

Distribution Agreement

In presenting this thesis or dissertation as a partial fulfillment of the requirements for an advanced degree from Emory University, I hereby grant Emory University and its agents the non-exclusive license to archive, make accessible, and display my thesis or dissertation in whole or in part in all forms of media, now or hereafter known, including display on the world wide web. I understand that I may select some access restrictions as part of the online submission of the thesis or dissertation. I retain all ownership rights to the copyright of the thesis or dissertation. I also retain the right to use in future works (such as articles or books) all or part of this thesis or dissertation.

Signature:

Bryan Matthew Ellrod

Date

Can These Bones Live?
Christian Ethics and a Politics of Responsibility for the U.S.-Mexico Borderlands

By

Bryan Matthew Ellrod
Doctor of Philosophy

Graduate Division of Religion
Ethics & Society

Timothy P. Jackson, Ph.D.
Advisor

Ted A. Smith, Ph.D.
Advisor

Vincent Lloyd, Ph.D.
Committee Member

Ellen Ott Marshall, Ph.D.
Committee Member

Accepted:

Lisa A. Tedesco, Ph.D.
Dean of the James T. Laney School of Graduate Studies

Can These Bones Live?
Christian Ethics and a Politics of Responsibility for the U.S.-Mexico Borderlands

By

Bryan Matthew Ellrod
Th.M., Candler School of Theology of Emory University, 2015
M.Div., Candler School of Theology of Emory University, 2014
B.A., Florida Southern College, 2011

Advisors: Timothy P. Jackson, Ph.D. & Ted A. Smith, Ph.D.

An abstract of
a dissertation submitted to the Faculty of the
James T. Laney School of Graduate Studies of Emory University
in partial fulfillment of the requirements for the degree of
Doctor of Philosophy
in Graduate Division of Religion
Ethics & Society
2021

Abstract

Can These Bones Live?

Christian Ethics and a Politics of Responsibility for the U.S.-Mexico Borderlands

By Bryan Matthew Ellrod

In 1994, the United States implemented an enforcement strategy for the southwestern border that weaponized the landscape against migrants. The strategy, premised on a logic of “prevention through deterrence,” wagered that if the cost of crossing were raised to an unbearable degree, illicit entries could be prevented by deterring migrants ever from undertaking the journey. The strategy’s efficacy in preventing surreptitious crossings remains uncertain. What cannot be doubted is its effectiveness in producing and reproducing migrant death. Over the last twenty-five years, thousands of human remains, many of them little more than disarticulated bones, have been recovered from the Sonoran Desert.

Political rhetoric and federal policy documents typically portray southwestern border enforcement as an indispensable effort for maintaining territorial integrity, upholding the rule of law, and safeguarding the politics of self-determination. However, fragmented bones in the dust of desert valleys bear witness to the contradictions proliferated by the present strategy’s material prosecution. Rendering the Sonoran a technology of state confounds the distinction between city and wilderness. Relying on its lethal potentials to halt migrants’ advances preserves the rule of law with nature’s anarchic violence. Adding lines to a burgeoning ledger of the dead reveals self-determination’s vicious potential to lapse into other-termination.

The present analysis begins by attending to the witness that the dead bear against the American project of self-determination, reading against it the contradictions written on their bones. Escaping these contradictions’ deadly consequences, I contend, requires an account of political subjectivity that does not premise political liberty on freedom from the outsider’s demand. To this end, I offer a political theological reading of the Parable of the Samaritan (Luke 10:25-37) that eschews the self-determining political subject for one constituted by its approval of the other’s demand. Such a subject resists self-determination’s fratricidal potentials by resituating the law it posits within the encounter with the stranger, such that her life becomes that good which at once delimits and re-orientes the law, bounding its injunctions and giving them new meaning. Elevating this aspect of the oft-cited parable proposes how Christian ethics may yet spur a politics responsible to the U.S. borderlands.

Can These Bones Live?
Christian Ethics and a Politics of Responsibility for the U.S.-Mexico Borderlands

By

Bryan Matthew Ellrod
Th.M., Candler School of Theology of Emory University, 2015
M.Div., Candler School of Theology of Emory University, 2014
B.A., Florida Southern College, 2011

Advisors: Timothy P. Jackson, Ph.D. & Ted A. Smith, Ph.D.

A dissertation submitted to the Faculty of the
James T. Laney School of Graduate Studies of Emory University
in partial fulfillment of the requirements for the degree of
Doctor of Philosophy
in Graduate Division of Religion
Ethics & Society
2021

Acknowledgments

I owe a debt of gratitude to my directors, Dr. Timothy P. Jackson and Dr. Ted A. Smith, who walked with me the winding road from prospectus to dissertation. Dr. Smith's direction was indispensable in my efforts to articulate an eschatologically inflected ethics attentive to the difficult truth that the Reign of God is both "now" and "not yet" upon us. All the while, Dr. Jackson challenged me to consider what this ethical approach might have to say to long-standing arguments about the validity of bordered polities and *agape*'s potential significance therein. I also want to thank Dr. Ellen Ott Marshall for helping me to appreciate the complex and often constrained nature of human agency, as well as the resonances between my work and the feminist ethics of care. Throughout the writing process, Dr. Vincent Lloyd also offered challenging and generative questions about the nature of law, the problem of supersessionism, and the affective dimensions of the study's rhetoric. The committee's recommendations and questions helped me to untangle and to follow through the threads that constitute this dissertation. Whatever heights of insight it may have reached would have been impossible without them.

I am also deeply grateful to the faculty and my fellow students in the Graduate Division of Religion's Ethics and Society course of study. In seminars with Dr. Liz Bounds I learned better to appreciate the complex ways in which power operates within a society. Seminars with Dr. Pam Hall equipped me to rethink the shape that virtue might take in contexts of deep social disruption. Both within and beyond these seminars, I have been fortunate to share regular conversations with a group of rising scholars who challenged my assumptions and expanded my intellectual horizons. Silas Allard, Emmy Corey, Cara Curtis, Jared Jones, Shari Madkins, Dr. Joi Orr, Nicole Symmonds, Dr. Michael Yandell, and Nelly Wamaitha have been generous with their friendship and with their thoughts.

Finally, I am thankful to my mother and father, Louise and Matthew, who supported the pursuit of one degree after another. To the best of my knowledge, they never publicly questioned my sanity. The good humor of my brothers, Stephen and Tim, helped to keep things in perspective and to keep me moving. Finally, I owe a special debt of gratitude to my wife, Courtney, who not only suffered my incoherent ramblings, but bolstered my faith in the value of my pursuits, even in the moments that my own faith was worn thread bare.

I owe a great many thanks to a great many people, who supported me through the completion of this study. This number includes those who had a direct hand in the project's development. However, it also includes the family, friends, and teachers, who stoked the curiosities and passions of an at-first stubborn and reluctant student, who, otherwise, might never have attempted the undertaking in the first place. My debts are too many to name. Therefore, I hope these brief thanks would be received as a promissory note rather than a final word. To anyone I have missed, I will be happy to remedy the omission over a glass of strong coffee – or perhaps something stronger.

Table of Contents

Preface	1
Introduction	4
An Aside on Method: The Remembrance of Dismembered Bodies	36
Chapter One: Self-Determination & the Problem of Beginnings	42
Chapter Two: The Theater of Alienation	66
Chapter Three: The Witness of Fragments	96
Chapter Four: The Samaritan's Virtue	112
Chapter Five: Samaritans in the Sonoran	134
Bibliography	160

Preface

It is the second day of November. The dead are making their way to visit their family members among the living. The living anticipate the dead's arrival with eager expectancy. These living family members do not practice a cult of death. Nor do they expect supernatural intercession from the dead. They expect a warm visit with their loved ones, and they have taken up the responsibility of welcoming them.¹ The living have constructed ofrendas for them. The little, brightly-colored memorials are adorned with their images and stocked with the foods and drinks they enjoyed in life.

Parents, siblings, and children who have passed through death's door have not passed from the community.

It is the second day of November. A small bus carries me from Phoenix to Tucson. Night still blankets the road, but the sun will have broken the horizon, and the dead will be walking the streets when I arrive. Fighting jetlag and the cognitive blur left by a sleepless night, I will struggle to

¹ See Shawn D. Haley & Curt Fukuda, *Day of the Dead: When Two Worlds Meet in Oaxaca* (New York: Berghahn Books, 2014), 136-138.

pick them out from the living. The dead will have put on the living's clothing, just as the living will have painted themselves with the dead's bones. Together, they will process through the city's streets. The dead will take on a second life as they animate the throng. The living's response will make their presence felt. By their remembrance, the living will welcome the dead back into the *polis*.

It is the second day of November. The sky is still a canopy of stars. As the hum of the highway tempts me to sleep, I peer out into the Sonoran Desert. Somewhere, to the southwest, tired legs are pressing north. Impelled by desperation and longing, they ache to cross over a forbidding boundary. Whether they will pass through America's guarded gate or death's gaping maw remains undecided. An array of powers has conspired to press them into a wilderness turned deadly technology of state. In the valleys are dry bones. Critics estimate that the desert swallows five bodies every four days.² Thousands of skeletal remains recovered by volunteers and hikers bear witness that many who hoped to cross the United States' territorial threshold have crossed death's instead.

It is El Dia de Muertos. Those who have passed through death's door have not passed from the company of the living. I do not know if I believe in ghosts, but I believe in haunting. The dead are present among the living.

There are dead who linger somewhere between oblivion and resurrection. They call the living to remembrance and prayer. They make a claim upon the living. What must we make of the *polis*

² See Miguel A De La Torre, *Embracing Hopelessness* (Minneapolis: Fortress Press, 2017), 129.

if we allow the dead to walk its streets? What must it mean to commit ourselves to the cause of resurrection? Son of Man, can these bones live?

Thousands of human remains lie abandoned in the Sonoran Desert. Thousands more will join them if the dead's witness is banished from the *polis*. Son of man, can these bones live?

Introduction

He led me around them; there were very many lying in the valley, and they were very dry. He said to me, “Son of man, can these bones live?” I answered, “O Lord God, you know.”

--Ezekiel 37:2-3 (Revised Standard Version)

1. The Bones in the Valleys

There are bones in the valleys. There are thousands of them. For all its beauty, the Sonoran Desert is an extreme environment. It stretches north, from Sonora, Mexico, into Arizona, and west into California, spanning roughly 100,000 square miles. In the northern desert, rugged mountain ranges carve the landscape into a maze of jagged peaks and sweltering valleys. Migrants crossing from Mexico into the United States face the challenge of navigating this maze. Most make their ways through the valleys.¹ Here, daytime temperatures regularly exceed 100 ° F and soar as high as 118 ° F.² At night, the temperatures plunge toward freezing, replacing the dangers of dehydration and heatstroke with the risk of hypothermia. Water is scarce in this parched landscape. Some years see no more than three inches of rain. The desert’s flora and fauna have adapted to this arid setting,

¹ In recent years, the Growler Valley, in western Arizona, has become one of the most heavily travelled routes. It is also one of the deadliest. (See Arizona OpenGIS Initiative for Deceased Migrants, “Custom Map of Migrant Mortality,” Humane Borders, <https://humaneborders.info/app/map.asp> (accessed June 11, 2020))

² See Sonoran Desert Inventory & Monitoring Network, “Sonoran Desert Network Ecosystems,” National Park Service, <https://www.nps.gov/im/sodn/ecosystems.htm#:~:text=Sonoran%20Desert%20Network%20Biomes&text=the%20Sonoran%20Desert-,%20The%20Sonoran%20Desert%20is%20thought%20to%20have%20the%20greatest%20species,in%20National%20Park%20Service%20units.> (accessed July 27, 2020)

but they are indifferent to human needs. Saguaros, ironwoods, and acacias offer little shelter from the sun's beating rays. Coyotes, vultures, and flies are not picky about the remains they consume.

In the opening lines of *The Devil's Highway*, Luis Alberto Urrea describes in terrible detail the environment's effects on migrants' bodies:

Five men stumbled out of the mountain pass so sunstruck they didn't know their own names, couldn't remember where they'd come from, had forgotten how long they'd been lost. [...] They were burned nearly black, their lips huge and cracking, what paltry drool still available to them spuming from their mouths in a salty foam as they walked. Their eyes were cloudy with dust, almost too dry to blink up a tear. Their hair was hard and stiffened by old sweat, standing in crowns from their scalps, old sweat because their bodies were no longer sweating. They were drunk from having their brains baked in the pan, they were seeing God and devils, and they were dizzy from drinking their own urine, the poisons clogging their systems.³

Urrea's book recounts the true story of a group of five migrants intercepted by an agent of the border patrol near its Wellton Station on May 24, 2001. They were surviving members of a group of twenty-six men and boys, who had crossed over from Mexico five days earlier. By the end of the fifth day, only twelve remained among the living. The Sonoran claimed fourteen as its share. At the time, the story of the "Wellton 26" caught national attention. Appearing in the *New York Times* and *Washington Post*, it shed light on a grizzly reality that Americans living in the interior typically preferred to ignore.

The fate that befell the Wellton 26 was not anomalous. The group was discovered in the Growler Valley, a pass between the Growler Mountains and the Granite Mountains in Arizona's southwestern desert. Since 1993, the Pima County Medical Examiner's office has recovered

³ Luis Alberto Urrea, *The Devil's Highway: A True Story* (New York: Little, Brown and Company, 2004), 3. The details in Urrea's book, which is dedicated "to the dead and to those who rescue the living," are not the fruit of a novelist's sensationalizing eloquence. Rather, they are the result of interviews, travel, and extensive study of U.S. and Mexican government reports. They are an endeavor to capture the horrific extremes to which law enforcement and the landscape conspire to send the bodies of the excluded.

nearly 3,300 human remains from the Sonoran, with a sizable proportion coming from this region.⁴ By the time of their discovery, most of these remains are little more than disarticulated bones, more than a third of them too deteriorated to be identified. These remains represent only a fraction of the lives—parents, siblings, children, friends, lovers—consigned to the dust. The United States Border Patrol reports having recovered between 6,000 and 8,000 human remains from the desert. Critics suggest that this number may still undercount the total tally by as much as 43 percent.⁵ In 2008, Robin Hoover, a founder of the humanitarian aid organization Humane Borders, estimated that between five and six hundred migrants were dying *each year*.⁶ More recently, in 2015, reporters from the *New York Times* offered a similar estimate, wagering that five migrants were dying every four days.⁷ An exact tally cannot be determined. Just as the forbidding environment resists crossing, it also resists the efforts of those who would retrieve the bodies it claims. The remains discovered gesture to others lying in unvisited desolation – sojourners slain in lonely anonymity. God alone knows these unfortunate souls.

