become a problem of inclusion.

As Foucault (2003) notes: “The theory of sovereignty is bound up with a form of power that is exercised over the land and the produce of the land, much more than over
bodies and what they do” (36). Sovereign power, Foucault claims, is tied to concerns of extraction: extracting value from the land and the laborers attached to it. However, as Sassen (2006) describes in *Territory, Authority, Rights*, medieval or feudal territorialities are not overly determined by fixed borders. Borders remain at the margins of concern within sovereign power. Historically, fixed borders are not central to the operations of sovereign power – which is instead dominated by the limited gaze of the sovereign (Nealon 2008). Sovereign power is primarily a representative mode of power that works in large part through displays of power rather than fixed spatiality (Foucault 1977, 2003; kurz 2012). As part of the establishment and spread of nation-states, especially after 1789, borders are central to what Deleuze (1995) would call disciplinary societies.26

Deleuze opens his “Postscript on Societies of Control” with a discussion of Foucault’s (1977) *Discipline and Punish*. In the “Postscript,” Deleuze describes disciplinary societies as organizing the numerous spaces of disciplinary enclosure – the family, the school, the barracks, the factory, the hospital, the prison – and how the individual passes from one discrete enclosure to another. Foucault showed how the prison was the analogical model, specifically the panopticon as envisioned by Bentham. In the panopticon, guards in a central tower would observe the prison inmates arrayed in such a manner that their only line of sight led to the tower. In their cells, the prisoners would be monitored constantly, and eventually the need for actual guards in the central tower would disappear. The prisoners, never sure if guards were present, would nonetheless

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26 According to the timeline provided by Nealon (2008), sovereign power emerged in the 17th century and disciplinary societies through the 18th and 19th centuries, which largely tracks with the emergence and spread of the nation-state-form.
behave in the way desired by the guards. Thus, the panopticon served as the visual diagram for all of the disciplinary enclosures, or institutions, that made up disciplinary societies.

In the “Postscript,” Deleuze claims that disciplinary enclosures are experiencing a generalized crisis. The interiority of disciplinary enclosures was being opened up to their respective outsides. For example, he describes the crisis of the “hospital as environment of enclosure” (178), since neighborhood clinics, hospices, and day care centers offer a new degree of freedom over healthcare, and perhaps transform the city itself into a hospital. This new freedom, however, comes with a price, because the changes bring with them new mechanisms of control “that are equal to the harshest confinements” (178). Deleuze calls this new set of power relations societies of control.

If discipline is ultimately a visual mode of power, then control is tactile, it “invites our hands-on participation” (Shaviro 2003, 32). In asking us to participate in our own reflexive surveillance, control relies upon participation in order to make feedback immediate, in real time. On the one hand, discipline is aimed at the generation of a future ideal citizen; on the other hand, control is the now-time modulation of the subject as it is. As Shaviro notes, in control societies, “the apparatus of surveillance is fragmented, multiplied, and widely distributed” (36) rather than enclosed and centralized as in the panoptic disciplinary enclosure. Further, the “old disciplinary surveillance system accumulated facts and figures. Its purpose was to see, and remember, everything that happened” (36). In a control society, the point is not to survey, record, and then punish,
but to prevent risky behavior in the first place: “If undesirable behavior is dissuaded right from the outset, it doesn’t need to be disciplined later on” (36).

What does control look like? In two essays, Gilles Deleuze highlights aspects of control as a diagram of power and the overarching logic of societies of control. To date, they remain somewhat enigmatic in the Deleuzian canon and in their relation to Foucault’s oeuvre, because he does not elaborate much beyond these short forays into control societies. Focusing on his examples, it is possible to abstract a few key elements of control as a governmentality, which will be discussed below.

The first example that Deleuze (1995) deploys is a gated community that requires a keycard to enter and exit. In his “Postscript,” he writes:

Félix Guattari has imagined a town where anyone can leave their flat, their street, their neighborhood, using their (dividual) electronic card that opens this or that barrier; but the card may also be rejected on a particular day, or between certain times of day; it doesn’t depend on the barrier but on the computer that is making sure everyone is in a permissible place, and effecting a universal modulation. (181-182)

This brief description contains a number of important details: first, that access is mediated, in this case through an electronic card, a barrier, and a computer; second, that

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27 There is, at the time of writing, a project being undertaken at Purdue University to transcribe, translate, and publish lectures delivered by Deleuze in which he makes explicit connections between his concept of control and Foucault’s development of biopower/biopolitics. In the lectures, Deleuze makes the claim that control and biopolitics are the same concept, articulated differently. I find myself less concerned with Deleuze’s assertion and more concerned with a) the examples he provides in his published works, and b) developing my concept of control from his but perhaps more closely following Steven Shaviro (2003), Antonio Negri (1990, with Deleuze), and Michael Hardt (1995, 1998) in the ways they deploy the concept. I maintain that control needs biopower in the same way that discipline needs sovereign power. Therefore, I am not drawing a hard distinction between control and biopower, although I am insisting that they work differently and allow for different outcomes.
power appears as opaque (in this instance, who is it that denies entry, and is it possible to redress the situation?); and third, the individual is not known by her identity, but rather by a “code,” and thus appears to power as a “dividual” and not an individual. The significance of the dividual is that, contrary to an identity (whether a self identity or one provided by the state) has a wholeness to it; the dividual is the individual reduced to data points. This example demonstrates that access, in particular the access to codes, is a crucial component of control societies, not to completely foreclose mobility, but to work horizontally to regulate movement. Access is enabled by codes; in this case, the code is a computer code, but codes can also be linguistic, socio-economic, racial/ethnic, and so on. Control in this sense is “free floating,” seen only “when it materializes” (Galloway and Thacker 2007, 41) – in this case, when the gate mysteriously will not let a person out.

Relating this to the RSD process, one can see parallels: first, access is mediated, in that an array of international aid organizations, databases, and forms are required or utilized in order to seek asylum; second, power is experienced by asylum seekers as opaque, in that decisions made by bureaucrats are not readily accessible or challengeable, and that this power materializes at particular moments, such as the screening interview; and finally, asylum seekers are not known by any self identity or relationships but rather through the detailed accounts of persecution.

The second example Deleuze (1998) describes, in “Having an Idea in Cinema (On the Cinema of Straub-Huillet),” is the highway as an example of an operation of control and a form of power:
We are entering into societies of control that are defined very differently from disciplinary societies. Those who look after our interests do not need or will no longer need structures of confinement. … A control is not a discipline. In making highways, for example, you don’t enclose people but instead multiply the means of control. I am not saying that this is the highway’s exclusive purpose, but that people can drive infinitely and “freely” without being at all confined yet while still being perfectly controlled. This is our future. (17-18)  

There are multiple reasons a highway might be built, most notably to facilitate the movement of people and goods at high speeds. There are relatively low legal barriers to driving a car, typically an age restriction and the successful completion of an exam. Even other formal barriers to driving on a road – such as access to a car – have been rendered fairly universally accessible in much of the world, where owning, renting, or borrowing are all options. Once these barriers are overcome, however, one can drive in a relatively unrestricted manner on a road; nearly any destination can be accessed by a road, and there is no quota for how long one spends on the road surface. But Deleuze’s point is that this kind of freedom is enabled by a layer of control, or multiple layers, that did not exist before the highway was built.

We can imagine that not that long ago, if one had a destination – New Orleans, for example – a multiplicity of routes existed, almost infinite in number, that would allow a person to reach it from New York City. Without roads, one could take established footpaths or blaze a trail, or one could use any number of conveyances that would not be

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28 It should be noted that, at least in the present moment (circa 2013-2014), it seems that Deleuze’s prediction that “those who look after our interests do not need or will no longer need structures of confinement” – a category in which he includes prisons, schools, and hospitals – was incorrect. It is more accurate to say that structures of confinement serve a different purpose than they did under disciplinary societies, but their disappearance seems unlikely.
tied to one particular route, such as a boat. One could climb a hill or go around it, cross a stream here or there, pass through a forest or not. So in a very basic sense, the highway controls because it restricts the pathway of movement, but it does not necessarily discipline the driver. Other restrictions do exist that are “designed in” to the highway (Hardt 1995; Guins 2009): speed limits, turn signals, directional signs, lane markings, median strips and barriers, and so on. But these control mechanisms do not normalize those subject to them, but are instead oriented toward setting a set of optimal limits within which a kind of freedom is produced. Such controls enable circulation, or as Guins (2009) has noted, “Strategies of control license and sanction the subject as autonomous only in that their choices are regulated through their relation to the devices that enable them to exert control” (21). Or more simply, perhaps, “Where discipline concentrated on the body, control seeks to regulate its mediated trajectories” (23). The combination of these mechanisms is a complex system designed to maximize the freedom of movement. \footnote{Complex enough that the science of fluid dynamics is often employed to understand traffic flows, the effects of braking on highways, and so on.} The point here is found in the form of the highway, which demonstrates the ways channeling, guiding, and directing are in fact modulations to prevent behaviors outside of an optimal range in order to maximize circulation.

Control as a governmentality is ostensibly about the fostering of freedom, even if it sets limits on the kinds of actions one can take (Rose 1999). For refugees, though, Deleuze’s examples perhaps fail to capture some of the complexity of “control” because there exists an unrecognized “underbelly” to societies of control. Facilitating
technological circulation, financial circulation, or even traffic circulation can be done with computers, algorithms, and access codes. Thus Deleuze’s examples are overdetermined by the technological advancements that were emerging in the late 1980s and early 1990s when he wrote the “Postscript.” As of yet the RSD process is still mostly a human process. Refugee control, as part of a larger society of control, is still heavily reliant upon forms of coercion that are not anticipated in Deleuze’s work. For this reason we can re-think “control” in light of refugee control, and we must re-think refugee control in light of Deleuze’s “control.”

Viewing RSD through the lens of control highlights the ways in which the proliferation of inclusive identities— which allows for the establishment of hierarchies and complex sets of overlapping, “fuzzily” bounded rights, protections, exceptions, exclusions, and institutions – determine the kind, duration, and experience of inclusion. This is what has been called “differential inclusion” (Hardt and Negri 2004; Mezzadra and Neilson 2012a, 2012b, 2013a; kurz 2012). The subject of this process is one that is placed directly up against state power in the form of its bureaucratic apparatus. If the intensive border regime described in Chapter 2 demonstrated the ways in which the state externalized bodies and attempted to manage their movement away from international borders, then the RSD process described here demonstrates the ways in which the state internalizes mobile bodies as manageable identities. Refugee control, in conjunction with a regime of intensive borders, produces a subject that is essentially managed, or
administered, and which enters into the global order in a hierarchized, differentiated manner.
4. Order

Israel has become a destination for those seeking asylum from the conflicts, devastated economies, and ongoing processes of state formation in North and East Africa. Its relative wealth and stability in the region, its proximity to zones of conflict, and its status as a liberal democracy make it a target for those seeking asylum from around the region. However, in the wake of recent turmoil in Tunisia, Egypt, and Libya, and the long-standing issues that have plagued Somalia, Eritrea, Sudan, and other countries in Africa, Israeli lawmakers passed the “Prevention of Infiltration Law” in 2012, which effectively criminalized asylum seeking and authorized the detention of asylum seekers for up to three years without charges or deportation (Haaretz Editorial 2013; Simpson 2013). Since then, over 1700 asylum seekers have been confined in the Saharonim facility, in the South of Israel. Conditions at Saharonim are isolating and debilitating, and have prompted several Eritrean asylum seekers to write an open letter expressing their dismay at being confined without having committed a crime:

We came to Israel after crossing the borders of three countries and overcoming great difficulties. The decision to compel us to forced three-year stays in detention camps ... hit us like some really bad news. ... In the past we have suffered awful suffering, including terrible torture at the hands of smugglers and human traffickers, who demanded ransoms ... Some of us left our homeland in Eritrea and are now forced to live in isolated detention camps, barricaded by walls. We are refugees, like refugees in other countries and refugees that came to Israel in the past ... We have committed no crime that would justify this kind of treatment.
What have we done to justify our imprisonment in enclosed areas? (quoted in Haaretz Editorial 2013)

Both the “Prevention of Infiltration Law” and the Saharonim detention center were decried by activists as being punitive measures, designed to force asylum seekers to accept voluntary repatriation, and to discourage future asylum seeking by others (Haaretz Editorial 2013; Simpson 2013). The Israeli Supreme Court recently declared the law in violation of Israel’s Basic Laws, the laws that constitute the de facto constitution of the state of Israel.

In response to the Israeli Supreme Court decision, the mandatory three-year confinement for seeking asylum was reduced to a single year. In addition, a novel type of detention center was devised in order to respond to charges that confinement was an inappropriate response to asylum seeking. Thus, the Holot Center for Residents was designed as an “open” center, to defuse arguments that asylum seekers were being imprisoned. During the day, “residents” are allowed to come and go as they please – except for thrice-daily mandatory headcounts. Already barred from working, the headcounts seem designed to disrupt even the mere possibility of a working day, tethering “residents” to Holot even if, in principle, it is an open center. This prevents working even in clandestine labor markets, such as day laboring. The center opened its doors on December 13, 2013 and will eventually have the capacity to house up to 3300 asylum seekers. From 10:00 pm to 6:00 am, “residents” must be inside the center (Sieder 2013).