Although the word may come naturally to a writer from the American interior like myself, it is a conceit to call those who perish in the Sonoran “unfortunate.” Those who know the southwestern borderlands will quickly (and rightly) contest the use of such a term. The Wellton 26 and the thousands of others claimed by the desert did not come to be there by accident. In 1994, seeking to impose the rule of law on an unruly border, the Clinton Administration instituted a

⁴ Arizona OpenGIS Initiative for Deceased Migrants, “Custom Map of Migrant Mortality.”

⁵ La Coalición de Derechos Humanos & No More Deaths, “Introduction,” *The Disappeared Report, No More Deaths* <http://www.thedisappearedreport.org/> (accessed June 11, 2020) 7, n. 1. & James Verini, “How U.S. Policy Turned the Sonoran Desert into a Graveyard for Migrants,” *New York Times*, August 18, 2020, <https://www.nytimes.com/2020/08/18/magazine/border-crossing.html> (accessed August 24, 2020).

⁶ Robin Hoover, “The Story of Humane Borders,” in *A Promised Land, A Perilous Journey: Theological Perspectives on Migration*, ed. Daniel G. Groody & Gioacchino Campese (Notre Dame: University of Notre Dame Press, 2008), 161.

⁷ Fernandra Santos and Rebekah Zernansky, “Arizona Desert Swallows Migrants on Riskier Trails,” *The New York Times*, October 23, 2015. This figure has been cited as recently as 2017. See Miguel De La Torre, *Embracing Hopelessness* (Minneapolis: Fortress Press, 2017), 127.

federal border enforcement strategy organized by a logic of “prevention through deterrence” (PTD).⁸ Strategists, guided by a rational agent theory of migration, imagined that some sort of cost-benefit analysis must underly migrants' decisions to venture north.⁹ If the costs of the crossing could be raised sufficiently high, they wagered, migrants would be deterred ever from beginning the journey. PTD brought increased criminal and civil penalties against individuals charged with unlawful entry. However, it made the Sonoran Desert, and not the courts, the state's primary technology for elevating and extracting the cost. *The Border Patrol Strategic Plan: 1994 and Beyond* states:

The border environment is diverse. Mountains, deserts, lakes, rivers, and valleys form natural barriers to passage... The searing heat of the southern border [affects] illegal entry traffic as well as enforcement efforts. Illegal entrants crossing through remote, uninhabited expanses of land and sea along the border can find themselves in mortal danger.¹⁰

The national strategy counted on the “mortal danger” posed by the desert environment. From 1994 on, Border Patrol escalated the presence of enforcement personnel and surveillance technologies at ports of entry. Newly constructed barriers and fencing snaked out into the wilderness. These measures combined to divert migrant traffic “over more hostile terrain, less suited for crossing and more suited for enforcement.”¹¹ There is little conclusive evidence that the new federal policy reduced the number of individuals attempting to cross over. Instead, with the ports of entry hardened to outsiders (“legal” and “illegal”), an increasing number of migrants were forced over “remote, uninhabited expanses of land” and exposed to “mortal danger.” Following PTD’s

⁸ This strategy, drawn up by senior agents and strategists from the border patrol, in partnership with the Army’s center on low-intensity conflict, was outlined in Doris Meissner, *Border Patrol Strategic Plan: 1994 and Beyond* (Washington, D.C.: United States Border Patrol, 1994).

⁹ Hence, the *Border Patrol Strategic Plan* was inclined to describe the majority of individuals crossing the southwestern border as “economic migrants,” a term that remains familiar in American political discourse to this day.

¹⁰ *Ibid.*, 2.

¹¹ *Ibid.*, 7.

implementation, the incidence of migrant mortalities on the southwestern border sky-rocketed, with the lion's share resulting from exposure and injuries inflicted by the natural environment. The word "unfortunate" pictures the migrants in the Sonoran like unlucky gamblers who misplayed the odds. This depiction may capture some measure of truth. However, it papers over the constellation of law-enforcement initiatives and surveillance technologies that constrain the field within which migrants practice their agency and stacks the odds against them.

Other readers may find the proposition that the US government has "slain" these migrants worthy of suspicion. After all, Border Patrol and US Customs and Border Protections (USCBP) officers are not making a standard practice of gunning down migrants at the international line. The increased rate of mortality and the shift in its causes that followed PTD's implementation suggest that the environment is doing the killing – not uniformed representatives of the state. Can the US be held responsible for the deaths of migrants who have made illegal and imprudent decisions? The "push and pull" factors, effected by past US military and economic interventionism, as well as the long-standing demand among US industries for exploitable labor, are well documented by scholars of migration. For now, we may bracket these factors' far-reaching implications. Planners self-consciously designed the present border enforcement strategy to constrain migrants' agency. They identified the diversion of migrant traffic onto hostile terrain and the increasing incidence of migrant death as indicators of success. PTD self-consciously creates and promotes death as an option, effectively deputizing the Sonoran. It is not merely that the desert kills, but that PTD uses this death and its representation as a tool for deterring other potential migrants. Migrants do not happen to die because they have made imprudent decisions. The strategy actively creates an environment that elicits "imprudent decisions" and capitalizes on their consequences. The language of "slaying" implies agency, that is, intention and the capacity to bring this intention to

fruition. PTD intends migrant death and instrumentalizes the desert as a technology for bringing about the desired result. It is ham-fisted and impersonal in its use of this technology, but no less deliberate for this imprecision.¹²

Nevertheless, from 1993 to the present, PTD has not only survived but expanded. Why should so inhumane a policy have thrived under four consecutive presidential administrations? Part of the answer is that the policy is perceived as a necessary condition of American political self-determination. However, this answer alone does not yet explain the relative ease with which the federal government has accepted this particularly violent strategy. Therefore, a more complete explanation must begin to grapple with the oppositional categories that frame our perceptions of the violence and the bodies upon which it is visited. These oppositions are (at least) as old as the doctrine of manifest destiny and are reiterated today in an aesthetics that portray the borderland as a zone of low-intensity conflict.

2. Border Policing & the Politics of Self-Determination

The idea of territorial integrity, thanks to its connection with the ideal of collective self-determination, enjoys a particular pride of place in our political imagination. The twentieth century witnessed collective self-determination's ascendancy as a peremptory norm of international law and the system of nation-states it orders.¹³ Today, a people's right to collective self-determination finds one of its most precise legal articulations in United Nations General

¹² The foregoing clarifications should not be taken as an argument against migrant agency. To insist that migrants are not merely "unfortunate" gamblers and to aver that they have been "slain" by U.S. border enforcement strategy is rather to contextualize their agency in a field of powers where agency does not function as a linear concept of singular causes and effects. As Jason De León has proposed in his anthropological studies of the borderlands, and as I shall argue in Chapter three, this context requires a more complex account of agency capable of conceiving the interlaced and, at times tangled, lines of human and inhuman causes that shape and inform the responsibilities of migrants, the state, and the humanitarians seeking to intervene between the two.

¹³ For a history of this political ideal see Jörg Fisch, *The Right of Self-Determination of Peoples: The Domestication of an Illusion* (New York: Cambridge University Press, 2015).

Assembly Resolution 1514. The resolution declares that “all peoples have the right to self-determination,” i.e., the right freely to determine their political status and freely to pursue their economic, social, and cultural development, unconstrained by interference from other states.¹⁴ This resolution was to signal the end of colonialism and the restoration of territory and, along with it, autonomy to formerly colonized peoples. In effect, it synthesized earlier notions of collective self-determination that variously associated the ideal with government by consent of the governed and territorial sovereignty.¹⁵

Although, international agreements appear to have solidified self-determination’s meaning, it bears noting that, even in the history of international governance, self-determination remains a contested term.¹⁶ It has functioned both as a concept of rightful governance and as a rhetoric for political movements. It has served to solidify the right of western nation-states to territorial integrity and to autonomous self-governance within that territory. However, it has also been invoked to justify former colonial powers’ trusteeship over peoples they judged insufficiently developed to direct their own affairs. Conversely, the ideal of self-determination has been claimed by post-colonial and anti-colonial movements to resist the lingering threat of empire and to reclaim the rights of marginalized peoples. For the purposes of this study, I am interested in the ideal of

¹⁴ UN General Assembly, *Declaration on the Granting of Independence to Colonial Countries and Peoples*, 14 December 1960, A/RES/1514(XV).

¹⁵ C.f., President Wilson’s Message to Congress, January 8, 1918. Records of the United States Senate, Record Group 46, Records of the United States Senate, National Archive; & Vladimir Lenin, “Declaration of the Rights of the People of Russia,” *A Documentary History of Communism: From Lenin to Gorbachev*, ed. Robert Vincent Daniels (Burlington: University of Vermont Press, 1993), 66-67

¹⁶ C.f., Brad Simpson, “Self-Determination and Decolonization,” in *The Oxford Handbook of the Ends of Empire*, ed. Martin Thomas & Andrew S. Thompson (New York: Oxford University Press, 2018), 417-430. Simpson’s essay traces the 20th century development of the concept of self-determination in U.N. declarations and charters in order to refute two common theses regarding its relationship with decolonization. First, Simpson rejects the claim that decolonial and anticolonial movements merely coopted the language of self-determination for instrumental purposes. Second, Simpson refutes the separate thesis that post-colonies reduced the meaning of self-determination to little more than state-sovereignty and territorial integrity. Against this claim, Simpson points out anticolonial movements that resisted the belief that self-determination was impossible apart from the state and explored other political forms (separate autonomy, federation, etc.).

“self-determination” insofar as it proffers a logic of legitimation for enforcing the coincidence of territory, nation, and state.¹⁷

Political theorist Michael Walzer offers us a compelling account of the normative ligature that joins autonomous governance and territorial integrity, illuminating the ideals’ deep moral appeal.¹⁸ Politics premised on collective self-determination are differentiated, if only in principle, from political realism by their commitment to a formal theory of justice premised on the universality of human dignity. Self-determination, that is, excels self-interest, just as autonomy excels egoism. In opposition to the tyrants of the early twentieth century, Walzer insists that all human beings are “culture-producing creatures” that create and inhabit worlds of shared meaning.¹⁹ Politics’ task is to resist nihilistic assertions of power by restraining power’s exercise to accord with the social meanings common to the society’s members.

The plurality of peoples that constitute the international community may make it impossible to articulate a universal set of social goods. Nevertheless, the requirement that power

¹⁷ Because my argument focuses on self-determination’s service to the nation-state, it leaves aside discourses and concepts of self-determination that attempt to disentangle the concept from its service to state sovereignty and imperial domination. We might imagine an alternate version of this argument that approaches the border from the south and appeals to the ideal of self-determination in migrants’ defense. Indeed, as I will note in the dissertation’s final chapter, border activists have cited self-determination as a human right that entitles individuals to seek safe-haven and better life in another country. We might also imagine an argument that ascribes the push and pull factors in this migration system to the hypocritical abuses of self-determination perpetrated by the extractive economics of U.S. imperialism. It is not the aim of the present study to foreclose upon these possibilities once and for all. However, any such argument would need to reconcile self-determination’s operative account of sovereignty with the account of ethical and political subjectivity developed in the following pages. At issue is whether sovereignty is to be located in the will of the people internal to the polis or to the demand that the other—even the outsider—makes upon it. If the two cannot be reconciled, then appeals to self-determination risk reproducing the violence and refusal of responsibility that has all too often accompanied efforts to define the boundaries of peoples, both in the imperial center and in the post-colony. We are not without intellectual resources for taking on this challenge. Much might be gained, for instance, in attending to the minority positions voiced at the first meeting of the Organization of African Unity. Nevertheless, the tensions observed in this study are not absent from anti-colonial thought. The tension between the (potentially violent) pursuit of self-determination and responsibility for the other are displayed in the defense of anticolonial violence on offer in Frantz Fanon’s *Wretched of the Earth*, and the concluding lines of his *Black Skin, White Masks*, in which he presses the question, “was my freedom not given to me then in order to build the world of the *You*?” (See Frantz Fanon, *Black Skin, White Masks* (London: Pluto Press, 1986), 181). Unfortunately, an in-depth treatment of this complex issue exceeds the scope of the present analysis and, for now, must be deferred for another time.

¹⁸ See Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (New York: Basic Books, 1983).

¹⁹ *Ibid*, 314.

would conform with the social goods identified by a given national community affords, at least, a formal communitarian account of justice. This theory of justice requires a commitment to communal independence, i.e., a people's freedom from external constraint to decide what is good and what is owed to each. The commitment to territorial integrity follows by implication. Any given political power must be limited within some jurisdiction. This limit is best achieved through the coincidence of respective peoples, states, and territories.

Thus, collective self-determination requires borders and entails a people's right to closure. Without these commitments, no communal independence would be possible, and power would overreach its jurisdiction and slip the chain of social meaning. Moreover, on this line of reasoning, not only territories, but *peoples* require boundaries. As far as the coincidence of peoples and territories extends, territorial boundaries serve not only to delimit the state but the communities themselves which lend the state its legitimacy. Thus, the policing of territorial borders takes on a crucial importance for the maintenance of communal boundaries and proposes itself as a necessary condition of communal self-determination.

"Admissions and exclusions," Walzer explains, "are at the core of communal independence."²⁰ "They suggest the deepest meaning of self-determination," he continues, "without them, there could be no *communities of character*, historically stable, ongoing associations of men and women with some special commitment to one another and some special sense of their common life."²¹ Walzer presupposes landed-peoples and subsequently imagines decisions of admission and exclusion to occur at the literal and figurative boundaries of their territory (land borders or ports of entry or embassies within or outside the national interior). Thus,

²⁰ Ibid, 62.

²¹ Ibid.

the border becomes that crucial dividing line where a people determines its territorial horizons and the boundaries of its identity.

This study aims to re-read the American project of self-determination from the bones of those it excludes. In the nineteenth century, American romantic poets appealed to the majesty and grandeur of the landscape as an analog for the virtue of the people that settled it. However, fragmented bones scattered at the roots of ironwoods and acacias render the landscape grotesque. They drive a wedge between the easy conjunction of natural beauty and national virtue. The bones in the valleys populate a ledger of the dead by which the cost of collective self-determination must be measured. The defense of American virtue littered the Growler valley with the bodies of the perished from among the Wellton 26. It has done the same with thousands more.