30 Israel has also built a fence along its border with Egypt, which has drastically reduced undocumented entry into the country via the North African corridor.
Three days after opening, on December 16, 2013, a group of about 130-150 asylum seekers left the Holot Center to march on Jerusalem in protest of their detention (Al Jazeera 2013; Sieder 2013). Most of the asylum seekers participating in the march were from the Darfur region of Sudan, and their aim was to confront the Knesset in order to request that their refugee status be recognized, and to secure their release from detention. Even with Holot’s supposed openness, the pressures of detention continue to be felt. One march participant noted, “We want them to know that we are still in a prison ... [although] they call it open detention” (Al Jazeera 2013). The marchers were notified that they had 48 hours to return to the detention center or risk confinement in a standard prison. Upon arriving at the Knesset after a two-day journey, the protesters were arrested and taken into custody (Ravid and Lior 2013). Those who had not checked in at the Holot Center for more than 48 hours were taken back to Saharonim, the rest were returned to Holot (Ravid and Lior 2013).

Dubai has long attracted migrant labor from India. As Neha Vora (2013) describes Dubai, and the Arabian peninsula in general, the region is “originally global” (53), considered as such “long before the discovery of oil and also long before European ‘world travelers’ appeared in the region” (53). Since the discovery of oil in Dubai, however, a differentiated and hierarchized structure of citizenship and belonging has evolved.

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31 Sources conflict on the actual number of marchers. Estimates range from approximately 100 up to 200, but a mid-range of 130 to 150 appears most often in reports.
Vora describes a three-tier structure that has designated “particular spaces and who could occupy them, who was visible and who was invisible, who was new and who was old, who was permanent and who was temporary, and which bodies contributed to national development and which ones threatened it” (39). She uses the terms migrants, expatriates, and locals to differentiate among those affected by this structure. While Vora is careful to note that the lived experiences of individuals in Dubai were not necessarily easily mapped onto this tripartite division, it remained (and remains) a useful heuristic to understand structures of belonging in the city.

Dubai locals are full citizens of the State. As a principality, citizenship is not akin to its liberal counterparts – voting, free speech, and so on – but is instead primarily a means of distributing material benefits. Ownership of high-end real estate, access to elite shopping, significant tax breaks, easy travel, and other such benefits are reserved for locals. Expatriates, or expats, are the foreign-born workers who are considered members of the elite, granted many of the same material benefits as locals. One of the interesting benefits granted to expats but not to locals is uncensored internet access. They are also granted access to elite housing, shopping, and tax incentives. Migrants, finally, are those who are essentially used for their labor but are also never granted formal membership and usually denied most of the material benefits of citizenship. These are the “impossible citizens” of her book’s title. Migrants are temporary workers, “whose perceived lack of hygiene, morality, and decorum” according to popular and governmental discourse, “threatens instead of contributes to the future of the nation” (48).
Vora’s exploration of “impossible citizenship” is in its entirety an analysis of the ways a differentiated structure of belonging serves to *include* individuals in structures of exploitation and precarity, even as such inclusion rests on forms of social, legal, and spatial exclusion. As she describes, many of the *migrants* have been settled in Dubai for generations, and so have become integrated into the fabric of daily life; yet they remain outside of formal citizenship status even as they build, feed, and clean the city. Barred from the elite housing developments and shopping centers, their status as non-citizens is markedly different than the *expats*, who are actively courted by the government and recognized as those whose labor is essential for the continued success of Dubai’s global economy.

This brief discussion of recent events in Israel and Dubai opens up significant questions about belonging and inclusion today. For example, how do external pressures, such as human rights laws, alter the treatment of mobile peoples as in Israel’s attempt to manage migration and asylum? What does asylum mean when it comes with detention as its cost? In what ways do the uneven interpenetration of labor and belonging in Dubai condition decisions about who to include and who to exclude? Does national citizenship, the now-conventional marker of political belonging and rights, mean much anymore if there are increasingly differentiated global categories of belonging? As the following chapter argues, these and other questions cannot be answered through recourse to discussions of exclusion. Clearly, Dubai has produced a system that *includes* migrants into a differentiated social and economic structure. Within that structure, migrants are
mostly able to live as they please, but with certain restrictions that bind their behavior without excluding them. In Israel, the country remains open to accepting refugees but only in exchange for their confinement. And the Holot center actually allows for a degree of free movement. Neither of these situations is a condition of unfettered freedom, as those who have experienced such conditions would no doubt agree. However, neither situation is one that makes sense if viewed through the lens of “exclusion,” because it is arguable that almost no one today has a truly unfettered freedom in relation to state power and the freedom to move. Reorienting our understanding of inclusion and exclusion, then, will reveal a pattern of governance and global order that is characterized by forms of inclusion. It is imperative, though, that we understand inclusion to be an ambivalent concept and practice that is not experienced uniformly by all people. Thus, rather than privileging exclusion, we turn to the concept of differential inclusion.

Differential inclusion is a concept that describes the ways in which contemporary local, national, and global orderings function to include, rather than strictly to exclude, and in ways that differentially position individuals or groups according to their degree of exploitability.\(^{32}\) An early use of the term can be found in Yen Le Espiritu’s (2003) book on Filipino Americans, in which she defines differential inclusion “as the process whereby a group of people is deemed integral to the nation’s economy, culture, identity, and power – but integral only or precisely because of their designated subordinate

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\(^{32}\) I am drawing a connection here between the emerging literature on differential inclusion and the concept of precarity. This link will become clear as the chapter progresses.
Espiritu provides a number of justifications for using differential inclusion rather than exclusion that warrant attention. First, she uses the term to “counter the myth of ‘voluntary’ migration and to make visible the violent and deliberate peopling of the United States” (47). Second, she employs differential inclusion to “confront the narratives of inclusiveness – of a welcoming America extending the promise of homes and citizenship to the world’s poor and persecuted – and to emphasize instead that the process of inclusion, for racialized groups, simultaneously means legal subordination, economic exploitation, and cultural degradation” (47-48). Finally, she wants to underscore how central Filipinos have been to “building and sustaining the nation” (48), in both material and ideological senses of nation. Espiritu’s use of “differential inclusion” comes out of a concern primarily for race relations in the US.

Shifting our focus to a global scale, differential inclusion is most fully developed as a concept by Sandro Mezzadra and Brett Neilson (2012a; 2013a). It has also made appearances in a range of other scholarship, whether explicitly (Andrijasevic 2009b; Neilson 2009; Neilson 2010), in implicitly related terms (Lazaridis and Koumandraki 2007; Ariely 2011; Coleman and Kocher 2011; Carmel 2012), or sometimes as a direct reversal, i.e. differential exclusion (Castles 1995; Sanchez 2004). Our argument over the last few chapters has sought to demonstrate how the intensive border regime and the governmentality of control work together to differentiate individuals and populations so as to include them in an emergent global order. This order operates on and through difference, modulating relations and degrees of interaction rather than through a binary

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33 Espiritu’s book was originally published in 1995.
decision between inclusion and exclusion. Intensive bordering and the proliferating categories that increasingly define our lives form an intersecting grid that allows for a great deal of fine-tuned differentiations among individuals. This is similar to what was explored in the previous chapters (Chapters 2 and 3), which traced the ways that borders and the RSD process both multiply and manage mobile identities.

To focus on a systemic form of *inclusion* is not to say that there has not been a resurgence in nativist and racist thought and practice; this would be demonstrably false. The rise to influence and the recent mainstreaming of extreme (sometimes violent) nationalist political parties in Europe would have been relatively unthinkable just a few short years ago, given the European history of extremist political parties during the 20th century. To those outside of Europe, the Freedom Party in the Netherlands, the True Finns in Finland, the British National Party, the National Front in France, and perhaps most notably (for its violence) the Golden Dawn in Greece are only the most well-known political parties to move from the fringe to the center of European politics since the economic crises of 2007-2008. In the United States, the Tea Party, state militias, and vigilante groups have proliferated since the terrorist attacks on September 11, 2001, and they have significantly altered the political landscape in the country (Chacon and Davis 2006; Doty 2007; kurz and Berry forthcoming). Thus, our argument here does not preclude the existence of such nativist thinking – by arguing for re-orienting our thinking

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34 The expansion of “Europe” since 2004 complicates this assertion, but the very presence of the European Union stems from a political project specifically designed to mitigate extremism by linking countries and peoples together economically and culturally. Whether this has been successful is a different question altogether.
toward the concept of differential inclusion we are not arguing that racism and nativism (or even acts of “exclusion”) do not exist. What we claim instead is that, first, these right-wing parties are themselves a reaction to the forces of globalization that we have been discussing, in the same way that human mobility has been a response to the same forces. In a sense, they are mutually constitutive. Second, if we put aside the rhetoric of exclusion as an end in itself and focus instead on what such rhetoric does, we are left with a powerful mechanism that is selectively applied in specific places, based on local histories that taken together forms a globally networked method of producing precarity.

Thus to cite a recent example, anti-Latino rhetoric in the United States has indeed been a powerful political weapon; yet millions of undocumented Latinos remain not only inside US territory but employed in large numbers in industries from housing construction to food service, journalism, and entertainment. This rhetoric, far from facilitating the reduction in real numbers of undocumented migrants in the US (i.e. exclusion), produces or helps to produce the “exemplary migrant precarity” previously discussed in the second chapter (also see Coleman and Kocher 2011). Racism facilitates policing, in this case, by creating a climate that effectively erodes any geographical notion of bodily “safety” or “security” by extending the border with Mexico throughout the entirety of US territory (see chapter 2). In a sense, intensive bordering helps to facilitate a bodily instability that we would, in the past, normally associate with

35 To name only a few well known examples: Jose Antonio Vargas, a Pulitzer Prize for Journalism winner, has outed himself as an undocumented migrant; Cesar Millan, TV personality the “Dog Whisperer,” was undocumented during his 20s; and Actress Salma Hayek has publicly discussed her formerly undocumented status on several occasions.
repressive regimes. For example, internalized migration policing in the United States has more in common with the Fugitive Slave Act of 1850 than it does with notions of “national security” or enforcing an American fantasy of itself as a “nation of laws.” The Fugitive Slave Act of 1850 was passed as a part of the Compromise of 1850 that attempted to avert the growing conflict that would eventually erupt as the US Civil War. The law fundamentally changed the relationship between territory and freedom by requiring Northern states to effectively enforce slavery by returning escaped slaves to the South. Before 1850, escaped slaves could, at least in theory, find some sort of refuge in the North. After 1850, they could not. Of course, there are limits to this analogy, but the point is that anti-Latino rhetoric facilitates a form of policing that causes a particular racial or ethnic group to have to be constantly on guard, ever worried that arrest, detention, and/or deportation will come with the next car trip, bus ride, or walk to the store.

As discussed in Chapter 2, while this form of policing does increase the number of deportations – which have been occurring in record numbers under the Obama administration – actual removal of “unwanted” bodies is not the primary outcome.

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36 That the United States is a “nation of laws” is a popular trope on the political Right. To provide just one example, Speaker of the House John Boehner’s website states: “Securing our borders and stopping the flood of illegal immigration into the United States must be the first priority of this Congress. The American people understand that securing our borders is critical not only to prevent terror attacks but also to re-establish basic respect for upholding our illegal immigration laws. We need to have stronger border protections and full enforcement of our immigration laws. America is a nation of immigrants, but we are also a nation of laws – those laws must be obeyed and enforced. We must also ensure that taxpayer-funded benefits do not go to illegal immigrants. I will continue to fight against any attempts to give illegal immigrants benefits that are paid for with your tax dollars.” (Boehner, 2014, emphasis mine)
According to Coleman and Kocher (2011), we can see that the purpose of this kind of heightened racism, which enables and regularizes a kind of “exceptional” policing, is to render undocumented Latinos (and other minority ethnic groups) increasingly and more easily exploitable. And this of course has a ripple effect, in the sense that American political discourse is displaced from concern over economic exploitation to conservative diatribes (in both their Left and Right variants) about how the very presence of undocumented migrants violate the United States’ history as a “nation of laws.” As Nandita Sharma (2005) illustrates, rhetoric often has the opposite effect than that which is intended, and frequently assists in advancing policy agendas that have detrimental effects to migrants without really halting the phenomena such rhetoric, or even a specific policy, seeks to eliminate:

Not having restricted the movement of people, what the reformulation of immigration and refugee policy has accomplished is the denial of permanent status to the vast majority of the world’s migrants within the places they come to live and work. (105)

Sharma exposes such rhetoric as really about producing unequal legal regimes: “The operation of different legal regimes, one to govern ‘citizens’ and ‘permanent residents’ and another to govern ‘illegals,’ … a regime whereby discrimination against ‘foreigners’ is not only accepted but accepted as necessary” (105). The existence or experience of multiple legal regimes is not historically new, as both Jim Crow in the United States and Apartheid in South Africa were predicated upon such differentials. It is not surprising, then, that many scholars are using these historical regimes as analytical tools for contemporary society, as both Michelle Alexander’s The New Jim Crow (2010), and
Sharma’s work on Global Apartheid (2005; 2007) make evident. On a global scale, though, it would be inaccurate to claim that race is what defines a system of differential inclusion. Globally, race is one factor among many that produce differential subject positions, although in any particular place it is arguable that race is or can be, the most salient factor, such as the US.

There are several phenomena that feed our understanding of differential inclusion, including questions of race, gender, and the intersection of temporality and spatiality.