For questions of virtue, it does not matter whether these thousands represent a statistically small or significant proportion of the migrants who have entered the Sonoran Desert. Only the grisliest of utilitarian calculi can equate statistical insignificance and moral insignificance. Before border policing can be made a game of numbers, migrants and their deaths must be identified as *means* of national self-preservation and not *ends* in themselves. This move compromises the commitment to human dignity by which the politics of self-determination aspires to make political life a pursuit of justice and not merely self-interest. We might imagine a society that maintains its prosperity and security by coercively sending into the wilderness, each year, just one individual, who will die a slow and agonizing death of dehydration and exposure. We would still rightly question the character of a people willing to ensure its existence by intentional practices of dehumanization and termination. Even if such a death were judged to be necessary, a virtue that does not find this necessity scandalizing and lamentable is no virtue at all. To deny the lament or fail to feel its sting would evince a failure of moral recognition in the first place. It would mean

seeing the other as an object whose disposal is ultimately determined according to my needs, rather than a fellow subject, whose worth delimits my freedom's ambit.²²

“Can these bones live?” When God put this question to Ezekiel, the prophet stood among the dead. These were the bones of his own people, an army laid to waste as it abandoned the divine ordinances that had shaped its life. Ezekiel too stood in the indeterminate space between life and death. Before the word of the Lord offered oracles of restoration, it appeared as a sword before a sentinel – as judgment. The word of the lord mortified the iniquities that had taken root in Judea's character. Likewise, the bones in the Sonoran speak a word of judgment. If there is anything in it to be esteemed, American character must be mortified by the suffering it sows in the valleys of the Sonoran. Virtue comes to ruin where collective self-determination allies itself with other-termination. Self-determination nihilates any commitment to human dignity when it makes the routine dehumanization of migrants an essential condition of the polity's preservation. Like the prophet, we too stand among bones that are our own. They are our own because *we* have sent them to their desolation. They are our own because they witness our desolation.

3. Drawing Lines: The Legacy of Manifest Destiny

In the American West, the project of self-determination plays out the complicated legacy of the doctrine of manifest destiny. This doctrine found its idealized expression in John Gast's painting, “American Progress.”²³ Gast portrays American westward expansion as breaking dawn, shining

²² C.f., Bernard Williams, *Moral Luck: Philosophical Papers: 1973-1980* (New York: Cambridge University Press, 1981), 20-39; & Bonnie Honig, *Emergency Politics: Paradox, Law, Democracy* (Princeton: Princeton University Press, 2009). Developing Williams' reflections on tragic situations, Honig considers that it may indeed be the case that democracies may find themselves in situations in which they cannot but enact violence that they find unconscionable. Honig contends that surviving such tragic situations with integrity requires recognizing their exceptionality and grieving it. Honig's use of Williams' work suggests the probable salutary value of democratic practices of regret. Honig's *Emergency Politics* considers this a kind of care of self. Faced with the human cost of border policing, states must ask too how they must care for the outsider, in whose generation, exclusion, and execution they play a part.

²³ John Gast, “American Progress,” 1872.

from the east and beating back the darkness covering the west. Wagon trains, the Pony Express, and locomotives press out from a coastal city towards herds of buffalo untamed. Farmers and ranchers march west, cultivating as they go the earth beneath their feet. Leading them all is Columbia, the embodiment of American virtue and ingenuity. Her Roman garb suggests the purity of republican governance. The book in her right-hand underscores the republic's enlightened nature. The telegraph wire in her left the technological innovation that would guarantee its forward march. American progress, moving on the heels of the dawn, appears no less inevitable than the rotation of the earth or the passage of time. The process of self-determination, enacted in American republican governance, was not only to fulfill this people. It would be the apotheosis after which all history strove. In its westward expansion, the American project of self-determination became eschatology.

Popular American authors like John L. O'Sullivan saw the young nation as having accomplished a break with the old world's sins, destining them for "better deeds." He writes:

It is our unparalleled glory that we have no reminiscences of battlefields, but in defense of humanity, of the oppressed of all nations, of the rights of conscience, the rights of personal enfranchisement. Our annals describe no scenes of horrid carnage, where men were led on by hundreds of thousands to slay one another, dupes and victims of emperors, kings, nobles, demons in the human form called heroes. We have had patriots to defend our homes, our liberties, but no aspirants to crowns or thrones; nor have the American people ever suffered themselves to be led on by wicked ambition to depopulate the land, to spread desolation far and wide, that a human being might be placed on a seat of supremacy.²⁴

O'Sullivan's essay proposes that American exceptionalism lies in the nation's refusal to be seduced by monarchy's demonic aspirations. It identifies this seduction at the root of myriad disorders, principle among them deceit, war, and homicide. As in Gast's painting, this exceptionalism gives way to a kind of political eschatology:

²⁴ John L. O'Sullivan, "The Great Nation of Futurity," *The United States Democratic Review* 6 (1839): 426-430.

The far-reaching, the boundless future will be the era of American Greatness. In its magnificent domain of space and time, the nation of many nations is destined to manifest to mankind the excellence of divine principles; to establish on earth the noblest temple ever dedicated to the worship of the Most High – the Sacred and the True. Its floor shall be a hemisphere – its roof the firmament of the star-studded heavens, and its congregation a Union of many Republics, comprising hundreds of happy millions, calling, owning no man master, but governed by God’s natural and moral law of equality, the law of brotherhood – of “peace and goodwill amongst men.”²⁵

He speaks of America as the New Jerusalem – as that political community in which the divine promise, which accompanied Jesus’ birth, is finally realized and celebrated by “hundreds of happy millions.”

For O’Sullivan, the rule of law forms the heart of American virtue. The Americans are a people constituted by laws and not the fickle, dubious appetites of princes and tyrants. Moreover, in elevated language, O’Sullivan blurs the line between the actual body of laws posited by the young republic and “the natural and moral law of equality.” By blurring this line, O’Sullivan invests the promulgation of US Law with the divine’s imprimatur. By the same token, he places the American people in an analogous position to the divine lawgiver, who institutes the natural law, making their virtue a foregone conclusion. These moves enshrine a series of oppositions between the American people and the others that might impede their westward march. The clash is a clash between civilization and nature, lawful and unlawful, moral and immoral, divine and demonic.

Today, the explicit language of manifest destiny has receded from our political discourse. Having now completed the march that Gast depicted in 1872, the American frontier has traded the language of progress for the language of defense. Nevertheless, Americans continue to identify the defense of the border with the defense of the institutions of democratic governance and the rule

²⁵ Ibid.

of laws that safeguard the liberty, equality, and “brotherhood” of all humanity. The oppositions between civilization and nature, and between law and violence, that appear in Gast’s and O’Sullivan’s works reiterate themselves on the borderline. No longer does the light emanate from the east to dispel the darkness of the west. Now, it turns to shine from the north against the south. However, the constitutive oppositions remain the same. Hence, Gloria Anzaldúa suggests that the US’ Southwestern border is “set up to define the places that are safe and unsafe, to distinguish *us* from *them*.”²⁶ In US Customs and Border Protection’s diction, the border is the “frontline,” where brave men and women defend the law from the forces of anarchy, criminality, terror, and violence.²⁷

However, there is a bitter irony in this notion of American greatness. O’Sullivan praised Americans’ reverence for human equality, even as they subjugated and treated as property millions of enslaved Africans. He repudiated the “wicked ambition to depopulate the land,” even as the US army joined settlers in displacing and massacring indigenous populations. The US-Mexico border's present location is the consequence of the US’ disproportionate and unprovoked military conquest of Mexican lands. Those tasked with fighting this war, including the young Ulysses S. Grant, recognized the injustice of their own cause.

Nevertheless, President James K. Polk’s “wicked ambition” to possess this territory did not abate. Neither did “wicked ambition” abate with the war’s end. US military and para-military organizations like the Texas Rangers enacted a brutal (if sporadic) campaign to pacify the region. Massacres and the violent repression of the Chicanos who had long inhabited the newly American

²⁶ Gloria Anzaldúa, *Borderlands: La Frontera: The New Mestiza* (San Francisco: Aunt Lute Books, 2012), 25.

²⁷ “Ethos of the U.S. Customs and Border Protection Agency,” in U.S. Customs and Border Protection, *Vision and Strategy 2020: U.S. Customs and Border Protection Strategic Plan* (Washington D.C., Department of Homeland Security, 2015).

territories continued into the early twentieth century.²⁸ Even as the treaty entitled them to become citizens, they were assured by manifold means that they occupied a subordinate place in this “nation of nations.” All the while, the land was swindled, stolen, or purchased out from beneath them by Anglo-American settlers, creating a racially coded economic hierarchy that consolidated power and wealth in the hands of settlers that shared Columbia’s fair skin and trod underfoot the dignity of those who did not.

Gast inadvertently captures this irony in the imagery of “American Progress.” To the indigenous persons pictured fleeing with the darkness, Columbia is a terrible sight. American enlightenment fails to cast light on the humanity of those whose demise the nation’s inevitable advance requires. For them, the light blinds. It does not reveal. In the shadows of desert mountains, PTD continues to perpetrate this violence, and the death it produces continues to ironize the presumption of American virtue’s “unparalleled glory.” It may be that the US has not “spread desolation far and wide, that a human being might be placed on a seat of supremacy.” However, it has done the same in the name of a *people* – a people whose carefully policed boundaries betray their highest ideals.

4. Transitions Between Worlds

Even as the logic of self-determination and the legacy of manifest destiny attempt to order the borderlands, this place resists them. On the border, the bounds of national identity and territory must continually be asserted and re-asserted by law enforcement’s efforts to regulate the movement of bodies. These efforts simultaneously present the state at its most palpably real and perceptibly fictional. This contradiction is made concrete in the border fences that have fascinated

²⁸ This history of violence includes the “Cortina War” of 1869 and the US’ response to the 1915 “Plan de Santiago.” C.f., Timothy J. Dunn, *The Militarization of the U.S.-Mexico Border, 1978-1992: Low Intensity Conflict Doctrine Comes Home* (Austin: CMAS Books, 1996)

American imaginations of border security since the implementation of PTD. In this fencing, migrants encounter the United States as a material reality constructed of iron and concrete, low-tech barriers, and high-tech sensory apparatuses. On this line begins the United States. And yet, this line cuts through the lands of indigenous communities that long preceded it and bisects natural environments unaware of their territorial designations. American progress was not as inevitable as the rotation of the earth or the passage of time. The border is as unnatural and fictional as it is concrete.

Thus, Anzaldúa judges the border an “*herrida abierta*” – “an open wound” – something violently inflicted on the landscape and those who have long traversed and inhabited it.²⁹ “A border,” she explains, “is a dividing line, a narrow strip along a steep edge,” the imposition of which produces a spatially extended zone that is in a “constant state of transition.” “A borderland,” she continues, “is a vague and undetermined place created by the emotional residue of an unnatural boundary.”³⁰ The United States is not a brute fact, but a reality asserted through an ongoing process of self-preservation. This endless assertion makes the borderlands a place of transition between wilderness and civilization, law and anomie, life and death. As long as border enforcement is conceived and practiced as an issue of national security, in which the unregulated movement of bodies poses an existential threat to the United States’ continued existence, the borderlands will mark a transition between worlds: a political reality constantly breaking the horizon and another struggling against passing away.³¹

²⁹ Anzaldúa, *Borderland*, 25.

³⁰ *Ibid.*

³¹ C.f., Daisy L. Machado, “Borderlife and the Religious Imagination,” in *Religion and Politics in the American Borderlands*, ed. Sarah Azaransky (Lanham: Lexington Books, 2013) & Gregory Cuéllar, *Resacralizing the Other at the U.S.-Mexico Border: A Borderlands Hermeneutic* (New York: Routledge, 2020). The borderlands’ importance as a context for theological reflection has not failed to garner scholarly attention in recent publications. I note Machado and Cuéllar’s writings for our mutual interest in the themes of embodiment and alterity. Through a combination of historical analysis and the study of religious practices, Machado argues that borderlife produces a religious imagination characterized by duality, flux, and embodiment. Machado is quick to clarify that “borderlife” not only

Therefore, the borderlands are a context that calls Christian theology back to its origins: the life and teachings of a sojourning Messiah slain at the crossing between the city that claimed to be eternal and the insipient Reign of God that marked its passing. The angels announce Jesus's birth as the arrival of a "prince of peace," a "savior" hailing from a defiant imperial backwater. Recent scholarship has highlighted the polemical undertones of Luke's angelic declaration.³² The angels ascribe to Jesus honorifics first ascribed to Caesar Augustus at his own birth. The angelic declaration positions the unassuming Galilean as a Messiah pitched against Caesar.³³

Of course, the power that Jesus wields against Rome is qualitatively distinct from the power of a liberating army. The disciples do not take up arms and depose The Emperor's proxy, Pontius Pilate. To the contrary, Pilate deposes Jesus. However, Rome's triumph is its downfall. Jesus's is a strength in weakness. His crucifixion and resurrection reveal that Rome, which purported to

describes life in the borderlands, but includes the pervasive legal, social, and racial exclusion experienced by "non-citizens" all over the country. The religious imagination that develops in this lifeworld emphasizes connection to the divine, and the community between God and those excluded by majority-culture. Crucial to this religious imagination is the Nahuas' conviction that dualities like material/immaterial, inside/outside, natural/supernatural, exist in a state of constant flux, flowing into and out of one another. Consequently, the body itself is not a hermetically sealed unit. Rather, it is the site of encounter with the divine and with the community. Building on the work of Gloria Anzaldúa, Cuéllar seeks to provide a hermeneutics that would mend the wound inflicted by the border. This wound consists in the production of "difference" between "insider and outsider." But more than this, the border accompanies difference with a distinct normative valuation. The insider is "safe," the outsider is "unsafe." The insider is "lawful," the outsider is "criminal." Cuéllar does not propose to overcome this problem through the abolition of difference by assimilation or integration. Rather, he proposes a hermeneutics that inverts the value systems imposed by the border and "re-sacralizes" the other. With this move, the very distinctions meant to alienate and deride the "outsider" become the very sources of pride and self-respect that would provide the conditions for flourishing or, at the very least, resistance. Between Machado and Cuéllar, I think, we can uphold the moral significance of alterity and not abstract alterity, but concrete embodied alterity.

³² Warren Carter, "Singing in the Reign: Performing Luke's Songs and Negotiating the Roman Empire (Luke 1-2) in *Luke-Acts and Empire: Essays in Honor of Robert L. Brawley* ed., David Rhoads, David Esrlerline, & Jae Won Lee (Eugene: Pickwick Publications, 2011); Amanda C. Miller, *Rumors of Resistance: Status Reversals and Hidden Transcripts in the Gospel of Luke* (Minneapolis: Fortress Press, 2014); C. Kavin Rowe, *World Upside Down: Reading Acts in the Graeco-Roman Age* (New York: Oxford University Press, 2009); Kazuhiko Yamazaki-Ransom, *The Roman Empire in Luke's Narrative* (New York: T&T Clark, 2010); & Joshua Yoder, *Representatives of Roman Rule: Roman Provincial Governors in Luke-Acts* (Boston: De Gruyter, 2014).

³³ Although the political implications of the title Messiah are often underappreciated in Jesus's case, a line of scholarship tracing from biblical scholars like Krister Stendahl and John Howard Yoder and stretching to materialist philosophers like Jacob Taubes and Giorgio Agamben have cited the hermeneutical shortcomings of approaches leading to this underappreciation.

hold the power of life and death in its grip, was, in fact, no master of this power. Shattering the illusion of Roman deity, Jesus discloses the temporality, contingency, and mortality of the “eternal city.” At the zenith of its power, the reign of Caesar succumbs to the reign of God. The eternal city would pass away. Jesus’s disciples were to witness to this passing, to participate in the winding down of one history, and to anticipate the coming of the next. To gather around the broken body of the one excluded by the empire was to stand with one’s feet in history and one’s eyes straining beyond its end. It was to live within the political institutions of the day and yet to be estranged from their normative structures.³⁴

Spanish-Salvadoran liberation theologian Ignacio Ellacuría argued that the situation that faced Jesus and his first disciples repeats in every historical age.³⁵ In “El Pueblo Crucificado,” Ellacuría points out that Jesus was executed for the preservation of the *Pax Romana* and the reign of Caesar to which the Reign of God was opposed.³⁶ This crucifixion is repeated, he averred, whenever individuals and groups are rejected and killed to preserve institutions that must be regarded sinful. Writing on the eve of the Salvadoran Civil War, with the beleaguered Salvadoran

³⁴ C.f., Saint Augustine of Hippo, *Concerning the City of God against the Pagans* (New York: Penguin Classics, 2003). In the early years of the fifth century, Saint Augustine of Hippo articulated this tension by proposing that human beings lived between two different orders of love and, consequently, experienced and used present political orders fundamentally differently. Intermingled in the human population were the members of a heavenly city, ordered by the love of God, and an earthly city, ordered by the love of self. Whereas, the earthly city associates peace with the preservation of the mortal body and establishes political institutions to this end, the members of the heavenly city subordinate this end to the love of God (and neighbor), making use of the earthly city’s institutions as a “pilgrim in a foreign land, who does not let himself be taken in by them or distracted from his course toward God.” (See Book XIX, Ch. 17). Augustine’s two cities remain powerful images in the Christian imagination, having been revisited, revised, and resisted by the reformers and contemporary theologians alike.

³⁵ Ignacio Ellacuría, “The Crucified People: An Essay in Historical Soteriology,” in *Ignacio Ellacuría: Essays on History, Liberation, and Salvation* ed. Michael E. Lee (Maryknoll: Orbis Books, 2013).

³⁶ The Gospel of Luke is not unique in recognizing the political implications of Jesus’s preaching. The author of John makes explicit reference to the political stakes at play in allowing Jesus to live or putting him to death. The initial plot to kill him is begun over the concern that Rome would respond to any popular movement formed around him by destroying all the inhabitants of the land. He writes: “So the chief priests and the Pharisees called a meeting of the council, and said, ‘what are we to do? This man is performing many signs. If we let him go on like this, everyone will believe in him, and the Romans will come and destroy both our holy place and our nation.’ But one of them, Caiaphas, who was high priest that year, said to them, ‘You know nothing at all!’ You do not understand that it is better for you to have one man die for the people than to have the whole nation destroyed.” (John 11:47-50, NRSV)

peasantry in mind, Ellacuría judged sinful any institution that demanded “that many suffer so a few may enjoy, that many be dispossessed so that a few may possess.” That is, institutions lapse into sin when they become the agents of atavistic desires that premise the fulfillment of the self on the desolation of the neighbor. In the Sonoran, PTD arrays a host of state institutions to safeguard the American pursuit of self-determination by disappearing and killing those migrants who might otherwise make a claim upon it.

However, Ellacuría adds that “the crucified people” are not distinguished by their suffering alone. While their contemporaries may view them with contempt and scorn, they play a part in the historical unfolding of salvation. In this regard, they are identified with Christ and join him in participating in the historical process of salvation. What it means to participate in the historical process of salvation is difficult to say. However, the bones in the Sonoran propose an answer. Their participation in this process is negative. Even as they are marked as “criminals,” the bones reveal the fratricide upon which American self-determination relies. They reveal the terrible cost of opposing the reign of God and the concomitant disregard for the life of the stranger. They reveal our decadence and put to us a terrible, yet salutary, question: “son of man, can these bones live?”³⁷

To become a disciple, to be disciplined by the story of Jesus and the early church, is to become a sojourner navigating an undetermined place in a constant state of transition. Christianity has stood in this place for nearly two millennia now, continuously tempted to allow its fatigued gaze to fall back into the present. Christianity has taken shape in the time between times produced

³⁷ To propose that the bones’ participation in the historical unfolding is “strictly negative” is an effort to ward off any notion that their suffering is “redemptive,” or rather, that their suffering is somehow a duty enjoined upon them. Christ’s crucifixion was not an ethical act that issued an imperative for repetition. Christ alone could reconcile human beings with God. There should only have been a single crucifixion. That people are crucified in every age indicates that the historical completion of the work of salvation remains outstanding; it attests the historical endurance of Sin and the continued need for the Messiah. Thus, the bones in the Sonoran issue “judgment” against us. They are grace only insofar as the consciousness of sin is a necessary condition for repentance. The bones are “grace” not because these deaths may be substituted for our own, but because they give the lie to this very notion.

by the delay of the *Parousia*. The seemingly indefinite deferral of the eschaton allows it to slip our moral logics as the present's exigencies dominate our view. The primacy of national self-preservation and our political institutions' maintenance conveys itself with a more acute sense of “reality” than the eschaton, which would displace it normatively. Human remains scattered in the borderlands call Christian ethics back to their place between realities. They reveal the asserted nature of the United States and defy the notion that “American Progress” can be identified with the rotation of the earth or the dawning of the New Jerusalem. Another light must break across the horizon. The bones extol the task of envisioning a polity of sojourners and the virtues that orient their movements in the penumbra between breaking dawn and passing night. The witness of sun-scorched bones, the company of the dead, nail the theological task inextricably to its stakes. If the current political order is permitted the status of ultimacy, its preservation that of the *summum bonum*, then the lives claimed in its name may be judged necessary sacrifices. Resisting the deification of immanence requires an encounter with immanence shot through with longing for the transcendent – and vice versa. A political theology of the borderlands must wrestle with the question: “Son of man, can *these* bones live?” It must discover a word transcendent enough to exceed life and death while remaining as concrete as the bones they produce.

Today, Christians are charged with gathering around broken bodies in the shadows of desert mountains and, in so doing, rediscovering the reign of God still breaching the horizon and casting its light into the present moment. A political theology responsible to the bones must be haunted by the dead – the spectral cloud of witnesses. I contend that haunting structures a political subject fundamentally distinct from the autonomous subject of self-determination. Whereas the autonomous political subject secures its identity and freedom by loosing itself from the demand of the other, its alternative is shaped by this demand. It trades unalloyed freedom for responsibility

to the approaching stranger. PTD is designed to frustrate the emergence of such a political subject by rendering the phenomenon of migration and the disruptive encounter with the stranger invisible. It would disappear the bones that the project of self-determination creates. Nevertheless, it has failed to hide the life it takes and the death it yields. Those who undertake the difficult work of remembering dismembered bodies take the first steps in practicing a politics responsible to the other (even the Holy Other).

5. Testing the Limits of the Christian Political Imagination

The ideal of collective self-determination occupies so prominent a place in our political imaginaries that it is remarkably challenging to imagine its alternative. Moreover, border-policing has come to be seen as so vital a condition for self-determination as to make its re-conception or reformation similarly confounding. The voice of Christian ethics does not provide, in and of itself, a genetically distinct alternative. As O'Sullivan's equation of the United States and the New Jerusalem attests, the ideal of self-determination and its realization has, at times, bound itself with Christian ideals. The American project of self-determination that shaped and continues to shape the southwestern borderlands was initially legitimized as a kind of messianism. Recognizing the mutual fascination between the language of Christianity and the language of self-determination uncovers the challenge of imagining an alternative form of political subjectivity and practice. To do so, we must test the limits of both our theological and our political imaginaries. We must engage once again questions of sovereignty, legitimacy, and ethics, amid the Reign of God incipiently present now, but not yet consummated.

Christian theological ethicists have not been silent on migration in the decades following PTD's implementation. Dana W. Wilbanks, Kristin Heyer, Ilup Ahn, and, more recently, Robert W. Heimburger and Tisha M. Rajendra have contributed book-length studies on the ethics of

migration in the American context.³⁸ Against political rhetoric on the right and the left, which too often reduces migrants to their economic utility or legal status, Wilbanks's *Re-Creating America* and Heyer's *Kinship Across Borders* recover migrants' humanity, effectively expanding the scope of moral concern beyond the limits of national borders. Wilbanks highlights the relationships that bind citizens and migrants, drawing on biblical narratives to subordinate national allegiances to the interpersonal responsibilities that bind the people of God and those who appear to them strange. Likewise, Heyer lays bare the tensions between common kinship in the family of God and exclusionary insider and outsider status, arguing that Christian love enjoins justice, demanding action on behalf of those whom society excludes and discards. Rajendra's *Migrants and Citizens* carries the significance of relationality further. Her theory of justice as "responsibility to relationships" plays on the historical relationships binding American citizens and (in particular) migrants from Latin America's northern triangle. Justice, she avers, cannot be conceived abstractly. What is due to and from each person can be determined only in light of the relationships and attendant responsibilities they have accrued due to their shared histories. The history of American interventionism in Latin America obliges Americans to address the historical inequities their country has played a share in creating. Nevertheless, despite these arguments' moral force, in recent years, scholars have observed the continued need for a robust political theology of migration.

That is, those who attempt to mobilize these moral insights in the public sphere face the seemingly impossible task of reconciling Christian claims about universal human kinship with the

³⁸ Dana W. Wilbanks, *Re-Creating America: The Ethics of U.S. Immigration & Refugee Policy in a Christian Perspective* (Nashville: Abingdon Press, 1996); Kristin Heyer, *Kinship Across Borders: A Christian Ethic of Immigration* (Washington, D.C.: Georgetown University Press, 2012); Ilup Ahn, *Religious Ethics and Migration: Doing Justice to Undocumented Workers* (New York: Routledge, 2013); Tisha M. Rajendra, *Migrants and Citizens: Justice and Responsibility in the Ethics of Immigration* (Grand Rapids: William B Eerdmans Publishing Company, 2017); & Robert W. Heimburger, *God and the Illegal Alien: United States Immigration Law and a Theology of Politics* (New York: Cambridge University Press, 2018).

more exclusionary formal requirements of collective self-determination. Consequently, Christian ethicists risk finding themselves embroiled in intractable arguments that demand a decision between “open borders” on one side, or “closed borders” on the other. The universality of Christian claims, it would seem, is ultimately incompatible with political institutions like borders.³⁹ However, this disjunction is a caricature. Neither option is even tolerable under the normative commitments of political self-determination. “Open borders,” insofar as they describe wholly unregulated boundaries, compromise communal independence, whereas “closed borders,” insofar as they describe boundaries impervious to entry or exit, compromise self-determination’s commitments to human dignity. Moreover, it is difficult to determine how these extreme descriptions of borders map on to the complex interplays of selective permeability and impermeability, demilitarization and securitization of actual borders like the United States’ own. The task, then, is to re-appraise the normative relationship between these two pillars of self-determination and to clarify how Christian ethical claims bear upon them.⁴⁰

³⁹ Wilbanks proposes, for instance, that in its most idealized form, Christian Ethics cannot tolerate borders and the divisions they produce. Of course, the notion that borders may be fundamentally unjust is not unique to Christian ethicists. See C.f., Joseph Carens, “Aliens and Citizens: The Case for Open Borders,” *The Review of Politics* 49 (1987): 251-273.

⁴⁰ It is worth noting that there are scholars who find Christian ethicists wholly unequipped for this task. C.f., Mark R. Amstutz, *Just Immigration: American Policy in Christian Perspective* (Grand Rapids: William B Eerdmans Publishing Company, 2017). Amstutz charges Christian ethicists with propounding a utopian idealism out of touch with the real-world conditions that shape migration and migration policies. The “reality” to which Amstutz refers is the international system of nation-states and its legitimate role in regulating the movement of bodies across borders. Amstutz argument relies on a communitarian theory of justice, drawn from the political philosophies of Michael Walzer and John Rawls. These theories, he contends demonstrate nation-states’ rightful roles and unmatched efficacy in upholding the value and dignity of human lives. Moreover, drawing on a (exegetically flawed) version of Martin Luther’s two governance thesis, Amstutz contends that the proper jurisdiction of the church is private morality, whereas it is the divine mandate of the state to legislate and secure public peace. Christian ethicists, he judges, should confine their work to issues of private morality and leave to the experts the issue of policy. Amstutz is not alone in raising such concerns. In 2013, Ahn identified the need among Christian ethicists to take seriously the rights of nation-states as they consider issues of migration. However, as I am contending here, to make the borderlands a context for theological reflection is to recognize the *asserted* nature of that “reality” which Amstutz takes for granted. Christian ethicists need not disagree with Amstutz as a matter of utopianism versus idealism; rather, the disagreement may take the form of a dispute over the “real” itself.

Recent studies like Ahn's *Religious Ethics and Migration* and Heimburger's *God and the Illegal Alien* represent self-conscious efforts to join Christian ethical discourse with the legal and political discourse of self-determining states. In particular, Heimburger's book sets out to draw up a theology of politics that identifies the nation-state's role in salvation history.⁴¹ Better to draw out what is distinctive in my own contribution, I pause here to consider the promises and limits of Heimburger's approach.

Like Wilbanks and Heyer, Heimburger anchors his analysis in theological anthropology. Appealing to Karl Barth's doctrine of the "Mitmensch," Heimburger contends that the human being is an "I" that is always encountering, relating to, and partnering with a "you."⁴² This encounter discloses the common humanity in which each participates and relativizes whatever distinctions render them different from one another. This common humanity falsifies the notion that any human being is "alien" to another. However, it does not, in turn, invalidate nation-states or their duty to secure their borders.⁴³ Citing the story of Cain and Abel and the eschatological vision of the new Jerusalem, Heimburger notes that borders (even walled borders) have a legitimate function as long as we tarry on the earth. The bounded polity serves to protect the common good of those who dwell within its territory and to tame violence with the rule of law.⁴⁴ Thus, Heimburger proposes that God invests nation-states with a measure of legitimacy *but* places them under the sovereignty of God.

⁴¹ Vis-à-vis Amstutz's criticisms of Christian ethics, Heimburger's project sets out from the realization that, at least in the United States, where politics pervade private life, no clear line of separation may be drawn between so-called "private morality" and public policy. The two spill into one another, this intermingling is evident in the work of politicians attempting to legislate according to their consciences and in the precarious lives of undocumented persons whose legal status subjects them to the constant fear of removal and separation from their communities and families. Therefore, Christian theological ethics must find something to say about politics. Like Amstutz, Heimburger appeals to reformation theologians as "trusted interpreters" to derive from Christian Scriptures a theology of politics.