First, at least since the colonial era, race has been a significant factor in dividing groups of people into categories that make it more or less easy to exploit them. This will be addressed more fully below in the discussion of South African Apartheid, but for now it is sufficient to highlight another example. In the US, racial classification has long been a method used to differentiate and hierarchize, in part to protect the economic interests of a relatively small group of White landowners and then what would become the American working class (see Roediger 2007). As Michelle Alexander (2010) has written, mass incarceration is the primary means for producing racial divisions in the United States today (which followed Jim Crow, which itself followed slavery):

Through a web of laws, regulations, and informal rules, all of which are powerfully reinforced by social stigma, they [the formerly incarcerated] are confined to the margins of mainstream society and denied access to the mainstream economy. They are legally denied the ability to obtain employment, housing, and public benefits – much as African Americans were once forced into a segregated, second-class citizenship in the Jim Crow era. (4)
She forcefully asserts that, “we have not ended racial caste in America, we have merely redesigned it” (2). What becomes clear in her work is not the direct economic benefit that comes from imprisoning up to one-third of the African American men in the United States (9), although she does make it clear that there are enormous profits to be had in the War on Drugs and the resultant growth of a for-profit prison industry; what is decisive is the way race works as part of a social system that produces an undercaste that is fundamentally integrated into the functioning of the system itself. As the undercaste grows, the mechanisms and industries that control the undercaste must grow to keep pace, which then incentivizes the powerful entities in the system to continue to allow the undercaste to grow – by using social norms and legal policies that are, in fact, aimed at eliminating the undercaste. Thus, even in what we consider to be an extreme form of exclusion – imprisonment – we can see that there is a perverse inclusion at the heart of racial discrimination in the US, especially at the intersection of institutions and economic exploitation.

Second, feminist scholarship has long drawn our attention to the ways that women have been differentially included in most societies throughout history. Rutvica Andrijasevic (2009) chronicles just a few of the ways that this has impacted immigration policies in the United States and Britain. She references the Page Law, from the late 1800s, which “restricted Chinese women entering the United States as it effectively conflated Chinese women’s migration with enslaved prostitution” (389). She then provides an example from the United Kingdom: “…in the late 1970s, as part of the official government policy informed by the stereotype that to enter a marriage a South
Asian woman had to be a virgin, British immigration officers subjected prospective Indian brides to ‘virginity tests’” (389). These examples are limited to the realm of migration policy, but there is a much broader way that differential inclusion works, notably through the gendered division of labor.

Silvia Federici (2004) has provided an excellent analysis of the ways in which capitalism is entirely predicated upon women’s bodies and their capacities to reproduce labor power by literally giving birth to (future) workers. Capitalism has always functioned by getting workers to provide labor for free, whether it be the traditional Marxist notion of surplus labor – that is, for example, labor performed on the factory floor in excess of that which is compensated by the wage – or through what Marx called the process of primitive accumulation. Primitive accumulation is typically identified as the process by which the land, money, and resources necessary to invest in capitalism was first accumulated. The quintessential example is the first land enclosures (e.g. Marx 1977; Rousseau 1984; Brown 2010). Federici (2004), however, points in a different direction and shows how, first and foremost, primitive accumulation entailed a dispossession of the female body:

…the female body was turned into an instrument for the reproduction of labor and the expansion of the work-force, treated as a natural breeding-machine, functioning according to rhythms outside of women’s control. … This aspect of primitive accumulation is absent in Marx’s analysis. … Marx never acknowledged that procreation could become a terrain of exploitation… (91)

The point here is that the long campaign to dispossess from women the control over their own reproductive capacities is one of the first divisions of capitalism. Women are absolutely integral to every society, not just capitalism, due to their ability to reproduce;
it is in capitalism, however, that such dispossession becomes the foundational method for accumulating profit. Differential inclusion, in this case, can be literally mapped onto women’s bodies, highlighting the ways that inclusion is always already invested in reproduction.

Finally, time and space work in various ways to produce differential inclusion. We have already discussed the spatial aspects of this in Chapter 2. To reiterate the key aspects of the argument, intensive border regimes erode the ability of individuals to experience territorial security on an everyday basis, by opening up ever broader swathes of people to the constant policing of their identities and presence within territorial spaces. We have seen the way in which time works in conjunction with this already, as island detention is used as a particular strategy to prolong the claims for asylum and their process for adjudication by making it extremely difficult for lawyers and other skilled individuals to be close to their clients (see Mountz 2010).

Another way in which time plays a role in this process is discussed by Mezzadra and Neilson (2013a), where they differentiate a spatial analysis by drawing attention to the “temporal thickness” of borders. For example, they draw on the work of Xiang Biao to discuss the practice of “benching” labor (136). Mezzadra and Neilson highlight the fact that benching refers to the practice of “holding in reserve” workers who “are paid very small amounts while benched, for outsourcing to private and government enterprises” (136). Benching, then, is not necessarily a spatialized practice, at least not primarily so, but a temporal one. Delaying the entry of some workers onto a market can drive up or reduce wages. In essence, benching is a temporal strategy that can be implemented by
private firms or by governments (via immigration points schemes) to help manipulate labor markets.

What is common across all of these vectors of differential inclusion is the way in which a division, a border, is central to the functioning of systems of exploitation: race and the production of an undercaste, gender and the reproduction of labor-power, space and its destabilization of zones of safety and refuge, and time and the modulation of reserve labor. Differential inclusion is a process of systematic multiplication or proliferation, which in effect produces lines everywhere: color lines, class lines, gender lines, spatial lines, and so on. These lines produce an intersecting grid, upon which subject positions are always in flux, partially unknowable, and therefore subject to increasing degrees of control. And because categories of identity are constantly in flux, it becomes more and more difficult to produce and sustain “commons” from which political change can be asserted. Differential inclusion can be understood, then, in relation to another critical concept that has emerged from scholar-activist circles, the concept of precarity.

The concept of precarity emerged from activist movements in Europe as a way to describe changes in employment from the relative stability (for some) of the Keynesian labor contract, epitomized by the grand bargain between unions, the state, and capital, to the growing instability of just-in-time production and the rise of the service economy. Flexible work, telecommuting, short-term contracts, and other changes in the forms of
work were emerging and *precarity* came to describe the growing uncertainty and
instability that working people were experiencing on a day-to-day basis.

In the specific context that interests us here, precarity is 1) the dislocation in space
produced by intensive borders, 2) the assignment of multiple identity categories for the
purposes of managing mobility, 3) the alienation from law produced through the
governmentality of control, 4) a global order characterized by differential inclusion, and
5) the state of exception. This is a very different way to think about precarity than what
typically emerges from academic writing on the concept, which is usually tied to the
conditions of temporary, flexible, contingent, or intermittent work that characterizes the
late capitalist economy.

What should be by now clear is that *differential inclusion* and *precarity* are
excellent tools for analysis, because they expose aspects of a changing global order. We
will argue that Global Apartheid is the name for this order, which works *via* intensive
border regimes, the multiplication of identities and their control, and precarious
differential inclusion.

Apartheid no longer can be thought as what had been called in South Africa,
“Grand Apartheid,” which entailed a rigidly enforced color line with separate spheres of
development. Global Apartheid, if it is to be meaningful at all, must take as its point of
intervention the modulation of the (growing) distance between the subject and power that
is produced through the proliferation and manipulation of space, time, and identity. The
State of Exception is reinterpreted here away from *sites*, such as Auschwitz or
Guantanamo Bay, Cuba and aligns instead with the *relation* that is produced by the
impossibility of deciding what is interior and what is exterior to any given situation, as described in earlier chapters. However, before discussing Global Apartheid and exception any further, we should address the applicability of the term “apartheid” to contemporary global conditions by turning briefly to South Africa.

South African Apartheid

Apartheid in South Africa was a system of legal racial segregation enforced from 1948 to 1994. In general it was defended as being necessary to ensure “racial peace” (Richmond 1993, 7). The legally and socially enforced separation of races was the culmination of a long history of discriminatory practices on the African continent stemming from colonial occupation. The state of South Africa, in fact, emerged from and because of European colonial economic priorities (Alexander 1996), in which geographic racial intermixing happened only if it directly addressed “the wants of Whites” (Rich 1978, 190). As Alexander (1996) notes, Apartheid’s “geo-political boundaries,

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37 Apartheid was preceded by a system of Segregation that lasted roughly from 1910, the year of South African independence, to 1948. While Segregation provided much of the institutional and legal backbone of Apartheid, the two regimes were different. See Wolpe (1972) for a detailed discussion of the difference and the shift from Segregation to Apartheid. Also see Rich (1978) for a more detailed analysis of the development of the regime of Segregation.

38 I am referring to the formation of the Union of South Africa in 1910, which has distinctly different origins than the post-Apartheid state that emerged in 1994. Also, to clarify the qualified circumstances of racial mixing, Rich (1978) describes this as the Stallard doctrine (after C. F. Stallard), a “rational ideological response by certain groups within the White polity, namely White labour and urban commercial capital, to what was
institutions, laws, patterns of ownership and use of resources were designed to meet European needs” (25-26). He describes the partial roots of Apartheid in the search by colonists for home in unfamiliar places, as they built “little Holland or little England 6,000 miles and many months from home” (26). Given the general disdain for “the unfamiliar, near-naked, dark-skinned inhabitants” (26), it is unsurprising that this search for “togetherness” resulted in the development of White racial enclaves. But primarily, Apartheid emerged from the economic development of South Africa, first as a Portuguese, then a Dutch, and finally a British colony. By the time the Union of South Africa was formed in 1910, the country was already shaped in significant ways by the De Beers diamond cartel, the gold industry, and the influences of the Dutch East India Company and the British South Africa Company (Alexander 1996).

Apartheid was a systemic reaction to increased economic competition, and functioned as a way to ensure that White South Africans maintained economic and political control in the country (Wolpe 1972; Alexander 1996). Mining was one of the central industries in South Africa, and the contest over wages and job security was central to the systematization of racial segregation. As Alexander describes, mine-owners opposed racial segregation; in 1904, in fact, they imported 60,000 Chinese workers, who were later sent back to China when their contracts ended in 1908 (1996, 29). It was White workers who agitated for racial segregation “to protect their privileges and higher wages perceived as an economic threat to their livelihood” (190-191). See Davenport (1970) for more about Stallard.  

39 There is a debate between proponents of ideologically-driven Apartheid and economically-driven Apartheid. While recognizing the debate, I will leave it aside and simply state that I find the economically-driven explanations more convincing.
from competition” by cheaper workers of color. An economic depression from 1904 to 1909 forced many Whites off of small farms, at which time they transformed into a new social issue in the region – the “poor white problem” (Alexander 1996, 30). A seemingly unbroken string of economic crises between 1904 and the early 1940s set the stage for the election of the National Party in 1948. Their manifesto introduced the word *apartheid* and emphasized that the “fundamental guiding principle of National Party policy is preserving and safeguarding the White race” (cited in Alexander 1996, 31).

It is significant that Apartheid was in many ways a geographic spatialization of reserve labor. What came to be called “Reserves,” “Homelands,” and eventually “Bantustans,” were first established with the Labour Regulation Act (1911) and the Native Lands Act (1913). Subsequent laws passed in 1945, 1950, 1951, 1966, and 1986 intensified the legal system of requiring Black Africans and other non-Whites to live in specified areas.40 Black and “Colored” Africans were confined to hostels, townships, and homelands in order to preserve the city centers for White South Africans. Large numbers of domestic laborers, agricultural laborers, and other forms of service workers were forced to migrate from these “reserves” and townships in a form of internal migration. Rather than a strict segregation along racial lines that prevented racial intermixing of any kind, Apartheid was characterized, then, by a separation of domestic and reproductive

40 Relevant laws include, in 1945 the Blacks (Urban Areas) Consolidation Act; in 1950 the Population Registration Act; in 1950 and 1966 the Group Areas Acts; in 1951 the Prevention of Illegal Squatting Act; and in 1986 the Abolition of Influx Control Act (Richmond, 1993, 7). This list is not comprehensive by any means, it is merely suggestive. The point is to highlight the frequency with which the Apartheid regime was reiterated, refined, and reaffirmed.
spheres. The South African economic sphere was thoroughly interpenetrated when it came to race, even if it was clear that it entailed a racial hierarchy.

The economic sphere was sustained primarily by migration; domestic or internal migration, from the Reserves, and international migration were both carefully controlled and highly selective. Richmond (1993) notes that immigrants to South Africa had to be of “European” descent. More than one million such immigrants entered South Africa between 1945 and 1985. However, even with such an influx of White migrants, there was still an overwhelming demand for labor, especially in areas such as agriculture, mining, manufacturing and domestic services. Clearly, then, Black South African labor was necessary and desirable; Apartheid made it exploitable to a degree that a “free” labor market could not match.