⁴² Heimburger, *God and the Illegal Alien*, 47.

⁴³ Heimburger locates these arguments within a larger genealogy of the legal category of the "alien." I take up these connections elsewhere in my forthcoming review of his book for the *Journal of Law and Religion*,

⁴⁴ Heimburger, *God and the Illegal Alien*, 98-101.

Nation-states ought to serve as “humble guards.” Peoples and nations are “due a request when non-members want to cross their lands,” but they are not free to judge this request however they wish.⁴⁵ They must act according to the hallmarks of divine judgment, which include righteousness toward “the one from far away and love for the migrant.”⁴⁶ Consequently, the “humble guard” must also be a “good neighbor.” The state must lavish mercy not only upon its citizens but upon those to whom it draws near. Therefore, nation-states must reimagine borders as sites of encounter rather than fortified barriers. Nation-states must draw up their immigration laws in partnership with their neighbors and respect the histories of migratory peoples and labor flows that traverse these borders.⁴⁷ By these means, Christian theology transforms the nation-state such that it may perform its God-given role in history.

God and the Illegal Alien offers a compelling Christian realist response to the ethical issues surrounding migration, but his theology of politics is not without complications. First, modern political theorists may question whether Heimburger’s account of divine sovereignty is ultimately compatible with democratic politics or the doctrine of collective self-determination. In *On Revolution*, Hannah Arendt warns that the good’s sovereignty may be no less destructive to freedom than evil’s tyranny.⁴⁸ Likewise, Michael Walzer subordinates “moral necessity” to the political priority of self-determination and the society’s attendant “right of closure.”⁴⁹ Both arguments trade on the ultimate incompatibility of political freedom with moral necessity. Politics is the domain of freedom, a group’s dialogical self-realization. The good, no less than the evil, impinges on this freedom with the violence of necessity. It is a kind of conversation stopper. A

⁴⁵ Ibid, 123.

⁴⁶ Ibid.

⁴⁷ Ibid, 194-204.

⁴⁸ See Hannah Arendt, *On Revolution* (New York: Penguin Books, 1963). N.b., her interpretation the problem of good and evil in Herman Melville’s *Billy Budd*, pp. 81ff.

⁴⁹ See Walzer’s conception of “Samaritanism” and his limitations on the principle of mutual aid in *Spheres of Justice*, pp. 33ff & 50-51.

people cannot decide for themselves who they will be, for instance, if they must grant asylum to large numbers of refugees. The demand that these refugees pose disrupts the autonomous structure of self-determination. Therefore, Walzer proposes that sovereignty be tethered to the people's process of meaning-making while Arendt goes further, attempting to expunge it from politics entirely. However, by eschewing federal plenary power, in matters of admission, exclusion, and removal, for a divine imperative, Heimbürger's conceptions of neighborliness and humility shackle political freedom to the chain of moral necessity.

Heimbürger's political theology also produces a theological discontent commonly associated with Christian realists. That is, Heimbürger dissociates moral life from eschatological longing, alienating the eschaton from the domain of material history. It is not my intention here to rehash old disputes between thinkers like John Howard Yoder and Reinhold Niebuhr. Instead, I want to emphasize the borderlands' significance as a setting saturated with eschatological longing. The international system of nation-states presupposes the coincidence of peoples, territories, and states. The border is that institution which indicates and enforces this coincidence. However, migration, especially unregulated migration, by its very nature, disrupts any such coincidence. The borderlands attest to the contingency of the nation-state and the violence that preserves this system. The bones in the valleys cry out for a reckoning that the present political reality cannot deliver. They stir up a longing for a politics not shored up by the broken bodies of the excluded. Thus, political theologies of migration have good theological reasons to question whether the Christian mission is to legitimize the measures by which the state is preserved or to participate in the passing away of one world in anticipation of the world to come.

To speak of the "passing away" of one world is to evoke myriad images and ideas – many of them troubling and violent. Lest this proposal appear no more preferable than the present

violence by which the US border is secured, I want to clarify what I mean by this phrase. To do so, I appeal to Pierre Bourdieu's concepts of "structure" and "habitus." According to Bourdieu, the shaping of a human life is neither independent of the historical process nor determined thereby. Rather, our subjectivity, or "habitus," is *structured* by the environment (natural and human) in which we live and, in turn, *structures* the environment in which it emerges.⁵⁰ The subject, then, is partially the product of a "world," i.e., a universe of material and discursive conditions and institutions that shape and norm its movements, expectations, and beliefs. These conditions endure and retain legitimacy, Bourdieu writes, as long as they belong to "the class of that which is taken for granted, doxa, the sum total of the theses tacitly posited on the hither side of all inquiry."⁵¹ The "world" and, likewise, the subject's conformity to it appear perfectly natural so long as the contingency of these theses is undisturbed. However, at the moment that inquiry glimpses its "hither side," the artifice of history is drawn into view and history, nature, and habitus, slip out of joint. To participate in the "passing away" of a "world" is to reckon with the disjuncture and depart the orthodoxy that would buttress its normative structures. To anticipate the coming of another world is to resist boundless nihilism and strive after the good by which we might orient some new normative structure.

The bones in the valley force us to reckon with the processes that prop up the present political reality. Moreover, as I shall argue in the following chapter, they reveal a normative disjuncture that fractures the politics of self-determination. Thus, they reveal a disjuncture between life and politics that cries out for a reckoning. To recognize these bones as our own is to enter into the disjuncture, participate in the negative moment of dialectic, and permit a fundamental

⁵⁰ Pierre Bourdieu, *Outline of a Theory of Practice* (New York: Cambridge University Press, 2013), 82ff.

⁵¹ *Ibid*, 168.

change in our political subjectivity. It is to revoke violence's place in the process of identification and allow our identity to be re-constituted by the approval rather than the exclusion of alterity.

This subject is one formed by a negative relation to sovereignty. That is, it is shaped by the imperative to save the lives that PTD discards. This imperative neither provides a mandate nor determines an appropriate response. Bones scattered on sun-scorched earth may cry out for a reckoning, but they do not dictate of what this reckoning is to consist. Instead, the anticipation of the world to come issues a challenge for practical reason. In my view, the law, which presently serves to preserve the nation-state, need not (and ought not) be discarded. As I shall argue in the fourth chapter, dispensing with the law would leave us bereft of resources to address the present situation and consign us to impotent anomie. Nevertheless, the law must undergo a radical transvaluation of values and be made an instrument of mercy, a defense against the state on behalf of those it excludes.

If Christian ethical imperatives to attend to the stranger do not reconcile the paradox at self-determination's core but accentuate it, then neither will they satisfactorily answer disputes about "closed" or "open borders." Moreover, if the story of Christ proposes that we are to be shaped in response to the claim that the bones in the Sonoran make upon us, then it proposes an account of ethical and political subjectivity out of joint with the one that lends self-determination its normative structure. That is, this story privileges interruptions of communal independence. Therefore, rather than attempting to offer national policy proposals, I intend to offer here an analysis that inquires into the political practices by which actors in the borderlands may disrupt American self-determination's deadliest inclinations and glimpse the possibility of a political existence ordered otherwise. These glimpses, of necessity, will be fragmentary, hewn by contradictions of their own. Interrupting PTD's deadly effects requires laying hold of the levers

of power by which it is structured and, therefore, participating in these institutions' perpetuation. The glimpse, then, that these practices afford is a transvaluation of values, wherein sovereignty is displaced from the people and rediscovered in the encounter with those they exclude. The practices that follow likely will not result in the total deregulation of the border but appeals to juridical power that safeguard migrants from PTD's lethal potentials.

6. Argument Outline

Chapter One, "Self-Determination and the Problem of Beginnings," initiates the work of challenging the hegemony that politics premised on the principle of collective self-determination enjoy in our political imaginary. My conversation partners in this chapter are political philosophers Hannah Arendt and Michael Walzer. Few political philosophers have offered so clear and compelling an account of collective self-determination as Walzer. Walzer commits his political theory to the universal claim that all human beings are "culture producing creatures" that "create and inhabit worlds of meaning." The task of politics, in turn, is to structure the institutions of common life such that they accord with the world of meaning in which a people posits itself as a distinctive moral community. On this view, collective self-determination protects human dignity against tyranny by making the political order reflect the people's self-understanding. However, drawing on Hannah Arendt's thesis that politics begins in "fratricide," I argue that the decisions of admission and exclusion by which the community determines its identity reveal an internal contradiction between the autonomy of particular communities and the assertion of universal human dignity from which this autonomy derives its motivational force. In the end, the political freedom, for which the politics of self-determination strain, is secured at the cost of the paradoxical non-identity between moral necessity and political prerogative.

In the borderlands, the negative space between the moral and the political becomes a space where the good borne in the body and blood of the neighbor is masked and disappeared. Chapter Two, “The Theater of Alienation,” follows up the preceding theoretical argument with an analysis of the concrete processes of border enforcement by which the United States attempts to determine the shape of its community and the political discourses by which it gathers legitimacy around these processes. The United States-Mexico border was established by the right of conquest. Since the mid-1990s, the federal government has evoked this history’s emotional residue in conceiving the southwestern borderlands as a theater of low-intensity conflict. The contradiction at the core of self-determination, cast within this theater, is eclipsed by the exigency of national self-preservation as migrants who might otherwise appear as necessitous, estranged siblings take on the costumes of “transnational criminals,” “enemy alien combatants,” and “terrorists.” Examining the “theater” of border enforcement brings into view its fictive character, contesting any assumption of the border (and the polity it delimits) as brute givens and disclosing them as asserted realities.

Chapter three, “The Witness of Fragments,” attends to the steadily growing ledger of the dead, revealing the grave cost at which self-determination attempts to hide the excluded and assert the polity. The theater of border enforcement endeavors to legitimize the violent collision between law and life in the aesthetics of low-intensity conflict. However, the material strategies that frame this scene simultaneously produce obscenity. Human remains lie in the valleys of the Sonoran Desert. These bones attain a political afterlife as they rupture the aesthetics of low-intensity conflict and call in for judgment the processes that produce death. Once uncovered, the dead bear silent witness to the train of contradictions that self-determination creates in its attempts to escape the other’s demand. The disarticulated remains of the excluded confound the distinctions between law and violence, politics and anarchy. They declare the fratricidal non-identity between moral

necessity and political prerogative. The bones, in a word, perform a determinate negation of the aesthetics of low-intensity conflict, reading “from [their] features the admission of falseness which cancels [their] power and hands [them] over to truth.”⁵² In the liminal space between life and death, the bones challenge us to read self-determination’s imperatives anew.

Chapter four, “The Samaritan’s Virtue,” sketches an alternate form of political subjectivity. In place of the self-determining political subject, which prioritizes autonomy in constituting identity and recoils at the stranger’s approach, I propose a political subject that comes into being as it falls under the sway of another. For a formal account of such a subject, I turn to the Parable of the Samaritan (Luke 10:25-37). In this parable, the neighbor emerges as a distinctive type of ethical subject, shaped by her encounter with a good that outstrips her and makes a claim upon her. In the context of the parable, this good is radically embodied, incarnated in the wounded stranger, and viscerally experienced in the body’s response to her appearance. *Agape* is this subject’s defining virtue. It is that disposition that lays her open to the movement of compassion and re-reads the law from the stranger’s body, making the law an instrument of mercy. Crucially, in this manner of reading, the law does not dictate compassion’s movement, nor does it comprehend alterity through the provision of a system of definitive names and norms. Rather, the encounter with the stranger acts as a supplement to the law, opening its terms to broader and deeper meanings. Thus, whereas self-determination’s subject accepts fratricide in exchange for autonomy, the neighbor accepts heteronomy in exchange for the stranger’s life.

In Chapter Five, “Samaritans in the Sonoran,” I conclude by outlining what it might mean to perform an *agapic* reading of the law in the U.S.-Mexico borderlands. Here, I return to the question that animates this introduction: what does it mean to become neighbor to the dead? What

⁵² Theodor W. Adorno & Max Horkheimer, *Dialectic of Enlightenment: Philosophical Fragments* Trans. Edmund Jephcott (Stanford: Stanford University Press, 2002), 18.

is the work of love in the borderlands? By what political practices may our self-determination's deadliest inclinations be checked? To answer these questions, I rely on the parable and the examples afforded by humanitarian aid workers striving to save migrant lives in the Sonoran Desert. To become a neighbor to the dead requires not only mourning but penance. It means reframing our relationship with those among the living who may yet come to share their fate. In the borderlands, the work of love consists of risky action on the stranger's behalf, responsible to the needs and contingencies revealed in the encounter's material site, and open to the possibility of offense. Those who read the law on behalf of the excluded implicitly challenge its function in preserving American territorial integrity and community autonomy. While this action puts them at risk of joining those they aid as targets of state actions, the trials and legal actions in which they find themselves entangled become theaters of agency within which PTD may be resisted. Placed in the docks themselves, they join the dead in bearing witness to the passing away of one world and the coming of another.

An Aside on Method:
The Remembrance of Dismembered Bodies

The present analysis undertakes its work rhetorically as well as dialectically. In addition to the argument laid out above, I attempt, through thick descriptions of border policing and those it victimizes, to register affectively for the reader the moral demand that would reconstitute our ethical and political subjectivity. That is, it is my aim not only to demonstrate the coherence of the political vision I am offering, but to invite the reader to enter in and be transformed. Like Ezekiel, who was transported to the valley of dry bones, I would beckon my reader to enter the borderlands, that she would hear, in all its force, the same question, “can these bones live?” The bones in the desert interrogate us even as we interrogate them, simultaneously inviting our empathy and thwarting it, at once perplexing us and indicting us. The bones we are dismembering beyond recognition include our own body politic. Can we live and let live?

Drawing near to the bones forgotten in the Sonoran, engaging in the remembrance of dismembered bodies, promises a re-membering of our moral and political communities. Since many of the remains in the Sonoran go unidentified, they confront us as a mystery. The work of remembrance, then, is not a work of recollection that gathers from the storehouse of memory fragments of the lives lost. In too many cases, the storehouse is empty. Therefore, remembrance becomes a creative, empathetic activity that confounds the borders between self and other as the bones come to inhabit and resist our capacities for imaginative comprehension.

However, it bears stating that this rhetorical strategy, which entails presenting scenes of gross violence, is fraught with risk. U.S. border policing instrumentalizes migrants' lives (and deaths) for its own ends. It must be stated at the outset how my own work at least attempts to avoid a similar instrumentalization. It must be shown how the imaginative work of remembrance is not a work of narcissistic fantasy that makes of human remains its raw material.