South African Apartheid ended in 1994, which raises questions about whether Apartheid of some kind continues to exist. It is interesting that the mid-1990s brought with it a popularization of the term Global Apartheid, which coincided with the explosion of a “global” economy and the rise to maturity of many global governance institutions (such as the United Nations, the World Trade Organization, and the Group of Seven, which all took on more expanded governing roles during the 1990s). This suggests that

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41 Reproductive meaning both, literally, procreation – there was a prohibition on interracial marriage, for example – and the reproduction of labor as described earlier in this chapter in our discussion of Federici and the gendered division of labor.
42 I use the term “immigrant” here only because South Africa’s European migrants have largely internalized the narrative that the country is a “nation of immigrants,” similar to the United States’ founding myth.
43 There is an obvious parallel here to the rise of service economies in the so-called Global North.
some discussion is needed regarding this concept’s appropriateness outside of its South African context. As Titus Alexander (1996) writes in his book *Unravelling Global Apartheid*, there are some issues when it comes to “translating” across contexts:

Apartheid was a very specific system of discrimination which classified each individual according to race and ruthlessly divided people into separate groups. Western systems of exclusion are more sophisticated. They also involve a hierarchical ranking of group privileges, but the West is publicly opposed to racism. Most Western countries have laws against racial discrimination and active anti-racist movements. Yet much Western thought, law and action are exclusive, operating through institutional and indirect discrimination rather than overt racism. National interest rather than race justifies double standards in international relations, while appeals to national identity are often coded forms of racism in domestic politics. (5-6)

In this light, questions thus arise: does Global Apartheid primarily govern *primarily* through race and racial distinction? What are the stakes in using the term *Apartheid* outside of its specific historical circumstances in South Africa? As we have seen, South African Apartheid was an explicit system designed to protect the economic competitiveness and labor privileges of Whites, and perhaps served as a form of primitive accumulation that produced and reproduced capitalist relations of production (Wolpe 1972). But what, if anything, is Global Apartheid’s relation to these same processes today?

Global Apartheid

The term “Global Apartheid” was first used in the 1970s by Gernot Köhler (1978) to describe the growing wealth disparities between countries, generally referred to as a
“development gap.” Indeed, the term is still used frequently today to describe such conditions (Amin 2001; Sharma 2007). As Sharma (2007), among others (Castles, de Haas, and Miller 2014), notes, such inter-national disparities are frequently the cause of migration. And the increase in economically driven migration has instigated significant changes in the attitudes of states and bordering practices:

Over the twentieth century, the practice of absolute sovereignty over a bounded territory produced substantial wealth inequalities globally, which increased the desire of many people to move either to avoid deteriorating conditions in their home state or to seek better economic opportunities elsewhere…These movements, along with the possibility of hostile people or items passing into the state, resulted in a new purpose for borders as a location to prevent the unauthorized movement of people. (Jones 2012, 11)

As we have seen, however, Global Apartheid must contend with phenomena that do not fit a state-scale or international development framework.

If we recognize that South African Apartheid was an ideology and a set of practices that sustained and reproduced “capitalist relations of production,” and which utilized race in order to mean “difference,” rather than strictly “hierarchy” (Wolpe 1972, 451-453), then we can begin to see the concept of apartheid’s mutability. As Wolpe (1972) has aptly described, race in South Africa was neither strictly binary (Black/White) nor did it entail a static color line. Indeed, under Apartheid (rather than the pre-1948 Segregation system), the term “race” gave way to “nation,” “ethnic group,” or “volk” (451). Race was a malleable concept that was part of an ideological apparatus that changed over time to control the reproduction of cheap labor. There is little doubt, then, that South African Apartheid has given way to a Global Apartheid in which race is but
one of many apparatuses that aim to perfect the ordering of labor power (Wolpe 1972; Mezzadra and Neilson 2013a).

Indeed, labor power as central to the emergent phenomenon called Global Apartheid can be seen in both economic analyses of changing global markets after World War II and in scholarship on migrants and refugees that addresses changing practices of bordering and mobility restrictions. The former points to international “development gaps” (Alexander 1996; Amin 2001), as discussed above, while the latter stresses discrimination based on one’s place of birth. For example, Joseph Nevins (2012), referring to anti-immigrant pogroms in South Africa in May 2008, claims that,

South Africa is hardly alone in fomenting cruelty toward migrants. Indeed, it does what all other nation-states do: privilege their nationals over noncitizens and, in doing so, elevate rights granted by states to select individuals over universal human rights. In a context of deep inequality between countries, national territorial divides have profound implications: which side of a boundary one is born on significantly determines the resources to which one has access, the amount of political power on the international stage one has, where one can go and under what conditions, and thus how one lives and dies. Thus, there is an inherent double standard – significant rights for some, fewer for others – a disparity that comes about by accident of birth. (19-20)

Taking its cue from many civil rights movements from the past, this line of critique makes an analogy: if it is wrong to discriminate against someone for aspects of their personhood that they cannot control – race, gender, disability, sexuality, and so on – then it is similarly unacceptable to discriminate based on the “accident of birth.” For this trajectory of academic and activist scholarship, national boundaries represent one of the last remaining forms of institutional discrimination, a form of discrimination that most people consider to be a common sense necessity rather than a severe injustice.
Nandita Sharma (2007) demonstrates how such practices are carried out. She claims, “The way that nation-states in the Global North are setting up a Global Apartheid system is to discriminate against people on the basis of their nationality” (72). Later, she argues,

In this period of globalization, nationalist ideological practices are as important as ever in unifying a population around the legitimacy of ruling relations, even when such practices work against the interests of the majority of the same population. (83)

Sharma recognizes, however, that such practices are not really about differentiating between one nation and another, or maintaining national development gaps; instead, they are really about differentiating between people within a particular space. In clarifying arguments made by Anthony H. Richmond (1994), she notes that:

the organization of a global apartheid is one where rich states keep out people from poor ones. However, it is important to note that like past forms of apartheid, global apartheid is not based on keeping differentiated people apart but instead, on organizing two (or more) separate legal regimes and practices for differentiated groups of people within the same space.” (Sharma 2007, 72)

This in fact marks a significant departure from much of the literature addressing Global Apartheid, especially that which relies on development gaps, and which points to the growing disparities between countries in the so-called Global North and Global South (van Houtem 2010; Harrison 2002; Amin 2001; Alexander 1996; Richmond 1994, 1993; Köhler 1978). At best, this economically-driven literature draws an isomorphic relationship between inequalities within a country to inequalities in world society (Köhler 1978). But such analyses remain rooted in a relatively rigid understanding of apartheid as a kind of territorial segregation. Sharma’s (2007) analysis is more concerned with
differentiation within a national space rather than between nations. She recognizes that “Foreigners have always been a part of any nationalized society” (73), and that therefore it is better to “understand nationalized exclusions as forms of differential inclusion” (73, emphasis hers).

What needs greater attention, however, are the myriad ways that differential inclusion is in fact the general condition in which most people exist today, not just migrants and refugees. The way that Greece has experienced the economic crisis that began in 2007-2008 in the United States and spread globally, is an interesting case that illustrates this point. Greece is a provocative case because it is both an EU member state and the destination of significant refugee migrations from the Middle East, Africa, and Eastern Europe. Long positioned as a “problematic” member of Europe, the economic crisis of 2007-2008 and its aftermath of austerity drew out and highlighted the issue of differential inclusion. Greek citizenship seemed to mean very little, and on an international scale, Greece’s inclusion in the EU was held hostage by more powerful member states, such as Germany.

As of this writing, parts of the European Union remain in the midst of a financial crisis, especially along its edges: Ireland, Spain, Portugal, Italy, and Greece. The cause of this crisis is beyond the scope of the argument, but, in short, Greece was deemed by the European Union to have too large a proportion of sovereign debt to income. A major contributing factor was Greece’s membership in the euro currency, which prevented the country from enacting currency controls, devaluations, and other practices typical in
situations of economic crises. For Greece to remain part of the EU and the euro, it was decided that public expenditures would have to be cut, public institutions privatized, and the government would have to drastically raise its revenues. The ensuing practices have been labeled by the left and right alike as “austerity.” For example, Greece’s agreement with the so-called troika of creditors — the European Central Bank, the European Commission and the IMF — commits the government to raise 50 billion euros through privatizations by 2015 (now extended to 2016). Loans totaling over 200 million euros were provided by the troika. In return, however, significant pension and labor “reforms” were required to be implemented.

In response to the gutting of pensions and the decimation of hard-won labor protections, many Greeks revolted. In 2011 and 2012, Syntagma Square became the site of a long-standing occupation as well as a battleground for, at times, almost daily skirmishes between occupiers and the Greek police. (In fact, periodic unrest continues to occur; however, the continued occupation of Syntagma Square has largely subsided.) The revolt was widespread, involving a cross-generational coalition of Greeks on the left, and in their own way, a virulent, fascist right-wing (the Golden Dawn). Resistance was so strong that even the possibility of Greek elections became a hot topic in the EU, with serious proposals to cancel or postpone elections for fear that Greece would make the “wrong choice” (Munchau 2012; Roos 2012). The media (especially in Germany and Britain) was increasingly vocal in painting the Greeks as lazy and incapable of following through on the “agreements” “they” entered into. In this context, the country was being upheld as a unitary individual rather than as a nation of diverse constituencies. The
policies enacted by one government were so unpopular that a new government was elected. When that new government tried to change the policies to match its constituents’ desires, it was castigated by the troika for being unable or unwilling to follow through on its agreements (Beugel 2012). The conflict has become a struggle over the agreements themselves, and the severity of what those agreements entailed. Austerity is not a popular policy regime, and the violent protests in the streets illustrates only partial opposition to the regime – many more protest via the ballot boxes, others refuse to leave their homes due to the fear of violence. What became increasingly clear throughout the crisis was that citizenship in Greece meant very little, because the country’s membership in the EU and the euro currency opened up a substantial gap between democratic desire and governmental authority.

Austerity was widely seen to be a forced choice. As discussed by Ingeborg Beugel, a journalist covering the Greek crisis:

…this is not about “agreements” at all. Somehow, that word presupposes that we are talking about two equal parties agreeing on a mutual course of action. Nothing could be further from the truth. Greece has been humbled, mangled and castigated, forced to accept the various IMF demands and Merkel’s austerity measures in a profoundly unequal “like it or lump it” type of situation. The word “agreements” itself is just as deceptive as the words “support” or “reform”. In the case of Greece, “agreements” refer to demands made at knifepoint. Support does not consist of gifts, subsidies or investments, but of big fat loans at disastrous, sky-high interest rates that squeezed Greece will never be able to repay. And the reforms are really just absurd budget cuts that would be utterly impracticable in Northern Europe, including the prospect of a total annihilation of minimum labor rights — something for which Europeans, including the Greeks, have fought for centuries. (Beugel 2012)
Indeed, commentators have declared that Greece has become the European Union’s first “colony” (Munchau 2012; Roos 2012). Greece has maintained formal democracy and elections, but austerity will continue no matter their outcome.

To summarize, the austerity regime was implemented with enormous public opposition; elections were threatened to be suspended for fear that Greek citizens would make the “wrong choice;” a fascist party emerged and has engaged in documented collusion with the police force; and the country was recognized by influential voices in the EU inner circle that it did not just resemble a colony, but was a de facto colony.

Much like the example of South African Apartheid above, there is a great deal of detail that is glossed over in this example. However, the decisive element is the growing gap between individual action and governmental power, in this case rejecting austerity through popular elections. Taken together with the intensive border regime explored in the second chapter, the RSD processes detailed in the third chapter, examples of race in the US, the exploitation of female reproductive capacities, and the benching of labor, the example of Greece’s continued challenges paint a stark picture of the extensiveness of an emergent order, Global Apartheid.

As a way to concretize and draw together the various threads running through this dissertation, we might re-think Global Apartheid in light of Agamben’s concept of the state of exception. The state of exception for Agamben is one of the central problematics of modern political thought and practice. The sovereign is he who decides on the state of exception, a formulation borrowed from German jurist Carl Schmitt that forms the
backbone of Agamben’s (2005) genealogy of the state of exception. In basic terms, the exception is when the law is suspended through legal means, or as Agamben (1998) notes: “the sovereign, having the legal power to suspend the validity of the law, legally places himself outside the law” (15). In other words, “the law is outside itself,” or “I, the sovereign, who am outside the law, declare that there is nothing outside the law” (15). Agamben (2005) consistently describes this relation as topological, since a “simple topographical opposition (inside/outside)” is “insufficient to account for the phenomenon that it should explain” (23). The state of exception is a threshold, “neither external nor internal to the juridical order, and the problem of defining it concerns precisely a threshold, where inside and outside do not exclude each other but rather blur with each other” (23). Thus, the state of exception is first and foremost a relation to the law.

One avenue by which to view the state of exception is to find its localizations, often described as spaces of exception. There is practically an academic industry built on identifying such spaces of exception (e.g. Belcher et al 2008; Diken and Lausten 2005; Doty 2007; Edkins 2000; Gregory 2006; Puggioni 2005; Seri 2004). This stems from the way in which Agamben (1998) describes “the camp” as the “new biopolitical nomos of the planet” (176). It is unsurprising that a great deal of literature has explored Agamben’s claims that “the camp” (in fact the Nazi death camp) shares a hidden affinity with airport lounges, gated communities, soccer stadiums, refugee camps, and the detention center at Guantanamo Bay, Cuba (2000c). However, as Catherine Mills (2008) clarifies,

Rather than describing and delimiting a particular locale, the camp reveals an abstract logic that is by no means limited to the geographical space of internment. ... And to the extent that the figure of the camp expresses a topology of
contemporary politics, any more or less innocuous space can be effectively transformed into a camp if the attendant juridico-political structures are brought to bear in that space. (85)

Crucial for Agamben is that the camp is a “dislocating localization” (1998, 175). Thus, the state of exception is not in space, but is potentially any space. The indistinction between inside and outside, its topological character, means that even if a particular space of exception is located, it by definition opens onto the entirety of global space.