Mine is not the first study to be concerned over the literary depiction of violence. Saidiya Hartman confronts this issue head on in her 1997 monograph, *Scenes of Subjection: Terror, Slavery, and Self-Making in Nineteenth Century America*. Studying the constitution and performance of black subjectivity during the reconstruction era, Hartman acknowledges the longstanding role that scenes of violence played in establishing slaves' subjectivity. She opens her book with reference to Frederick Douglass's infamous retelling of his Aunt Hester's beating, which served as his introduction to the brutality of southern slavery. However, Hartman refuses to retell the story or to quote it directly. Her conscious decision to hold the story under erasure springs from her determination not to make a spectacle of black suffering or ravaged bodies. Not only are we required to interrogate the perpetrators of such violence, we must also interrogate the historians, ethicists, philosophers, and theologians who make its reproduction an element of method.

Hartman doubts the effectiveness of such literary accounts, adding that they may likely do more harm than good. She writes:

Rather than inciting indignation, too often they inure us to pain by virtue of their familiarity – the oft-repeated or restored character of these accounts and our distance from them are signaled by the theatrical language usually resorted to in describing these instances – and especially because they reinforce the spectacular character of black suffering.¹

¹ Saidiya Hartman, *Scenes of Subjection: Terror, Slavery, and Self-Making in Nineteenth Century America* (New York: Oxford University Press, 1997), 3.

Hartman goes on to identify a pair of dangers that accompany casual or overly familiar literary reproductions of violence: “indifference” and “prurience.” Both possibilities stem from the “theatrical language” that characterizes such retellings. Theater achieves its pathos through the reproduction of conventions. While they still enjoy novelty, performing these conventions may evoke deep pathos from their audience. However, if they become too familiar, they lose this force and may serve to alienate the viewer rather than to draw her in. That is, as they become increasingly familiar, the repetition of these conventions reminds the viewer of the production’s fictive nature. In such cases, the depiction of violence is met with indifference.

Nevertheless, the possibility that these retellings may elicit a prurient enjoyment evinces another problem with the theatrical: the divorced relationship between stage and spectator. The spectacle playing out on the stage occurs in a different world from the one occupied by the spectator. What transpires in this world and what befalls the bodies that inhabit it, makes no claim upon those seated in the audience.² Eventually, the scene will come to an end and the viewer is free to leave it in the past. The slave’s ravaged body, Hartman helps us to surmise, is too often held up as a possible object for the audience’s consideration and not a subject who breaches the perspectival distance between stage and spectator.

Hartman’s warnings against the distance produced by theatrical language propose an initial criterion for chastening literary retellings of violence and resisting the dangers of indifference and prurience. Overcoming these dangers requires contesting the gulf between spectator and staged spectacle. Those subjected to violence cannot be made mere objects for the consideration of a reader who stands at a distance. Their subjectivity must be preserved in order that it would make

² Stanley Cavell treats this relationship at some length in his essay on Hamlet in *Disowning Knowledge in Seven Plays of Shakespeare* (New York: Cambridge University Press, 2003), 179-192.

a claim upon those whom they confront. That is, it is imperative that some manner of recognition occur. However, lest this appeal to recognition settle the issue too quickly, Hartman cautions us that recognizing the other's subjectivity is not, in every case, tantamount to inspiring her liberation.

Attending to white legal productions of black subjectivity under slavery and during the reconstruction era, Hartman writes:

[The] recognition of the humanity of the slave did not redress the abuses of the institution nor the wanton use of the captive warranted by his or her status as chattel, since in most instances the acknowledgment of the slave as subject was a complement to the arrangements of chattel property rather than its remedy; nor did self-possession liberate the former slave from his or her bonds but rather sought to replace the whip with the compulsory contract and the collar with the guilty conscience. Put differently, I argue that the barbarism of slavery did not express itself singularly in the constitution of the slave as object but also in the forms of subjectivity and circumscribed humanity imputed to the enslaved[.]³

Recognition goes awry when it is premised on a "circumscribed humanity imputed to" the other. That is, recognition serves as a complement to vicious systems, when the terms of the other's recognizability are confined to the framing discourses and assumptions made available by that system. When the borderlands are conceived as a theater of low-intensity conflict, recognizing migrants as subjects very likely means recognizing them as "criminals" or "combatants." Such a recognition does not necessarily justify more humane treatment. To the contrary, it justifies the violence to which they are subjected and makes of their remains artifacts of justice.

In *Regarding the Pain of Others*, Susan Sontag suggests that how a scene of violence is depicted depends no less upon the presuppositions of the viewer than the content of the image. On her view, the representation confirms antecedent belief, it does not persuade to new belief. "To an Israeli Jew," Sontag writes, "a photograph of a child torn apart in the attack on the Sbarro pizzeria

³ Hartman, *Scenes of Subjection*, 6.

in downtown Jerusalem is first of all a photograph of a Jewish child killed by a Palestinian suicide-bomber.” Likewise, “to a Palestinian, a photograph of a child torn apart by a tank round in Gaza is first of all a photograph of a Palestinian child killed by Israeli ordinance.”⁴ The generic horror of the violence is lost on an audience for whom identity is axiologically and hermeneutically paramount. Scenes of violence, then, may just as well inspire further retaliation as a cessation of hostilities.

Between the warnings of Hartman and Sontag, we gather that if the recognition of the other’s subjectivity is truly to precipitate a moral demand, it must *disrupt* rather than *confirm* the frame in which it appears.⁵ In order that this disruption would sting us and not be confined to benign abstraction, I endeavor to remain in the concrete and the particular. In the pages that follow, I strive to emphasize, without racing to resolve, the discontinuities and contradictions wrought by the violence perpetrated on migrant bodies. Specifically, I attempt to show how this violence breaks frame with familiar schemes for representing the borderlands. In this way, I mean to preserve the other’s radical alterity, resisting the temptation to circumscribe her humanity within the discourse of the rhetoric. Rather than offering some positive account of common humanity, I turn to the Parable of the Samaritan for an account of the virtue that disposes us compassionately to meet that in the other which cannot be named yet must not be turned away – to that in ourselves which cannot be named but must not be refused. Organized under this rubric, I hope that the

⁴ Susan Sontag, *Regarding the Pain of Others*, (New York: Farrar, Straus, and Giroux, 2003), 10-11.

⁵ C.f., Iris Murdoch, *Metaphysics as a Guide to Morals* (New York: Penguin Books, 1992), n.b. 103ff. Murdoch proposes that art often functions to provide us with a sense of unity that lends comfort and reinforces our convictions. However, she criticizes art that functions in this way, as it threatens to uphold our narcissisms. Murdoch praises the tragic for its fragmentary nature. She writes, “our concept of tragedy must contain some dreadful vision of the reality and significance of death. Here sin, evil, is the evasion of the idea of death; refuge is taken in exercise of power, heroic fantasies of will or fate, cults of suffering or the passing-on of pain as damage to others.” She continues, “Tragedy is a paradoxical art because to succeed it must really upset us while exhibiting, but not as mere consolation, some orderly and comprehensive vista of evil and catastrophe... Tragedy, like religion, must break the ego, destroying the illusory whole of the unified self.”

violence described in this dissertation will neither inure nor tantalize. Rather, I hope the remembrance of dismembered bodies will call into question the very subject that engages in the act and precipitate the emergence of someone new.

Chapter One:
Self-Determination & the Problem of Beginnings

And the Lord said, “What have you done? Listen; your brother’s blood is crying out to me from the ground! And now you are cursed from the ground, which has opened its mouth to receive your brother’s blood from your hand.”

--Genesis 4:10-11 (New Revised Standard Version)

“Cain slew Abel, and Romulus slew Remus; violence was the beginning and, by the same token, no beginning could be made without using violence, without violating... The tale spoke clearly: whatever brotherhood human beings may be capable of has grown out of fratricide, whatever political organization men may have achieved has its origin in crime.”

--Hannah Arendt, *On Revolution*

1. Border Enforcement and Self-Determination

Abel was dead. But from the ground, his blood cried out to God. Lingered somewhere between life and death, it refused to fall silent. Even as the ground opened its mouth to swallow it, the blood bore witness to the crime. Even as he stood among the dead, the slain brother would not relinquish his claim upon God or upon the living. God heard the cry. Cain refused it. “Listen!” This was the charge God laid at the murderer’s feet. “Listen!” The blood that Cain spilled would never cease to cry out. The brother dwelling among the living would forever be haunted by the one exiled among the dead. For these brothers, the boundaries between life and death would

forever bleed into one another. “Listen!” Bloodied and cursed, the ground itself would continue to testify on Abel’s behalf. Thus, the founder of the first city would nevertheless be a wanderer on the face of the Earth.¹ No matter how settled he might become in familiar abodes, still the ground beneath his feet would resist his presence. He would never be at home. Something would always call a part of him away. “Listen!” The slain brother makes a claim. His brother would always keep him.

At base, the politics of self-determination are differentiated from their realist counterpart by their commitment to justice. In the American tradition, the right to self-determination has been traced to the principle of human equality. The political right articulated in foundational documents like the Declaration of Independence derives from a deep-seated conviction about human nature and its attendant dignity. This document’s appeals to “self-evident truths” of “equality,” “inalienable rights,” and their axiological priority to political right, are so well known as to obviate repeating. In the nineteenth century, as the fledgling nation grew, this ideal was evoked again to justify westward expansion. In “The Great Nation of Futurity,” John L O’Sullivan wrote that no ideal was so “perfect” nor so “universal” as the principle of equality that organized American political life.² In what does this equality consist? Political philosopher Michael Walzer proposes that all human beings are “culture producing creatures” that “create and inhabit worlds of shared meaning.”³ This fact, at once, lends self-determination its motivational force and proposes its

¹ C.f., Mari Jørstad, “The Ground that Opened its Mouth: The Ground’s Response to Human Violence in Genesis 4,” *Journal of Biblical Literature* 135 (2016): 705-715. Jørstad notes the scholarly tradition that ties Cain’s identity to the ground. The ground that “opened its moth” to take the slain brother’s blood might have been Cain’s accomplice. Instead, it allies itself with Abel. Cain’s alienation from the ground is an alienation from his own identity. His “wandering” involved more than his physical exile, it wove alienation into his identity.

² John L O’Sullivan, “The Great Nation of Futurity,” *The United States Democratic Review* 6 (1839): 426-430.

³ Michael Walzer, *Spheres of Justice Spheres of Justice: A Defense of Pluralism and Equality* (New York: Basic Books, 1983), 314. Walzer’s language should be read as an emphasis of the equality of all people and the universality of human dignity. To speak of all humans as “culture producing creatures” is to evoke and overturn racist theories

formal political structure. It joins at the root theories of politics and of justice. If human beings are equal, then one ought not to exercise power coercively upon another. Political power ceases to be coercive power only when it operates under the values that a society holds in common. Politics, rightly understood, regard not merely the mechanisms of power but the collective practices by which a people give meaning to their life together.⁴

However, like rival siblings, even as political right and moral necessity are bound together, they resist one another. There is an irony in both the Declaration of Independence and “The Great Nation of Futurity.” The Declaration of Independence named its self-evident truths not only to bind a people together but “to dissolve the political bands which [had] connected them to another.” The emergence of the “American” people included not only identification but exclusion. Likewise, in the nineteenth century, “equality’s” westward march was accompanied by the exclusion of indigenous peoples and Chicanos who already occupied the land. The “perfection” and “universality” of America’s organizing ideal were rendered suspicious by the aggressive military actions used to claim the west from those who held it. “According to the idea of the right of self-determination,” writes historian Jörg Fisch, “the worldwide division of territories is decided on the basis of the wishes of those affected... this results in a division of the world into states.”⁵ However, Fisch argues, this idea presupposes freedom from dominion for a situation in which power decides.⁶ The irony of our political history suggests that these siblings, moral necessity and political right, live ill at ease with one another. Today, in the borderlands, irony gives way to

like the Nazi account of race, which divided humanity into “founders of culture, bearers of culture, and destroyers of culture.” (C.f., Adolf Hitler, *Mein Kampf* trans. Ralph Manheim (Boston: Mariner Books, 1999), 290)

⁴ C.f., Robert Cover, “Nomos and Narrative,” *Harvard Law Review* 97 (1984): 4-68. By no means is Walzer alone in connecting the political and the moral. Robert Cover too proposes that a society’s laws, rightly conceived, formed, and practiced, articulate a people’s highest ideals and draw them toward their realization.

⁵ Jörg Fisch, *The Right of Self-Determination of Peoples: The Domestication of an Illusion* (New York: Cambridge University Press, 2015), 13.

⁶ *Ibid.*

paradox. The phenomena of migration and border policing that play out across the U.S.-Mexico line reveal the indeterminacy of the “American people” and the circular logics of sovereignty and legitimacy that emerge in efforts to justify the decisions that would determinate its bounds. On Walzer’s view, human equality appears to entail individuals a claim on goods the value of which they play a part in fixing. Transgressing this norm means dissociating power from meaning and risking politics’ collapse into nihilism. Walzer justifies a people’s right to determine its boundaries by proposing that membership is a good, the meaning of which is determined by a society’s members. However, in this chapter, I endeavor to show that the process that fixes membership’s meaning and value is not exclusively an insiders’ game. The decisions of admission and exclusion that Walzer associates with the “deepest meaning” of self-determination do not distribute a good whose meaning is already fixed. They are productive rather than disclosive of meaning.

Put another way, with regard to the good of membership, migrants are not outsiders to the process of meaning-making. Consequently, where migrants are walled off from the good of membership (literally or figuratively), their exclusion falls outside the standard logics of legitimacy and puts at odds moral necessity and political right. As self-determining societies strain to identify the proper subject of political power, political right, like Cain, puts to death moral necessity.

In the desert, dry blood and bone cry out, testifying to the crime of fratricide. In chapters two and three, I will attend more concretely to the border enforcement practices that effect these deadly exclusions, the aesthetic effort to blunt their moral sting, and the contradictions that follow in their wake. However, in this chapter, I begin with a more theoretical argument that demonstrates the indispensable place of the excluded in the dialectic of identification. In this way, I aim to convict us of the view that the bones in the Sonoran are not merely the bones of strangers but

estranged siblings. On this view, the killings perpetrated in the name of national security must be reconceived as instances of fratricide, and moral necessity's claim on political right reinvigorated. I do not devise in the following pages to mediate the paradox, to put an end once and for all to the conflict between Cain and Abel. I aim only to deny its inevitability and indicate the need, political and ethical, for accounts of political subjectivity and practice that resist its ceaseless repetition.⁷

2. The Problem of Beginning

Hannah Arendt saw in the story of Cain and Abel a universally applicable tale. It disclosed a truth that in the course of human history continually asserts itself with renewed force, “whatever brotherhood human beings may be capable of has grown out of fratricide, whatever political organization men may have achieved has its origin in crime.”⁸ On Arendt's reading, there is no essential difference between Cain and Abel's story and the story of Romulus and Remus. The crime of fratricide is what makes establishing the *polis* possible.⁹ However, in what, on Arendt's view, does this “crime,” this “fratricide” consist? Moreover, what is the crime's enduring significance for our politics?