A final aspect of the state of exception is that the law is fundamentally empty, rather than “full.” Agamben (2005) notes that, “the state of exception constitutes rather a kenomatic state, an emptiness of law” (6). In light of the argument raised so far, the “emptiness of law” takes on a new resonance here as the state in which borders, administrative procedures, and global order coincide to separate an individual from the law. Because “the state of exception is not a special kind of law (like the law of war)” but a “suspension of the juridical order itself” (2005, 4), there is a lacuna between the local, national, and global attempts to regulate movement that renders the law fundamentally empty. In case after case, refugees are exposed to the emptiness of the law, a space filled with the police and bureaucratic management. Thus, the state of exception not only refers to the sovereign decision; it also refers to the growing gulf between individuals and the kind of power that is meaningful in an increasingly global order. Or as Agamben (2003) summarizes:

What the “ark” of power contains at its center is the state of exception – but this is essentially an empty space, in which a human action with no relation to law stands before a norm with no relation to life.

This does not mean that the machine, with its empty center, is not effective; on the contrary, what we have sought to show is precisely that it has
continued to function almost without interruption from World War One, through fascism and National Socialism, and up to our own time. Indeed, the state of exception has today reached its maximum worldwide deployment. *The normative aspect of law can thus be obliterated and contradicted with impunity by a governmental violence that – while ignoring international law externally and producing a permanent state of exception internally – nevertheless still claims to be applying the law.* (86-87, emphasis mine)

Speaking from a global standpoint, what is particularly salient about thinking the state of exception in these terms is not the decision to suspend the law, but the growing disjuncture between those forces that “speak” with the force of law but lack the ability to enforce it. Taking his cue from Hannah Arendt, perhaps, there is a banality at work here. The true danger of the contemporary form of the state of exception is not its localization, in space or in an individual, but its de-localization, in bureaucracy, administration, and management. The refugee is thus re-cast as the figure that emerges within an order of Global Apartheid. It is not necessarily “depoliticized,” or even always exposed to death. At the least, there are many cases in which the refugee system works and a person is kept out of harm’s way. This is not the point. The point is that the refugee exists in a relation to space, identity, order, and law in such a way as to be managed and administered, subject to the state, bureaucrats, and the police.

The figure of the refugee is a threshold figure not only for contemporary politics but also for sovereignty as both a legal and administrative concept. The body of the refugee has become (or perhaps it always was) a site where the geopolitical has become indistinct from the biopolitical, which means that it is not a body that can be thought within current political theory. In a sense, the refugee represents a qualitatively different figure than *homo sacer* or the *Musselmann*, the products of Agamben’s camp. The
refugee is, instead, an administrated life, by which I mean something different than Foucault’s biopower (which has as its object the population), Agamben’s biopower (which has as its object the production of bare life that has lost all subjectivity in the face of raw state power), or Hardt and Negri’s biopower (which represents the power of the multitude to constitute a new politics out of Empire). Administrated life is ‘raw life,’ where state power has exerted itself upon the subject in such a way as to significantly erode political subjectivity yet without producing a bare life; this raw subject, raw life, retains some of the power of the multitude. And, perhaps paradoxically, the refugee remains subject to a Foucaultian biopolitics where there exist genuine desires to “make live and let die” at the level of a population, even while the individuated refugee and concomitant state practices remain specific to the individual. States are never actually interested in fully closing down refugee asylum practices nor in fully controlling individuals nor in ascribing entire populations certain characteristics (even when rhetoric sometimes points in this direction). In this way, the refugee body is not only a site of contested biopolitics (which is to say that it is always already a site of a contested geopolitics as well); it is a confused and contradictory body in the way it can be thought within the social order. This confusion and zone of indistinction makes the refugee body a site where the state, the law, subjectivity, and individual performance come into direct and violent contact with various forms of biopower, discourses of geopolitics, sovereignty (as distinct from the law), and administrative practices that cannot be easily classified (as instances of state racism, sovereignty, law, bureaucracy, and so on).
5. Refugee

Refugees are not terrorists. This headline encapsulates the challenge that refugee voices pose to governments and structures of power that have ostensibly depoliticized them. Writing in the Kakuma News Reflector: A Refugee Free Press, also called Kanere, journalists in the Kakuma refugee camp in Kenya are speaking against the government’s harassment and detention of refugees that followed the September 2013 terrorist attacks in the Westgate Mall in Nairobi. After reporting on the frequent targeting of buses carrying refugees by Kenyan security forces, and the numerous detentions resulting from a lack of sufficient documentation, Ibrahim Gindicha and Qaabata Boru (2013) offer some recommendations: the government should devise “credible machinery” to differentiate refugees from terrorists; the Kakuma camp authorities should speed up the delivery of crucial documents to the refugees who need them in order to travel and work; and the Kenyan Ministry of the Interior should stop the police from demanding money from refugees and thus curb corruption.

Kanere is an independent vehicle for refugee voices, which has garnered international attention from media, non-governmental organizations, and scholars (About
Kanere 2013). The UNHCR, however, has largely refused to lend support to Kanere. Primarily citing concerns over “ethical reporting” practices that centered on the publishing of names and situations that, according to the UNHCR, would pose security risks, the refugee organization has frequently blocked attempts to certify Kanere and therefore expand its ability to secure resources (Ojalehto 2010; Editorial Staff of the Kakuma News Reflector 2012). The Kanere editorial staff had refused, and continue to refuse, UNHCR control over Kanere’s content, a request seen by the Free Press as an attempt to maintain a monopoly over the flow of information coming out of the refugee camp. After almost five years of blocking Kanere from registering as a community based organization (CBO), the NGO Coordination board, operating under the Kenyan Ministry of State for National Heritage and Culture, approved their status as an NGO in November 2013 (Kanere 2013).

The conditions of Kanere’s existence raise questions, then, about the effectiveness of the Free Press in changing conditions in the Kakuma camp and in Kenya more generally. The editorial staff have claimed some successes in pressuring the Kenyan government and UNHCR to improve conditions in the camp (Editorial Staff of the Kakuma News Reflector 2012), but such successes have come from the public shaming that a press can provide. This is indeed what a truly free press can do, and why “the fourth estate” has been an integral aspect of liberal democratic governance. In this sense, Kanere is political, and allows refugees in Kakuma a modicum of influence they might not otherwise have. Kanere’s effect, though, has largely been improving the management
of refugees, exerting influence over the “quality of life” of refugees (no small feat) but not addressing the conditions that render them precarious to begin with.

We can now return to the figure of the refugee as described by Agamben (2000b), and which was discussed in Chapter 1:

Given the by now unstoppable decline of the nation-state and the general corrosion of traditional political-juridical categories, the refugee is perhaps the only thinkable figure for the people of our time and the only category in which one may see today – at least until the process of dissolution of the nation-state and of its sovereignty has achieved full completion – the forms and limits of a coming political community. It is even possible that, if we want to be equal to the absolutely new tasks ahead, we will have to abandon decidedly, without reservation, the fundamental concepts through which we have so far represented the subjects of the political (Man, the Citizen and its rights, but also the sovereign people, the worker, and so forth) and build our political philosophy anew starting from the one and only figure of the refugee. (16)

This dissertation has re-framed Agamben’s challenge in significant ways: first, by reconceptualizing what was meant by the “unstoppable decline of the nation-state;” second, by illustrating the ways that “traditional political-juridical categories” are corroding; and finally, by concretizing how the refugee is “perhaps the only thinkable figure for the people of our time.” What we are left with, however, is the *figure* in Agamben’s formulation, “the figure of the refugee.” What is the significance of the phrasing, *the figure of the refugee*? Why does the term *figure* not carry the same weight as *refugee* in this phrase?

Agamben makes consistent use of philology and the philosophy of language, and he was a poet before devoting himself full time to philosophy. Thus, familiarity with Agamben’s biography and his philosophical project from the 1970s to the present would
make it abundantly clear that *figure* in this context is not a throwaway term. Indeed, we will argue that it is significant, decisively shifting the refugee from the realms of representation or empirical sociology to the realm of philosophy, in which potentiality, power, and form-of-life are critical for understanding Agamben’s incitement to rethink political philosophy.

Patricia Owens (2009) is perhaps the most well known within Refugee Studies and International Relations to have directly addressed Agamben’s claims about the figure of the refugee. Her work requires some attention in order to define the stakes surrounding this figure.

Owens affirms the importance of understanding refugees along with a growing number of scholars (see Betts and Loescher 2010), and recognizes the impact that Agamben has had in this trend (e.g. Edkins 2000; Diken 2004; Jenkins 2004; Diken and Lausten 2005; Edkins and Pin-Fat 2005; Puggioni 2005; Nyers 2006). Indeed, “there are strong normative and analytical grounds for placing refugees and the study of forced migration at the centre of the study of world politics” (Owens 2009, 568). Owens takes issue, however, with Agamben’s discursive treatment of refugees, claiming that he “falls short” of the project. She writes: “This construction [of the figure of the refugee] takes the reduction of refugees to the level of ‘bare life’ too far,” and that ultimately, “the ‘abstract nakedness’ of human beings is – or should be seen as – *politically* irrelevant.” (569). Owens identifies a provocative incitement, but nonetheless insists that “we need
not accept all aspects of Agamben’s view of what happens when ‘life’ is placed at the centre of politics” (569).

Owens provides a skeleton sketch of Agamben’s famous reiteration of Aristotle’s division of “life” into two separate spheres: zoē and bios. Zoē is “life as it is rooted in nature and which we have in common with all living creatures,” and bios is “the ‘good life’ which since the Greeks has been understood as the political way of life” (569). Politics, according to this schema, is different than merely living, simply surviving, because of the human capacity for speech and praxis, according to Owens’ reading of Aristotle: “Politics and the human body, free action and labour, homo politicus and animal laborans have been distinguished from each other, and placed in different spatial locations and in the hierarchical ordering of human activities” (569). Noting that both Hannah Arendt and Agamben draw from this aspect of Aristotle’s work, and that Agamben borrows from Arendt quite heavily as well, Owens continues to lay out the ground she sees underneath Agamben’s discussion of the “figure of the refugee.” From Hobbes to Foucault, Owens traces the “inexorable trend toward the incorporation of life into more and more spheres of state practice” (570). Refugees, she notes, are particularly easy to see as objects of state power, “vehicles for the circulation of disciplinary and biopolitical power” (570), and managed populations.

Agamben’s originality, according to Owens, “resides in the claim that zoē – humans as animals without speech and political freedom – is re-included in politics when the state of exception is declared and materialised in the form of camps” (571-572, emphasis in the original). These sites, camps, are the locations in which “the exception to
the normal functioning of the law becomes the rule,” and “when a human (a refugee, an unlawful combatant) is excluded from the protection of the law...it is tantamount to including naked life within it” (572). Thus, “naked life is revealed as the underlying basis of sovereignty” (572). Homo Sacer is the figure from Roman law that represents this condition, because such an individual can be killed, but he cannot be sacrificed. Owens recognizes that “Agamben argues that growing numbers of people are vulnerable to this specific form of violence” (572).

In broad strokes, Owens understands Agamben’s work on Homo Sacer. Where she begins to articulate her distance from this line of argumentation, though, is in her discussion of refugee lip sewing, as discussed in Jenny Edkins and Véronique Pin-Fat’s (2005) article, “Through the Wire: Relations of Power and Relations of Violence.” Here, her objection is to the fact that sewing one’s lips closed as a form of resistance to sovereign power, to being detained in a camp, is reduced to an expression of bare life. In fact, such a form of resistance may “celebrate the life that sovereign power has sought to produce” (573):

In the case of refugees who protest their arbitrary and prolonged detention by sewing their lips and sometimes their eyes, they [Edkins and Pin-Fat 2005] write that, “the refugees’ sewn muteness, deafness and blindness shows that our bare life is, indeed, all we have left under sovereign power” (21). The complete embrace of bare life is the only way to unmask the violence of sovereignty and re-establish more open relations of power. Rather than a tragic act of defiance, refugee lip-sewing becomes an exemplary form of political resistance: an action that reveals a deeper meaning in the acceptance of bare life. On this view, humans

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44 Edkins and Pin-Fat are important early interpreters of Agamben’s then-recently translated Homo Sacer. They wrote several influential articles and chapters, and co-edited a collection, and were instrumental in popularizing Agamben in the field of International Relations, and others.
who are reduced to bare life in refugee camps should not seek reinstatement as political beings in the terms set out by sovereign power: that is, as citizens of their own polity. (573)

In her telling, bare or naked life becomes the desired terrain of politics. And rather than insisting upon their status as citizens, Owens describes Edkins and Pin-Fat as arguing that humans must accept their status as bare life and demand recognition as such. To claim citizenship would be to reinforce the power that produced human life as bare life to begin with. Indeed, “if we take Agamben’s claims seriously then it is difficult to imagine a global political order less free than the one we inhabit today” (574).

The picture that Owens paints of Agamben’s thought regarding *Homo Sacer* and the condition of refugees is, in a sense, *prima facie* correct. But her interpretation is blunted because she ignores some key distinctions in Agamben’s work between different kinds of power, namely that between sovereign power (state power), and potentiality (potency and impotency). Owens’ reliance upon Edkins and Pin-Fat’s work is part of this conceptual misunderstanding. Along with most of the early wave of English language engagement with Agamben’s work, she ignores his pre-*Homo Sacer* writing (e.g. de la Durantaye, 2009; Kishik, 2012; Watkin, 2014).