⁷ C.f., Seyla Benhabib, *Another Cosmopolitanism* (New York: Oxford University Press, 2006). Benhabib proposes cosmopolitanism as a project aimed at mediating the disjunction between cosmopolitan norms championing the moral status of individuals, on one side, and the political norms of sovereign states, on the other. Benhabib's cosmopolitan mediation relies on an account of “democratic iterations,” which evoke and transform the meaning of legal-political concepts and practices through the discursive interactions of insiders and those traditionally seen as “outsiders.” These interactions occur in a kind of global civil sphere that disjoins the *ethnos* from the *demos* and confounds the distinctions between global norms, on the one side, and the self-determination of particular polities, on the other. The argument I undertake here is similar to Benhabib's but seeks to emphasize that the conflict of values she describes can occur internally within the normative structures of self-determination itself. For this reason, democratic self-determination can never wholly dispatch with cosmopolitan norms as somehow irrelevant or utopian. Moreover, the practices of democratic iteration which Benhabib describes do not mediate self-determination and cosmopolitan norms without drawing politics into a fundamentally different normative structure.

⁸ Arendt, *On Revolution*, 20.

⁹ C.f., Ted A. Smith, “The Mark of Cain: Sovereign Negation and the Politics of God,” *Modern Theology* 36 (January 2020). Smith notes that Arendt's reading of the biblical story skips over the time in which God acts and the role that God's sovereign negation of Cain's crime plays in making possible the establishment of the city. This omission is not without consequence. By neglecting God's action and the possibility of some negative sovereignty, Arendt lends the appearance of necessity to a politics that originates in and inevitably returns to criminal violence. I will return to this argument in the final section of this chapter.

“Politics,” for Arendt, described the domain of free, creative, and cooperative human activity, delivered from the coercion of necessity and tyranny.¹⁰ Arendt drew her understanding of “freedom” from Herodotus, who considered it a condition of “no rule” in which all have a share in governance and no distinction exists between rulers and ruled.¹¹ However, this condition of equality is not possible in nature, where different individuals are endowed unevenly with differing gifts and talents. Rather, it is coeval with the emergence of the *polis*, for, by its laws, the *polis* makes equal in status that assembly which, by nature, is unequal in ability.¹²

Arendt calls “liberation” the process of achieving the conditions in which freedom can thrive. Tragically, on her view, this process appears to have required, in virtually every instance, the use of means antithetical to freedom. It was not by mistake, Arendt supposed, that Aristotle considered the capacity for speech to be the defining quality of the *zoon politikon*. However, the wars of liberation that accompanied the history of revolutions attested that speech would be drowned out by the rattle of rifles and the thunder of artillery in the achievement of freedom. Before discourses of persuasion could prevail, devices of coercion would have to make clear the way. These devices could have no home in politics. Like Cain’s murder of Abel or Romulus’s murder of Remus, they marked the boundaries of the political, enduring in its memory as the problem of beginnings, a kind of original sin. On the surface, then, fratricide's crime describes the literal destruction of one’s fellows in the pursuit of freedom. Even if fratricidal violence is judged the necessary means for the emergence of politics, the political process’s antipathy to violent

¹⁰ Arendt, *On Revolution*, 11.

¹¹ Arendt, *On Revolution*, 30.

¹² Or so we might hope. In fact, the law on its own is no guarantor of equal dignity. Even in places where it is insisted that the law is an unbiased institution treating all persons equally, as in the United States, the law is capable of producing and reproducing inequity and inequality.

means marks them as criminal. However, this literal understanding of fratricide does not capture the entire depth of the problem.

Freedom and, therefore, politics cannot survive necessity in *any* form. It was the shortcoming of Rousseau and Robespierre, Arendt judged, that the problem of good and evil should have “haunted the minds” of these revolutionaries.¹³ The good is no less capable of tyranny than evil. “Absolute goodness,” Arendt writes, “is hardly any less dangerous than evil.”¹⁴ “Goodness,” she explains, “does not act meekly but asserts itself forcefully,” Goodness, in the form of compassion, requires restitution for the poor and the suffering among a society. Because of the urgency that accompanies its claims, Arendt judges that when compassion enters into politics, “it will shun the drawn-out wearisome process of persuasion, negotiation, and compromise, which are the processes of law and politics, and lend its voice to the suffering itself, which must claim for swift and direct action, that is, for action with the means of violence.”¹⁵ Compassion’s putative “violence” inheres in its violation of political institutions’ autonomy. Compassion destroys the situation of no-rule and shackles politics to necessity’s chain. Thus, in Arendt’s thinking, the imperative to “direct action” is no more compatible with lasting political institutions than the fire that spills from the mouths of cannons and rifles. Glossing Herman Melville’s *Billy Budd*, Arendt concludes that the survival of the political stipulates that even “the angel must hang.”¹⁶ Neither the good nor the evil can be allowed to haunt the political. The ghost, holy or otherwise, must be exorcised. Fratricide, in its literal sense, evinces the rupture of non-identity that revolutionary wars and liberatory conflicts bring about between neighbors. In its more

¹³ Arendt, *op. cit.*, 81.

¹⁴ *Ibid.*, 82.

¹⁵ *Ibid.*, 87. C.f., Smith, “The Mark of Cain.” Arendt offers these judgments in her reading of *Billy Budd*, which Smith takes up at length in his essay. Smith argues that dispelling the good, which lies beyond the law, does not necessarily deliver the law from violence. Rather, it allows the law itself to become sovereign and violent while eroded the virtues necessary for the practice of politics.

¹⁶ Arendt, *On Revolution*, 84.

profound sense, the term “fratricide” describes the non-identity of political right and moral necessity that the law must enforce for the enjoyment of political freedom.

Arendt offered her reflections on the story of Cain and Abel amid freedom’s seeming triumph with the proliferation of international politics premised on the collective self-determination of peoples. With United Nations General Assembly Resolution 1514, the international community appeared to have allied itself against tyranny in the form of “alien subjugation.”¹⁷ The dismantling of colonial systems reflected an effort to realize the principle that “all peoples have the right to self-determination,” the right freely to determine their political status and freely to pursue their economic, social, and cultural development.¹⁸ Arendt had earlier judged colonialism—particularly the German and Russian imperial projects—the “preparatory stages” for totalitarianism and the catastrophes that followed in its wake.¹⁹ However, she resisted any temptation to triumphalism. As the 1960s drew to a close, Arendt characterized the twentieth century not as a century of freedom but as a century of violence.²⁰ The “process of liberation,” which Resolution 1514’s drafters considered “irresistible and irreversible,” would not expel violence from the earth. If freedom were at last washing across the globe like a breaking wave, it was not without liberation’s violent undertow and not without tragic instances of the political domain’s uncoupling from the moral.

“No beginning could be made without violence, without violating.”²¹ In the final analysis, not only did Arendt suppose that Cain’s crime repeated itself in every age, “no beginning” was possible without it. The crime is inevitable in every instance. Even as the right of collective self-

¹⁷ UN General Assembly, *Declaration on the Granting of Independence to Colonial Countries and Peoples*, 14 December 1960, A/RES/1514(XV).

¹⁸ *Ibid.*

¹⁹ Hannah Arendt, *On the Origins of Totalitarianism* (New York: Harcourt Brace & Company, 1951), 123.

²⁰ Hannah Arendt, “A Special Supplement: Reflections on Violence,” *The New York Review of Books* 12 (February 1969).

²¹ Arendt, *On Revolution*, 20.

determination enjoys widespread esteem, it cannot help but reproduce the problem of beginnings. Why should the problem of beginnings recur with such inevitability? The politics of self-determination presuppose a political subject that emerges through ongoing processes of identification that at once produce and reproduce the sorts of non-identity that Arendt judges fratricidal. I turn now to address these ongoing processes of identification in greater detail.

3. The Dialectics of Identification (and Exclusion)

Few political theorists have offered so clear an articulation of collective self-determination's normative structure as Walzer. "A given society is just," he rules, "if its substantive life is lived... in a way faithful to the shared understandings of its members."²² Moreover, membership must be made available to each person in a territory that has a share in the process of meaning-making. When these conditions are satisfied political life expresses the moral life of the community. Conversely, the *polis* becomes tyrannical when the exercise of power is disjoined from social meanings and exercised indifferently upon its members or when membership is withheld from those who have a share in defining its meaning. In either case, the invalidating commonality is the failure to honor the human being's status as a culture producing creature. Once this failure has occurred, the exercise of power in the *polis* becomes nihilistic and inevitably dehumanizes and alienates.

Therefore, when rightly understood, collective self-determination encompasses several claims. Stated negatively, it asserts that no human being ought to be subjugated to a political association with which she shares no common understandings. Neither can membership be forced upon a person. Coerced membership, as it were, is an oxymoron. The recognition of human dignity requires that political life be structured according to a principle of autonomy. Therefore,

²² Walzer, *Spheres of Justice*, 313.

stated positively, collective self-determination upholds the political priority of the shared creative process by which a community authors and inhabits a world of shared meanings. By extension, this entails their authority over the distribution of the goods whose meaning they fix. Put yet another way, collective self-determination asserts the sovereignty of the people.²³ The laws and institutions of a given political society do not supply themselves with legitimacy. They derive their legitimacy from that world of shared meaning by which the people posits itself as an identifiable community.

Whether stated negatively or positively, the right of collective self-determination assumes the existence of some determinate collective political subject engaged in the processes of making meaning and exercising power. Thus, the most fundamental sense of collective self-determination refers to the foundational decisions that facilitate this political subject's emergence – i.e., the collective body of individuals recognized as having a share in the authorial process.

Walzer dedicates the opening chapter of his landmark study *Spheres of Justice* to the distribution of membership. “At stake here,” he explains, “is the shape of the community that acts in the world, exercises sovereignty, etc.”²⁴ The distribution of membership (it seems) decides who has a share in authoring the world of common meanings by which a people defines itself. Consequently, this distribution bears implications for every subsequent political decision. Two questions naturally follow. First, who has the authority to make the decisions of admission and

²³ C.f., President Wilson's Message to Congress, January 8, 1918. Records of the United States Senate, Record Group 46, Records of the United States Senate, National Archive; Vladimir Lenin, “Declaration of the Rights of the People of Russia,” *A Documentary History of Communism: From Lenin to Gorbachev*, ed. Robert Vincent Daniels (Burlington: University of Vermont Press, 1993), 66-67; & Jörg Fisch, *The Right of Self-Determination of Peoples: The Domestication of an Illusion* (New York: Cambridge University Press, 2015), n.b., 129-137. Citing the examples of Wilson and Lenin, Fisch explains that in the process of gaining traction in the international community, a people's right to collective self determination was increasingly associated with the idea that legitimate government is premised on the consent of the governed (Wilson) and the corresponding idea of territorial sovereignty (Lenin). Implicitly and explicitly, Walzer too connects both ideas with the meaning of self-determination.

²⁴ Walzer, *Spheres of Justice*, 61-62.

exclusion that determine the community's boundaries? Second, on what grounds ought membership be provided or denied? Since few of us establish a people *de novo*, Walzer sets out to answer these questions *in medias res*. His answers, in turn, reveal self-determination's inevitable repetition of the problem of beginnings.

Most fundamentally, the realization of political justice requires that those who participate in authoring a good's meaning are the ones rightly to authorize its distribution. Authorship produces authority. Were a good to be distributed without regard for the significance that a society granted to it, the very process of distribution would evacuate it of meaning and render it unrecognizable as a good. Those who had a share in authoring the good's meaning would rightfully intervene to amend the policies and institutions governing the distribution, lest politics become nihilistic. Hence, Walzer concludes that the decision to admit or exclude must reside with those who are currently members of the community:

We who are already members do the choosing, in accordance with our own understandings of what membership means in our community and of what sort of community we want to have. Membership as a social good is constituted by our understanding; its value is fixed by our work and conversation; and then we are in charge (who else could be in charge?) of its distribution.²⁵

This answer to the "who" question appeals to the current members' role as authors and its significance to communal independence. Were anyone else in charge of membership's distribution, the current members could not hope to "fix" its value. Autonomy, at the deepest levels of self-determination, would list into heteronomy. Hence, Walzer's incredulous aside: "who else could be in charge?" Any other answer would implode the very idea of self-determination. The answer to the question of justification follows by implication. The decision to admit or

²⁵ Ibid, 32.

exclude is justified vis-à-vis the community's self-understanding. If the provision of membership would fundamentally change or invalidate the community's self-understanding, then it should not be extended. Put positively, membership's provision is justified by the conformity of the admitted to the present members' historic identity. Without the prerogative freely to decide matters of admission and exclusion—what Walzer calls the “right of closure”—there could not be “historically stable, ongoing associations of men and women with some special commitment to each other and some special sense of their common life.”²⁶

On first blush, then, it appears that the provision or denial of membership obeys the same distributive logic as that of any other social good. However, Walzer is quick to identify the crucial respect in which the distribution of membership and every subsequent distribution differ. The value of the social goods distributed *among* the members is fixed by their “work and conversation” with one another. That is, the dialectic that yields their normative value is *internal* to the community. Authorship, in these cases, is an insiders' game. Membership, on the other hand, is distributed to *outsiders*, and this all-important caveat invites the possibility that the value of membership is not “fixed” by the members alone. Rather its value seems to emerge from a dialectic in which the outsider is a vital element.

Recognizing the outsider's role in determining the value of membership requires recognizing that the decision to admit or exclude does not occur in a vacuum. The decision is always already a response prompted by an encounter with the stranger. Moreover, this encounter is not a matter of moral indifference to the members. The right of closure, Walzer explains, is

²⁶ Ibid, 62.

qualified by the principle of mutual aid, which expresses the duties we owe “not only to definite individuals but to persons generally.”²⁷ It applies in the domain of international politics, in “chance encounters” between strangers where it is unclear what one owes to the other. This principle too follows from Walzer’s fundamental anthropological commitment. As culture producing creatures, persons possess an inherent dignity that we ought not to transgress or forsake. The nature of our obligation to the stranger may be unclear, but, by virtue of her very humanity, we cannot deny that some obligation persists between us. Left in isolation, the people and their concept of membership enjoy a measure of fixity. However, the encounter with the stranger is an encounter with a good that throws these values into question.