Agamben is first and foremost concerned with human potentiality, defined, perhaps paradoxically, through a complex discussion of human *impotentiality*. For Agamben, our ability to *not do* is as important than our ability to *do*. Capitalism and sovereign power are not especially insidious because they force us to *be* in one or several particular ways, but because they prevent us from opting out, from being impotential. So Owens’ reliance upon notions of “freedom,” while common in International Relations
and mainstream Political Science, misses the point that “freedom” is constructed in particular ways and that a kind of “metapolitics,” the ability to shape what freedom looks like to begin with, is what is really at stake. In addition to this point, Owens loads “bare life” with a normative repulsion that is not present in Agamben’s writing. This can be partly attributed to Agamben’s example of the Nazi death camp as the paradigmatic site for the production of bare life. It is understandable, then, that one could interpret bare life as being always already “bad.” But this would miss the ambivalence, or what William Watkin (2014) calls the “indifference,” of Agamben’s philosophical project. The example brings to the fore the most extreme aspects of bare life, that is certain. But Agamben’s challenge to us, repeated in much of his work, is to extrapolate such site-specific conditions to the world at large as the “hidden matrix and nomos of the political space in which we are still living” (Agamben 1998, 166).

The real point of contention is exposed when Owens juxtaposes Hannah Arendt to Agamben. She draws such a hard distinction between them that she asserts “Refugee Studies replaces her [Arendt] with Agamben at its peril” (576). From the historical specificity of Nazi camps to the well known position that Arendt took against the possibility of rights based on man’s humanity, Owens deploys Arendt to insist that “the human being qua human being in which our ‘nature and essence is the same for all’ [Arendt 1958, 8], is politically irrelevant” (576). Arendt shows us why a “human rights” is impossible by pointing to the experience of the Jews fleeing Nazi Germany, turned away from country after country because they did not belong to a recognized community, meaning a nation-state.
There are a few problems with Owens’ interpretation. First, she implies that Agamben is advocating for “human rights” because he insists that we understand our relation to bare life and find a politics adequate to our condition. Owens mobilizes the term “re-claim” as if Agamben normatively thinks bare life is some lost form of ideal politics. She completely misses the problem of immanence at work in Agamben’s thought. There are numerous ways that immanence is fundamental to Agamben’s thought, but there are two that are particularly relevant here. First, there is the way life is described as “a marker of a set of processual capacities or the pure divisibility of life as a caesura” (Watkin 2014, 188-189) which he describes in The Open (2004). In this way, life is the immanent set of processes that allows for a multiplicity of forms to be constructed “on top of” it. “Life” is thus the same in the camp and in the mall, and it is the institutions (and sovereign power’s operations) in each that shape that life – but in each case it is “bared” to power. Second, there is the immanence that renders causality indistinguishable. As Watkin (2014) describes, “Change in the political is due to ontological change which is due to change in the political. The two discursive realms, in other words, enter into indifferential indistinction” (185). Owens provides a progression: from political communities to refugees or stateless persons to camps to protest and finally back to political communities formed around such protest. For Agamben, though, political change is opened up as a problematic that has multiple entry and exit points because of the indistinguishability of life and politics. It is not a matter of “re-claiming” bare life, or for that matter properly political life in the Arendtian sense, but of recognizing the mutual implication of each in the other.
Second, she misses a crucial point of convergence between Agamben and Arendt: that for each bare life can serve as the basis of a new politics. Where she derides what she thinks is Agamben’s reduction to bare life of refugees, and the supposed futility of lip sewing, she stages Arendt as offering something different:

The violence exposed but also committed through lip-sewing can form the basis of a new politics if it is acted upon and talked about over and over again; if, in other words, bare life is repudiated and a new worldly community is formed around resistance to injustice: that is, when individuals begin to create a public space in-between them. (577-578)

In short, she is describing how a new worldliness can be produced around refugees and their constrained forms of political activism and protest. This is where it is crucial that Agamben’s philosophy be looked at beyond the Homo Sacer book, because Agamben fundamentally shares this opinion, as evidenced in his essay “Form-of-Life” (2000a) and in his book The Coming Community (1993).

Agamben’s concept of bare or naked life must not be separated from his concept of politics, which is based on the distinction between zoē and bios from Ancient Greek philosophy. He writes,

By the term form-of-life… I mean a life that can never be separated from its form, a life in which it is never possible to isolate something such as naked life. … A life that cannot be separated from its form is a life for which what is at stake in its way of living is living itself. What does this formulation mean? It defines a life – human life – in which the single ways, acts, and processes of living are never simply facts but always and above all possibilities of life, always and above all power. Each behavior and each form of human living is never prescribed by a specific biological vocation, nor is it assigned by whatever necessity; instead, no matter how customary, repeated, and socially compulsory, it always retains the character of a possibility; that is, it always puts at stake living itself. (Agamben, 2000a, 3-4)
Agamben is fundamentally concerned with the ways that *life* is always exceeded by a world, or in his language, a form. Owens holds up Arendt as a foil, missing the fact that they in fact agree: a ‘politics of life itself’ is not actually a meaningful politics. It is only when communities are articulated that a real politics emerges. However, where Arendt and Agamben begin to part ways is essentially over the question of the State.

Arendt comes to the conclusion that the State is necessary as a guarantor of rights in order to avoid the situation of Jewish refugees in the 1930s and 1940s. *Human rights* are not really rights, because there is no one – i.e. no State – to guarantee them. Agamben (2000) is, on the other hand, critical of the State:  

> A political life, that is, a life directed toward the idea of happiness and cohesive with a form-of-life, is thinkable only starting from the emancipation from such a division, with the irrevocable exodus from any sovereignty. The questions about the possibility of a nonstatist politics necessarily takes this form: Is today something like a form-of-life, a life for which living itself would be at stake in its own living, possible? Is today a *life of power* available? (8-9)

What is at stake here, then, is the question of possibility that comes with the inseparability of life and its form. It is abundantly clear that Agamben would, if he were to take a normative position, advocate for the proliferation of *whatever communities* made up of *whatever singularities* (1993). The State overdetermines such communities, though, interrupting the relation between life and power that is fundamental to form-of-life. Work is a similar kind of interruption – not because there can ever be a condition in which labor disappears entirely, but because *Work* is a social organization that enforces a relation wherein, once again, the relation between life and power is disrupted. Thus, a politics to come, for Agamben, is not organized around the figures of either worker or
citizen; instead, it is tied to the possibility of nonstatist politics, an ability to be other than worker or citizen.

Having addressed those interpretations of Agamben’s work that efface the larger concerns that inform his understanding of the figure of the refugee we can turn to the figure itself. There are five essential facets of the figure that will be addressed here: 1) the role of the figure in the making of worlds, 2) the problem of prefiguration, 3) the question of fulfillment (in relation to prefiguration), 4) the symbolic figure and its ability to “call forth” political action, and 5) the challenge of disfiguration.

In his extensive study of the development of the term figura, Erich Auerbach (1973) describes how the figure is essential for world making. He first traces the term from its roots in Greek and Latin thought, then through its deployment by the “Church Fathers,” and finally to contemporary literary interpretation. In the process, he unearths a variety of important aspects of figura.

In its earliest formulation, figura meant “plastic form” (11). As the term developed, it was sometimes used to describe “outward appearance” or “outline” (12). Auerbach points to the “inclination toward the universal, lawful, and exemplary” of figura, which distinguishes it from related terms in Greek, schêma or typos (15). Later, with Lucretius, we see a new importance on figura in a philosophical sense, running the gamut from “the plastic figure shaped by man” to the “purely geometric outline” (16). Significant for the present discussion is Lucretius’ use of figura in his materialist
philosophy, in which the term occupies a place similar to “atom” in the work of
Democritus and in Epicurean cosmology:

He calls the atoms *primordia, principia, corpuscula, elementa*, semina, and in a
very general sense, he also called them *corpora, quorum, conscursus motus ordo
positura figura* … (“bodies whose combination, motion, order, position, *figura*”) brings forth the things of the world. But though small, the atoms are material and
formed: they have infinitely diverse shapes; and so it comes about that he often
calls them “forms,” *figurae*, and that conversely one may often translate *figurae*,
as Diels has done, by “atoms.” The numerous atoms are in constant motion; they
move about in the void, combine and repel one another: a dance of figures. (17)

In other words, figures are the material that make worlds, that *bring forth the things of the world*.

The second facet to the figure is the problem of prefiguration. To grasp this,
Auerbach turns to “the Church Fathers” to trace a dramatic shift in *figura* in the Christian
world from its Latin history. *Figura* takes on an aspect of “prophetic annunciation” or
“prefiguration” (29). Again, the materiality of *figura* is foregrounded: “*figura* is
something real and historical which announces something else that is also real and
historical” (29). Before making the turn to interpretation, Auerbach is emphasizing that in
these early uses of *figura*, the term was used to signify the ways that experience or
existence cannot be reduced to metaphor or allegory. Crucial here is the role that
“fulfillment” plays in Christian thought, especially in the ways that it is juxtaposed to
*figura*:

Figural interpretation establishes a connection between two events or persons, the
first of which signifies not only itself but also the second, while the second
encompasses or fulfills the first. The two poles of the figure are separated in time,
but both, being real events or figures, are within time, within the stream of
historical life. Only the understandings of the two persons or events is a spiritual
act, but this spiritual act deals with concrete events whether past, present, or
future, and not with concepts or abstractions; these are quite secondary, since promise and fulfillment are real historical events, which have either happened in the incarnation of the Word, or will happen in the second coming. … Since in figural interpretation one thing stands for another, since one thing represents and signifies the other, figural interpretation is “allegorical” in the widest sense. But it differs from most of the allegorical forms known to us by the historicity both of the sign and what it signifies. Most of the allegories we find in literature or art represent a virtue (e.g. wisdom), or a passion (jealousy), an institution (justice), or at most a very general synthesis of historical phenomena (peace, the fatherland) – never a definite event in its full historicity. (53-54)

Figures are “the tentative form of something eternal and timeless” yet “they point to something which is in need of interpretation, which will indeed be fulfilled in the concrete future, but which is at all times present” (59).

Third, the question of fulfillment stems from Auerbach’s discussion of prefiguration. If figura prefigures something or someone as a sign in a text that declares that some state of affairs will come to pass, then fulfillment is the way in which the figure causes interpreters to seek out what has been prefigured. Figura, then, folds prefiguration and fulfillment into the same object, sign, or body, setting out a future possibility yet always opening onto the closure of fulfillment.

A fourth aspect of the figure is the symbolic figure and its ability to “call forth” political action. Alain Badiou (2012) asserts the importance of maintaining a “relationship with what exceeds our possibilities” in the form of an idea that “exists beyond the natural needs of the human animal” (41). That relationship takes the form of “symbolic representation,” or what he calls “a heroic figure” (42). Badiou’s formulation characteristically makes reference to the form of the infinite:
‘Figure,’ because the type of action that is at stake here is essentially a recognizable form. ‘Heroic,’ because heroism is properly the act of the infinite at work in human actions. (42)

He thus provides us with a few interesting aspects of the figure to pull into our discussion. First and foremost is the accretion of action, form, and excess into a symbolic representation: figures belong “to the world of the visible, to immediate, or sensible, symbolic representation” (51). Second, figures do not merely signify action but entail creative freedom: figures embody potentiality. And finally, there is a distinct need to “create new symbolic forms for our collective actions” (58); emphatically, we need new figures with which to think.

Maintaining a relationship with what exceeds current possibilities is central to any politics, where the actual and the possible always blend. From Hobbes’ figure of Leviathan, to the French Declaration of the Rights of Man and Citizen, to Marx’s worker, politics has consistently been figured in ways that capture this indistinction between actual and possible. In a sense, each figure is performative, declaring or calling forth a politics organized around a figure that exists in actual time and space: the sovereign, the citizen, the worker. Equally, though, each of these pre-figures the possibility of such a politics, because the writing and articulation of Leviathan, the Declaration, and the Communist Manifesto calls forth a movement that remain faithful to it only after its utterance.45

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45 Badiou would describe this as fidelity to the event.
Fifth and finally, there is the challenge of disfiguration. Bill Readings (1991) provides a concise summation of Lyotard’s notion of *figure* that is useful to recall in this context:

The figural is an unspeakable other necessarily *at work* within and against *discourse*, disrupting the rule of representation. It is not opposed to discourse, but is the point at which the oppositions by which discourse works are opened to a radical heterogeneity or *singularity*. As such, the figural is the resistant or irreconcilable trace of a space or time that is radically incommensurable with that of discursive meaning: variously evoked throughout Lyotard’s writing as the visible (figure/ground), the rhetorical (figural/literal), work, the Unconscious, the event, postmodern anachronism, the sublime affect or the thing. (xxxi-xxxii)

Discourse and figure are in relation, according to Lyotard, which he signifies by inserting a comma in his title, *Discourse, Figure*; discourse and figure are not in opposition to one another. Discourse “is the name given…to the process of *representation by concepts*” (Readings, 1991, 3). It organizes, defines, and limits, by imposing “a spatial arrangement upon objects which Lyotard calls ‘textual’, a virtual grid of oppositions” (3). This should sound similar to Saussure’s linguistics, as Lyotard does not fundamentally part with Saussure on this point. Thus, “the rule of discourse is thus the claim to order being as a structure of meanings, to identify existence with the representable establishment of the exclusive rule of a network of oppositions between concepts or signifiers” (4). Where Lyotard begins to part ways with Saussure, though, is his insistence upon the figural. The figural “opens discourse to a radical heterogeneity, a singularity, a difference which cannot be rationalized or subsumed within the rule of representation” (4).

Lyotard has some affinity with deconstruction, and therefore with the project of foregrounding difference and ethics as an explicit politics. The figure, for Lyotard, “is the
clash of incommensurable spaces of representation” (Readings, 1991, 88). Sharing ground with both Derrida and Agamben, Lyotard’s politics is less about government or decision while perhaps more akin to an ethics:

politics is at odds with the political as a realm of knowledge, of strategy and goals; it may appear more like an ethics. Not an ethics because of a focus on individual conscience; an ethics facing the question of judging how to act once one can no longer know in advance how to act.” (37)

Once again, we see how the figure escapes reduction to the representable, the knowable, the institutionalizable.

For Lyotard, figure is that which exceeds discourse’s ability to represent. As Judith H. Anderson and Joan Pong Linton (2011) state, “figure is inarticulate,” it is “sensed, rather, as a force that transgresses the operations of discourse to shape a text from within” (10). They go on to note, “poststructuralist theory has shown how the figure haunts diverse kinds of texts, finding applications beyond the fields of art, poetry, and music” (11). Briefly discussing Giorgio Agamben, they write that in his work, “the energetics of the figure resides as well, as a force that both establishes and destabilizes” (12). Anderson and Linton go on to describe a “figure of ethical resistance, the neuter (or neutral),” which “operates as tropic oscillations that shape texts from within, in ways that baffle the rules of (discursive and institutional) language games – games that have real, formative consequences” (12). Finally, the figure is material:

The figure is irreducibly substantive, material – itself a body or meaningfully comparable to a body. In one or more bodily senses, it is forcefully there. Like the traditional use of the human body to figure the body politic, such as the kingdom, republic, or state, or to figure a legal entity, or corporation (from the Latin corpus, “body”), the figure’s embodiment extends from rhetoric to social and cultural
institutions and from forms like these to the energies that shape, disrupt, and underlie them. (Anderson and Linton, 2011, 1-2)

The figure’s materiality is what draws it out of the realm of textuality, of literature, and into the realm of material politics.

As is clear, the figure is a multi-faceted term that conditions the formulation “the figure of the refugee” in complex ways. Figure is not simply the representation of a subject in media or discourse. It points to a beyond, an excess, that shapes and disrupts, molds and disfigures an established order. Figures contain their own energetics (Lash 2012), forming and deforming politics, policy, humanitarian aid, media coverage, and academic discourse.

The figure of the refugee, then, is something other than its representation. It prefigures a politics that is in excess of the nation-state and ultimately leaves it behind. It demonstrates the arbitrary binding of birth to status, and it opens onto a coming politics. Edward Said (1993) captures the energetics of the figure of the refugee in exactly these terms. He notes that the contemporary conditions shaping the world are producing ever more mobile bodies:

surely it is one of the unhappiest characteristics of the age to have produced more refugees, migrants, displaced persons, and exiles than ever before in history, most of them as an accompaniment to and, ironically enough, as afterthoughts of great post-colonial and imperial conflicts. As the struggle for independence produced new states and new boundaries, it also produced homeless wanderers, nomads, and vagrants, unassimilated to the emerging structures of institutional power, rejected by the established order for their intransigence and obdurate rebelliousness. And insofar as these people exist between the old and the new, between the old empire and the new state, their condition articulates the tensions,
irresolutions, and contradictions in the overlapping territories shown on the cultural map of imperialism.” (332)

In spirit with Agamben, Said recognizes that displacement and exile, while not conditions one would desire, are nonetheless packed with political potential. He claims that,

it is no exaggeration to say that liberation as an intellectual mission, born in the resistance and opposition to the confinements and ravages of imperialism, has now shifted from the settled, established, and domesticated dynamics of culture to its unhoused, decentered, and exilic energies, energies whose incarnation today is the migrant, and whose consciousness is that of the intellectual and artist in exile, the political figure between domains, between forms, between homes, and between languages. From this perspective then all things are indeed counter, original, spare, strange. … And while it would be the rankest Panglossian dishonesty to say that the bravura performances of the intellectual exile and the miseries of the displaced person or refugee are the same, it is possible, I think, to regard the intellectual as first distilling then articulating the predicaments that disfigure modernity – mass deportations, imprisonment, population transfer, collective dispossession, and forced immigrations.” (332-333)

In this new light, we can now begin to understand what Agamben (2000b) means when he urges us to consider that we recognize ourselves for the refugees that we are. Which would also be to suggest that the task remains of building a new political philosophy “starting from the one and only figure of the refugee.”
References


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Appendix A: USCIS Form I-589
START HERE - Type or print in black ink. See the instructions for information about eligibility and how to complete and file this application. There is NO filing fee for this application.

NOTE: Check this box if you also want to apply for withholding of removal under the Convention Against Torture.

<table>
<thead>
<tr>
<th>Part A.1. Information About You</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Alien Registration Number(s) (A-Number) (if any)</td>
<td>2. U.S. Social Security Number (if any)</td>
</tr>
<tr>
<td>3. Complete Last Name</td>
<td>4. First Name</td>
</tr>
</tbody>
</table>

6. What other names have you used (include maiden name and aliases)?

7. Residence in the U.S. (where you physically reside)

<table>
<thead>
<tr>
<th>Street Number and Name</th>
<th>Apt. Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>City</td>
<td>State</td>
</tr>
</tbody>
</table>

8. Mailing Address in the U.S. (if different than the address in item number 7)

<table>
<thead>
<tr>
<th>In Care Of (if applicable):</th>
<th>Telephone Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Street Number and Name</td>
<td>Apt. Number</td>
</tr>
<tr>
<td>City</td>
<td>State</td>
</tr>
</tbody>
</table>

9. Gender: ☐ Male ☐ Female

10. Marital Status: ☐ Single ☐ Married ☐ Divorced ☐ Widowed

11. Date of Birth (mm/dd/yyyy)

12. City and Country of Birth

13. Present Nationality (Citizenship)

14. Nationality at Birth

15. Race, Ethnic, or Tribal Group

16. Religion

17. Check the box, a through c, that applies:

a. ☐ I have never been in Immigration Court proceedings.

b. ☐ I am now in Immigration Court proceedings.

c. ☐ I am now in Immigration Court proceedings, but I have been in the past.

18. Complete 18 a through c.

a. When did you last leave your country? (mm/dd/yyyy)

b. What is your current I-94 Number, if any?

c. List each entry into the U.S. beginning with your most recent entry. List date (mm/dd/yyyy), place, and your status for each entry.

(Association sheets as needed.)

<table>
<thead>
<tr>
<th>Date</th>
<th>Place</th>
<th>Status</th>
<th>Date Status Expires</th>
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<tbody>
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</tbody>
</table>

19. What country issued your last passport or travel document?

20. Passport Number

21. Expiration Date (mm/dd/yyyy)

22. What is your native language (include dialect, if applicable)?

23. Are you fluent in English?

☐ Yes ☐ No

24. What other languages do you speak fluently?

For EOIR use only.

<table>
<thead>
<tr>
<th>Action:</th>
<th>Decision:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interview Date:</td>
<td>Approval Date:</td>
</tr>
<tr>
<td>Asylum Officer ID#:</td>
<td>Denial Date:</td>
</tr>
</tbody>
</table>

For USCIS use only.

| Referral Date: | |

Form I-589 (Rev 1/01/12) Y

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### Part A.II. Information About Your Spouse and Children

**Your spouse**
- I am not married. (Skip to Your Children below.)

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<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>1. Alien Registration Number (A-Number) (if any)</td>
<td>2. Passport/ID Card Number (if any)</td>
<td>3. Date of Birth (mm/dd/yyyy)</td>
<td>4. U.S. Social Security Number (if any)</td>
</tr>
<tr>
<td>5. Complete Last Name</td>
<td>6. First Name</td>
<td>7. Middle Name</td>
<td>8. Maiden Name</td>
</tr>
<tr>
<td>9. Date of Marriage (mm/dd/yyyy)</td>
<td>10. Place of Marriage</td>
<td>11. City and Country of Birth</td>
<td></td>
</tr>
</tbody>
</table>

**15. Is this person in the U.S.?**
- Yes (Complete Blocks 16 to 24.)
- No (Specify location:)

**16. Place of last entry into the U.S.**
- 17. Date of last entry into the U.S. (mm/dd/yyyy)

**18. I-94 Number (if any)**

**19. Status when last admitted (Visa type, if any)**

**20. What is your spouse’s current status?**

**21. What is the expiration date of his/her authorized stay, if any? (mm/dd/yyyy)**

**22. Is your spouse in Immigration Court proceedings?**
- Yes
- No

**23. If previously in the U.S., date of previous arrival (mm/dd/yyyy)**

**24. In the U.S., is your spouse to be included in this application?** (Check the appropriate box.)
- Yes
- No

**Your Children. List all of your children, regardless of age, location, or marital status.**
- I do not have any children. (Skip to Part A.III., Information about your background.)
- I have children. Total number of children: ____________

**(NOTE): Use Form I-589 Supplement A or attach additional sheets of paper and documentation if you have more than four children.**

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<tbody>
<tr>
<td>5. Complete Last Name</td>
<td>6. First Name</td>
<td>7. Middle Name</td>
<td>8. Date of Birth (mm/dd/yyyy)</td>
</tr>
</tbody>
</table>

**13. Is this child in the U.S.?**
- Yes (Complete Blocks 14 to 21.)
- No (Specify location:)

**14. Place of last entry into the U.S.**
- 15. Date of last entry into the U.S. (mm/dd/yyyy)

**16. I-94 Number (if any)**

**17. Status when last admitted (Visa type, if any)**

**18. What is your child’s current status?**

**19. What is the expiration date of his/her authorized stay, if any? (mm/dd/yyyy)**

**20. Is your child in Immigration Court proceedings?**
- Yes
- No

**21. In the U.S., is this child to be included in this application?** (Check the appropriate box.)
- Yes
- No

*Form I-589 (Rev. 11/01/12) Y Page 2*
### Part A.II. Information About Your Spouse and Children (Continued)

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<tbody>
<tr>
<td>5. Complete Last Name</td>
<td>6. First Name</td>
<td>7. Middle Name</td>
<td>8. Date of Birth (mm/dd/yyyy)</td>
<td></td>
</tr>
<tr>
<td>13. Is this child in the U.S.?</td>
<td>Yes (Complete Blocks 14 to 21.)</td>
<td>No (Specify location)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>14. Place of last entry into the U.S.</td>
<td>15. Date of last entry into the U.S. (mm/dd/yyyy)</td>
<td>16. L-94 Number (if any)</td>
<td>17. Status when last admitted (Visa type, if any)</td>
<td></td>
</tr>
<tr>
<td>18. What is the child's current status?</td>
<td>19. What is the expiration date of his/her authorized stay, if any? (mm/dd/yyyy)</td>
<td>20. Is your child in Immigration Court proceedings?</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>21. If in the U.S., is this child to be included in this application?</td>
<td>(Check the appropriate box.)</td>
<td>Yes (Attach one photograph of your spouse in the upper right corner of Page 9 of the extra copy of the application submitted for this person.)</td>
<td>No</td>
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</tr>
</tbody>
</table>

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**Form I-589 (Rev. 11/01/12)**
### Part A.III. Information About Your Background

1. List your last address where you lived before coming to the United States. If this is not the country where you fear persecution, also list the last address in the country where you fear persecution. *(List Address, City/Town, Department, Province, or State and Country.)*

   (NOTE: Use Form I-589 Supplement B, or additional sheets of paper, if necessary.)

<table>
<thead>
<tr>
<th>Number and Street</th>
<th>City/Town</th>
<th>Department, Province, or State</th>
<th>Country</th>
<th>From (Mo/Yr)</th>
<th>To (Mo/Yr)</th>
</tr>
</thead>
<tbody>
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</table>

2. Provide the following information about your residences during the past 5 years. List your present address first.

   (NOTE: Use Form I-589 Supplement B, or additional sheets of paper, if necessary.)

<table>
<thead>
<tr>
<th>Number and Street</th>
<th>City/Town</th>
<th>Department, Province, or State</th>
<th>Country</th>
<th>From (Mo/Yr)</th>
<th>To (Mo/Yr)</th>
</tr>
</thead>
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</table>

3. Provide the following information about your education, beginning with the most recent.

   (NOTE: Use Form I-589 Supplement B, or additional sheets of paper, if necessary.)

<table>
<thead>
<tr>
<th>Name of School</th>
<th>Type of School</th>
<th>Location (Address)</th>
<th>Attended From (Mo/Yr)</th>
<th>To (Mo/Yr)</th>
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</table>

4. Provide the following information about your employment during the past 5 years. List your present employment first.

   (NOTE: Use Form I-589 Supplement B, or additional sheets of paper, if necessary.)

<table>
<thead>
<tr>
<th>Name and Address of Employer</th>
<th>Your Occupation</th>
<th>Dates From (Mo/Yr)</th>
<th>To (Mo/Yr)</th>
</tr>
</thead>
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</table>

5. Provide the following information about your parents and siblings (brothers and sisters). Check the box if the person is deceased.

   (NOTE: Use Form I-589 Supplement B, or additional sheets of paper, if necessary.)

<table>
<thead>
<tr>
<th>Full Name</th>
<th>City/Town and Country of Birth</th>
<th>Current Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mother</td>
<td></td>
<td>□ Deceased</td>
</tr>
<tr>
<td>Father</td>
<td></td>
<td>□ Deceased</td>
</tr>
<tr>
<td>Sibling</td>
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<td>□ Deceased</td>
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<tr>
<td>Sibling</td>
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<td>□ Deceased</td>
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<tr>
<td>Sibling</td>
<td></td>
<td>□ Deceased</td>
</tr>
<tr>
<td>Sibling</td>
<td></td>
<td>□ Deceased</td>
</tr>
</tbody>
</table>

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Form I-589 (Rev 11/01/12) Y Page 4
Part B. Information About Your Application

( NOTE: Use Form I-589 Supplement B, or attach additional sheets of paper as needed to complete your responses to the questions contained in Part B.)

When answering the following questions about your asylum or other protection claim (withholding of removal under 241(b)(3) of the INA or withholding of removal under the Convention Against Torture), you must provide a detailed and specific account of the basis of your claim to asylum or other protection. To the best of your ability, provide specific dates, places, and descriptions about each event or action described. You must attach documents evidencing the general conditions in the country from which you are seeking asylum or other protection and the specific facts on which you are relying to support your claim. If this documentation is unavailable or you are not providing this documentation with your application, explain why in your responses to the following questions.


1. Why are you applying for asylum or withholding of removal under section 241(b)(3) of the INA, or for withholding of removal under the Convention Against Torture? Check the appropriate box(es) below and then provide detailed answers to questions A and B below.

I am seeking asylum or withholding of removal based on:

☐ Race
☐ Religion
☐ Nationality
☐ Political opinion
☐ Membership in a particular social group
☐ Torture Convention

A. Have you, your family, or close friends or colleagues ever experienced harm or mistreatment or threats in the past by anyone?

☐ No ☐ Yes

If "Yes," explain in detail:
1. What happened;
2. When the harm or mistreatment or threats occurred;
3. Who caused the harm or mistreatment or threats; and
4. Why you believe the harm or mistreatment or threats occurred.

B. Do you fear harm or mistreatment if you return to your home country?

☐ No ☐ Yes

If "Yes," explain in detail:
1. What harm or mistreatment you fear;
2. Who you believe would harm or mistreat you; and
3. Why you believe you would or could be harmed or mistreated.
Part B. Information About Your Application (Continued)

2. Have you or your family members ever been accused, charged, arrested, detained, interrogated, convicted and sentenced, or imprisoned in any country other than the United States?

☐ No  ☐ Yes

If "Yes," explain the circumstances and reasons for the action.


3.A. Have you or your family members ever belonged to or been associated with any organizations or groups in your home country, such as, but not limited to, a political party, student group, labor union, religious organization, military or paramilitary group, civil patrol, guerrilla organization, ethnic group, human rights group, or the press or media?

☐ No  ☐ Yes

If "Yes," describe for each person the level of participation, any leadership or other positions held, and the length of time you or your family members were involved in each organization or activity.


3.B. Do you or your family members continue to participate in any way in these organizations or groups?

☐ No  ☐ Yes

If "Yes," describe for each person your or your family members' current level of participation, any leadership or other positions currently held, and the length of time you or your family members have been involved in each organization or group.


4. Are you afraid of being subjected to torture in your home country or any other country to which you may be returned?

☐ No  ☐ Yes

If "Yes," explain why you are afraid and describe the nature of torture you fear, by whom, and why it would be inflicted.
1. Have you, your spouse, your child(ren), your parents or your siblings ever applied to the U.S. Government for refugee status, asylum, or withholding of removal?
   - [ ] No
   - [ ] Yes

   If "Yes," explain the decision and what happened to any status you, your spouse, your child(ren), your parents, or your siblings received as a result of that decision. Indicate whether or not you were included in a parent or spouse's application. If so, include your parent or spouse's A-number in your response. If you have been denied asylum by an immigration judge or the Board of Immigration Appeals, describe any change(s) in conditions in your country or your own personal circumstances since the date of the denial that may affect your eligibility for asylum.

2.A. After leaving the country from which you are claiming asylum, did you or your spouse or child(ren) who are now in the United States travel through or reside in any other country before entering the United States?
   - [ ] No
   - [ ] Yes

2.B. Have you, your spouse, your child(ren), or other family members, such as your parents or siblings, ever applied for or received any lawful status in any country other than the one from which you are now claiming asylum?
   - [ ] No
   - [ ] Yes

   If "Yes" to either or both questions 2A and/or 2B, provide for each person the following: the name of each country and the length of stay, the person's status while there, the reasons for leaving, whether or not the person is entitled to return for lawful residence purposes, and whether the person applied for refugee status or for asylum while there, and if not, why he or she did not do so.

3. Have you, your spouse or your child(ren) ever ordered, incited, assisted or otherwise participated in causing harm or suffering to any person because of his or her race, religion, nationality, membership in a particular social group or belief in a particular political opinion?
   - [ ] No
   - [ ] Yes

   If "Yes," describe in detail each such incident and your own, your spouse's, or your child(ren)'s involvement.
### Part C. Additional Information About Your Application (Continued)

4. After you left the country where you were harmed or fear harm, did you return to that country?
   - [ ] No
   - [ ] Yes

   If "Yes," describe in detail the circumstances of your visit(s) (for example, the date(s) of the trip(s), the purpose(s) of the trip(s), and the length of time you remained in that country for the visit(s)).

5. Are you filing this application more than 1 year after your last arrival in the United States?
   - [ ] No
   - [ ] Yes

   If "Yes," explain why you did not file within the first year after you arrived. You must be prepared to explain at your interview or hearing why you did not file your asylum application within the first year after you arrived. For guidance in answering this question, see Instructions, Part I: Filing Instructions, Section V. "Completing the form," Part C.

6. Have you or any member of your family included in the application ever committed any crime and/or been arrested, charged, convicted, or sentenced for any crime in the United States?
   - [ ] No
   - [ ] Yes

   If "Yes," for each instance, specify in your response: what occurred and the circumstances, dates, length of sentence received, location, the duration of the detention or imprisonment, reason(s) for the detention or conviction, any formal charges that were lodged against you or your relatives included in your application, and the reason(s) for release. Attach documents referring to these incidents, if they are available, or an explanation of why documents are not available.
Part D. Your Signature

I certify, under penalty of perjury under the laws of the United States of America, that this application and the evidence submitted with it are true and correct. Title 18, United States Code, Section 1546(a), provides in part: Whoever knowingly makes under oath, or as permitted under penalty of perjury under Section 1746 of Title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document containing any such false statement or which fails to contain any reasonable basis in law or fact - shall be fined in accordance with this title or imprisoned for up to 25 years. I authorize the release of any information from my immigration record that U.S. Citizenship and Immigration Services (USCIS) needs to determine eligibility for the benefit I am seeking.

WARNING: Applicants who are in the United States illegally are subject to removal if their asylum or withholding claims are not granted by an asylum officer or an immigration judge. Any information provided in completing this application may be used as a basis for the institution of, or as evidence in, removal proceedings even if the application is later withdrawn. Applicants determined to have knowingly made a frivolous application for asylum will be permanently ineligible for any benefits under the Immigration and Nationality Act. You may not avoid a frivolous finding simply because someone advised you to provide false information in your asylum application. If filing with USCIS, an unexcused failure to appear for an appointment to provide biometrics (such as fingerprints) and your biographical information within the time allowed may result in an asylum officer dismissing your asylum application or referring it to an immigration judge. Failure without good cause to provide DHS with biometrics or other biographical information while in removal proceedings may result in your application being found abandoned by the immigration judge. See sections 208(d)(5)(A) and 208(d)(6) of the INA and 8 CFR sections 208.10, 1208.10, 208.26, 1003.47(d) and 1208.20.

Print your complete name. Write your name in your native alphabet.

Did your spouse, parent, or child(ren) assist you in completing this application? □ No □ Yes (If "Yes," list the name and relationship.)

(Name) (Relationship) (Name) (Relationship)

Did someone other than your spouse, parent, or child(ren) prepare this application? □ No □ Yes (If "Yes," complete Part E.)

Asylum applicants may be represented by counsel. Have you been provided with a list of persons who may be available to assist you, at little or no cost, with your asylum claim?

Signature of Applicant (The person in Part D.)

[Signature]

Sign your name so it all appears within the brackets

Date (mm/dd/yyyy)

Part E. Declaration of Person Preparing Form, if Other Than Applicant, Spouse, Parent, or Child

I declare that I have prepared this application at the request of the person named in Part D, that the information provided are based on all information of which I have knowledge, or which was provided to me by the applicant, and that the completed application was read to the applicant in his or her native language or a language he or she understands for verification before he or she signed the application in my presence. I am aware that the knowing placement of false information on the Form I-589 may also subject me to civil penalties under 8 U.S.C. 1324c and/or criminal penalties under 18 U.S.C. 1546(a).

Signature of Preparer

Print Complete Name of Preparer

Daytime Telephone Number ( )

Address of Preparer: Street Number and Name

Apt. Number City State Zip Code

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Part F. To Be Completed at Asylum Interview, if Applicable

NOTE: You will be asked to complete this part when you appear for examination before an asylum officer of the Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS).

I swear (affirm) that I know the contents of this application that I am signing, including the attached documents and supplements, that they are □ all true or □ not all true to the best of my knowledge and that correction(s) numbered ____ to ____ were made by me or at my request. Furthermore, I am aware that if I am determined to have knowingly made a frivolous application for asylum I will be permanently ineligible for any benefits under the Immigration and Nationality Act, and that I may not avoid a frivolous finding simply because someone advised me to provide false information in my asylum application.

Signed and sworn to me by the above named applicant on:

__________________________          __________________________
Signature of Applicant                 Date (mm/dd/yyyy)

__________________________
Write Your Name in Your Native Alphabet

__________________________
Signature of Asylum Officer

Part G. To Be Completed at Removal Hearing, if Applicable

NOTE: You will be asked to complete this Part when you appear before an immigration judge of the U.S. Department of Justice, Executive Office for Immigration Review (EOIR), for a hearing.

I swear (affirm) that I know the contents of this application that I am signing, including the attached documents and supplements, that they are □ all true or □ not all true to the best of my knowledge and that correction(s) numbered ____ to ____ were made by me or at my request. Furthermore, I am aware that if I am determined to have knowingly made a frivolous application for asylum I will be permanently ineligible for any benefits under the Immigration and Nationality Act, and that I may not avoid a frivolous finding simply because someone advised me to provide false information in my asylum application.

Signed and sworn to me by the above named applicant on:

__________________________          __________________________
Signature of Applicant                 Date (mm/dd/yyyy)

__________________________
Write Your Name in Your Native Alphabet

__________________________
Signature of Immigration Judge
# Supplement A, Form I-589

<table>
<thead>
<tr>
<th>A-Number (If available)</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applicant's Name</td>
<td>Applicant's Signature</td>
</tr>
</tbody>
</table>

## List All of Your Children, Regardless of Age or Marital Status

*(NOTE: Use this form and attach additional pages and documentation as needed if you have more than four children)*

<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>5. Complete Last Name</td>
<td>6. First Name</td>
<td>7. Middle Name</td>
<td>8. Date of Birth (mm/dd/yyyy)</td>
</tr>
</tbody>
</table>
  Male  Female |

13. Is this child in the U.S.?  Yes  No  
(Specify location):  

14. Place of last entry into the U.S.  
15. Date of last entry into the U.S. (mm/dd/yyyy)  
16. I-94 Number (if any)  
17. Status when last admitted (Visa type, if any)  
18. What is your child's current status?  
19. What is the expiration date of your child's authorized stay, if any? (mm/dd/yyyy)  
20. Is your child in Immigration Court proceedings?  Yes  No  
21. If in the U.S., is this child to be included in this application? (Check the appropriate box.)  Yes  No  
(Attach one photograph of your spouse in the upper right corner of Page 9 on the extra copy of the application submitted for this person.)

<table>
<thead>
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</tbody>
</table>
  Male  Female |

13. Is this child in the U.S.?  Yes  No  
(Specify location):  

14. Place of last entry into the U.S.  
15. Date of last entry into the U.S. (mm/dd/yyyy)  
16. I-94 Number (if any)  
17. Status when last admitted (Visa type, if any)  
18. What is your child's current status?  
19. What is the expiration date of your child's authorized stay, if any? (mm/dd/yyyy)  
20. Is your child in Immigration Court proceedings?  Yes  No  
21. If in the U.S., is this child to be included in this application? (Check the appropriate box.)  Yes  No  
(Attach one photograph of your spouse in the upper right corner of Page 9 on the extra copy of the application submitted for this person.)

---

Form I-589 Supplement A (Rev. 11/01/12) Y
### Additional Information About Your Claim to Asylum

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<td>Applicant's Signature</td>
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**NOTE:** Use this as a continuation page for any additional information requested. Copy and complete as needed.

Part

Question