Indeed, this encounter throws into question the very grounds on which the political subject's shape ought to be determined. The encounter with the outsider contains what Simon Critchley calls an “experience of demand.” Critchley proposes that contemporary ethics and political theory suffer from a motivational deficit.²⁸ A strict principle of autonomy may supply coherent justifying reasons for one way of life or another. However, before these justifying reasons can become anything more than hypothetical imperatives, individuals and communities must be moved to approve them as their own. Critchley proposes that escaping the motivational deficit requires an account of “ethical experience.” This experience is not one of self-legislation but of “active receptivity” to the claim that another makes upon us.²⁹ Ethical and political subjects, then, emerge in an experience of “hetero-affectivity.” They take their shape according to their approval or rejection of a moral demand that comes from without and usurps the I's sovereignty.³⁰ The

²⁷ Ibid, 33. Walzer here is quoting John Rawls. See John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971), 115.

²⁸ Simon Critchley, *Infinitely Demanding: Ethics of Commitment, Politics of Resistance* (New York: Verso, 2007), 32-37.

²⁹ Ibid, 14.

³⁰ Ibid, 10-11.

encounter with the outsider is destabilizing because it puts a fundamental choice before the people. Will they approve or reject the other's demand? Will they be a people shaped by hetero-affectivity or by autonomy? Will they allow moral necessity to chasten political right or suppress the former to rescue the latter's autonomy?

If it is through decisions of admission and exclusion that the community determines its shape, then every migrant that appears at their border poses the question of their identity anew. By throwing their identity into question, the "stranger" becomes an intimate partner in determining in what membership's value will consist and on what grounds the people will be constituted. In the moment of indecision, when the member and the stranger are caught in one another's gaze, the boundaries of the people blur into indeterminacy. If only for the briefest moment, the people's subjectivity and membership's value hang in suspension. The community of character is yet to be disclosed in the moment of decision that will admit or exclude – even to the present member. We learn as much about a community's identity from those for whom its boundary becomes a barrier as from those for whom it becomes a bridge.

When the process of identification at the deepest level of self-determination is conceived dialectically, it reveals that the people are not a fixed entity but an entity in the process of becoming. Moreover, the migrant encountered "by chance" is not an accident to the people's character at all. She is the necessary condition of their becoming. Yet, with her appearance, the normal logics of distribution come to a halt. Neither the value of membership nor the sovereignty of the people can legitimize the decision to admit or exclude. Both terms lie on the other side.

Despite Walzer's best efforts, the principle of mutual aid, meant to clarify obligations between strangers, only discloses the conflict between autonomous political right, which structures self-determination, and the anthropological commitment that provides its morally motivating

force. According to Walzer, the principle of mutual aid necessitates positive assistance when (1) the stranger's need is sufficiently dire and (2) the risk and cost involved in aiding her are judged to be tolerably low.³¹ The first criterion upholds the moral status of human beings *as such* and acknowledges the force of the other's demand. However, Walzer is quick to hedge against the potentially infinite demand that such a commitment would produce. This demand asserts itself against the right of closure, especially in the cases of displaced persons like asylum seekers.

Walzer concedes that some forms of positive assistance, like shelter and membership, cannot be exported yet cannot be withheld without permitting grave harm. Nevertheless, the priority that Walzer gives to autonomy requires that the second criterion be observed. Alone, the first criterion is insufficient and even destructive. Political justice requires that membership be extended to the asylum seeker if she is admitted. However, admitting large numbers of asylum seekers could plausibly lead to fundamental changes in a national community's self-understanding. Indeed, it could mark a shift from autonomy to hetero-affectivity. Admitting asylum seekers according to the direness of their need would allow moral necessity to override political right in defining the meaning of membership. To preserve political right, Walzer judges, political communities must be permitted to measure and decide whether the cost of admitting these persons would be tolerably low. Otherwise, the admission policies of just states might be determined by the failures or vices of the unjust states that produce displaced persons.

"My life," Walzer insists, "cannot be shaped and determined by such chance encounters."³² However, at this stage, the irony in these words should be palpable. On the one hand, they uphold the salience of autonomy to politics. However, were it not for "chance encounters," the shaping and determination of political life would have no occasion to occur at all.

³¹ Walzer, *Spheres of Justice*, 33.

³² *Ibid.*

Walzer's philosophy strains after but cannot sustain a dialectic whose underlying principle is identity. In ideal circumstances, the migrant a community admits will assimilate to their character. Whatever differences rendered them strange will prove superficial. The apparent contest between the principle of mutual aid and the right of closure will ultimately dissipate. However, the community's shape is determined not only by admissions but by exclusion. It becomes most clearly visible through negation, through decisions that determine who the community is not.

The non-identity between the members and the excluded is no less a part of the dialectics of identification than the identity of the members and the admitted. Thus, the principle of non-identity vies for its place as the fundamental one in the dialectic of identification. Moreover, to call the excluded "alien" to the authoring of membership's value falsifies their place in the process of identification. It denies from the outset the role of ethical experience in constituting their political subjectivity. Nevertheless, if autonomy is to be preserved, this is what the politics of self-determination must do. Otherwise, the people would fail to limit the claim that these estranged siblings would make upon membership's distribution.³³

Thus, it is the bitter irony of collective self-determination that it necessarily participates in creating stateless persons. The division of peoples is an uneven process and, like any uneven division, produces a remainder. In producing this remainder, it repeats the crime of fratricide by exposing the individuals it excludes to the dehumanizing violation that history visits upon those left in the lurch between polities. "Statelessness," in Walzer's own words, "is a condition of infinite danger." By accepting for any person the option of "infinite danger," the polity drives a

³³ The emergence of twentieth century asylum law reflects self-determining polities' inability to shake their sense of responsibility for the stateless left in the lurch by the present international system. These laws have merely failed to grant that the stateless are estranged siblings and not distant strangers.

wedge between the moral and the political. Thus, concerning the issue of asylum, Walzer concludes:

The call “give me... your huddled masses yearning to breathe free” is generous and noble; actually to take in large numbers of refugees is often morally necessary; but the right to restrain the flow remains a feature of communal self-determination. The principle of mutual aid can only modify and not transform admissions policies rooted in a particular community’s understanding of itself.³⁴

Like Arendt, Walzer ultimately finds the claim of “moral necessity” antithetical to the sort of freedom constitutive of the political. Likewise, Walzer’s commitments forbid us to see this conflict as anything other than a betrayal. Decisions of admission and exclusion appeal for their legitimacy to the sovereignty of the people. However, in the crucial moment leading up to the decision, the people are not yet a realized entity. Will they be a people shaped hetero-affectively by the demand of the other? Will they be a people shaped autonomously by the maxim of their own collective will? Unless the ones tasked with deciding are gifted with the eyes of Minerva’s owl, the decision will only attain legitimacy retrospectively. Thus, in the decision of exclusion, Walzer’s doubled political structure collapses into a singularity, and the logical line of legitimation curves back on itself. Re-reading the politics of self-determination from the position of the excluded excavates this conceit and precipitates the crisis of legitimacy that this circle produces. Culture-producing creatures – culture-producing creatures that played a role in the shaping of our world of meaning – have been forced beneath the operations of political power. By its own lights, self-determination must confess to the crime of fratricide.

4. Politics Haunted

³⁴ Walzer, *op. cit.*, p. 51.

Abel was dead. Willing to be rid of Abel, Cain left his brother in the field. Searching for the murdered brother, God found the living one. God said to Cain, “where is Abel, your brother?” Cain responded with disdain, “I do not know, am I my brother’s keeper?” Cain’s question was an accusation. “Keeping” human beings was God’s responsibility.³⁵ If some ill fate had befallen Abel, the blame lay with God, who had failed to protect the favored brother. Abel was not Cain’s responsibility. Cain was free of him. But Abel’s blood was crying out to God from the ground. God would not permit the cry to go unheard. “Listen!” This was the charge God laid at the murderer’s feet. With it, the very same ground that had swallowed the slain brother’s blood spat the crime back upon the living one.³⁶ God would not take the crime away from him. As long as Cain walked upon the earth, he would be reminded of his responsibility. For these brothers, the boundaries between life and death would always bleed into one another. The slain brother makes a claim. The living brother is never free of him. This haunting was Cain’s fate. This haunting was Cain’s responsibility.³⁷ He would always keep his brother.

³⁵ See Terence E Fretheim, “Genesis 4:1-26 Commentary,” *New Interpreters Bible Commentary* (Nashville: Abingdon Press, 1994), 374. The Hebrew verb in question, here, is “*shamar*,” from which “keeper” is derived. Citing Numbers 6:24 and Psalm 121:3-8, Freitheim observes that the Hebrew Bible scarcely depicts human beings as each other’s “keepers.” Rather, God “keeps” human beings. This is not to suggest that “keeping” is not an activity proper to human beings. Throughout the Pentateuch, God charges human beings with keeping his covenants and statutes. Even as Cain attempts to shift responsibility to God, he denies a responsibility that the Hebrew Bible regularly ascribes to human beings. Kristin Swenson proposes that this interchange between God and Cain molds the norm that the responsibility to “keep” the earth is at once a responsibility to “keep” its inhabitants – to keep our siblings. (Kristin Swenson, “Care and Keeping East of Eden: Gen 4:1-16 in light of Gen 2-3” *Interpretation* 60 (2006): 373-384; See also Jørstad, “The Ground that Opened its Mouth.”)

³⁶ C.f., Jørstad, “The Ground that Opened its Mouth.” Jørstad offers a thoughtful analysis of the now common recognition that, in Genesis 1-11, the ground is a character, portrayed as having its own agency. (See also, Swenson, “Care and Keeping East of Eden;” Terence E. Fretheim, *God and World in the Old Testament: A Relational Theology of Creation* (Nashville: Abingdon Press, 2005); & Michael Welker, *Creation and Reality* (Minneapolis: Fortress Press, 1999).)

³⁷ C.f., Roger Burggraeve, “Am I My Brother’s Keeper’: On the Meaning and Depth of Our Responsibility” *Ephemerides Theologicae Lovanienses* 84 (2008): 341-361. Burggraeve reads the story of Cain and Able as a story about the emergence of moral subjectivity. In Abel, Cain is confronted with the most primordial command, “thou shalt not kill.” Slaying Abel, Cain rebels against the command. In Cain, moral subjectivity emerges and is resisted as frustrated desire.

Cain thought the punishment too great a burden to bear. Banished from God's protection, he would be subject to any manner of violence. Anyone he met might kill him. So, God placed a mark on Cain, and the haunted brother traveled east to Nod. Though Cain no longer walked in God's presence, the mark ensured no one would take his life. Anyone who slew him would suffer a sevenfold vengeance. Not even the wanderer could be slain with impunity. Far from home, Cain took a wife, bore a son, and built for them a city, Enoch. But, with time, Cain's children forgot his dedication. Perhaps Abel's ghost passed away with Cain. Five generations later, violence returned, and the specter of vengeance grew more terrible. We are responsible for the ghosts. If we forget them, we are liable to repeat the crime that sent Cain from God's countenance. If we forsake our responsibility, the very earth may be forced to convict us of our sins. To walk with God is to walk with the dead.

Arendt suggests that the fratricide perpetrated in the name of self-determination is the violation that makes our national fraternity possible. The political has its origins in crime. Even in Walzer's careful presentation, it appears that a politics premised on self-determination cannot help but create estranged siblings and expose them to infinite danger. The dialectics of identification produce their political subject through exclusion no less than admission. Self-determination binds the I and the not-I. However, its notion of sovereignty cannot tolerate the bond. The estranged sibling makes a claim. Even as she is excluded, she takes her part in defining what it means to belong. Despite our protestation, perhaps it *is* the case that our lives should be determined by "chance encounters." Perhaps it *is* the case that the problem of good and evil should continue to "haunt the mind" of anyone with a share in governance. Walzer resists this possibility in the name of preserving the autonomy of political right. However, even his political philosophy can never put

to rest the other's demand. Whether as negated or approved, this demand plays a role in the political subject's self-constitution. From first to last, the dialectic of identification and exclusion is haunted by the other. Evading this unsettling possibility requires the disappearance of the estranged sibling. Thus, as I shall detail in the next chapter, projects of self-determination come to be accompanied by strategies of alienation and, in extreme cases, other-termination. We must leave the dead in the field, deafen ourselves to their cry, lest it keep us. Whatever fraternity self-determining human beings enjoy has grown out of fratricide. This truth, it seems, is the tragic fate of every political association.

However, we need not conclude from these contradictions that "no beginning could be made without violence, without violating."³⁸ We need only resign ourselves to the inevitability of this fratricidal violence if we lack the imagination to sojourn beyond the present political imaginary. Beginning such a venture requires two interventions. First, as Ted Smith argues, we require an account of sovereignty that delegitimizes the crime of fratricide and removes its power to structure political life without quashing human freedom. Second, political freedom must come to be haunted and chastened by the demand that the dialectic of identification endeavors to suppress.

Smith notes that Arendt's reading of the tale of Cain and Abel is incomplete.³⁹ As in the story of Romulus and Remus, whose violent clash decided on which hill Rome would be built, Arendt makes Abel's murder the indispensable condition for Enoch's founding. However, this retelling of the story skips over the time in which God acts, erasing God from the story entirely. It is not violence that legitimates the city. Instead, as Smith explains, it is God's sovereign negation of Cain's crime that makes politics possible. The mark that God places on Cain puts a halt to the

³⁸ Arendt, *On Revolution*, 20.

³⁹ Smith, "The Mark of Cain," 70-71.

cycles of vengeance that would allow the initial crime to spiral out into history. Cain and Abel's story provides a vision of sovereignty alternative to the sort that Arendt (and Walzer) describe.⁴⁰ While one resists it and the other embraces it, both Arendt and Walzer theorize sovereignty as serving a positive function. In Walzer's thought, for instance, the people serve as a double, distinct from the order of the law, but engaged in delimiting and authorizing its operation. As discussed in this chapter, the people are supposed to give legitimacy to the decisions and policies that regulate membership's distribution by authoring and fixing its value through their work and conversation. The Mark of Cain offers no such license.

“The mark is a stroke of divine sovereignty,” Smith argues, “but it relates to the city very differently than sovereignty that founds an order and then transmits legitimacy... the mark legitimates nothing.”⁴¹ The mark of Cain is an instance of determinate negation. It belongs to a dialectic that denies a specific term but does not posit a new one. That is, the mark that God puts on Cain identifies the fratricide as a crime. Nevertheless, the mark does not legitimate violence on Abel's behalf. Its express purpose is to rule out any such retaliation. “In denying justification to both repetitions of the crime and revenge for the crime,” Smith writes, “the mark of Cain negates the power of the crime to continue to shape the moral landscape by defining what counts as a justification for violence.”⁴² However, since the dialectic is fundamentally negative, it does not stipulate what bearing will shape the new landscape. Absent any political blueprint, politics

⁴⁰ While Smith's account of sovereignty has implications for theories of sovereignty like Walzer's, his argument is directed instead at Arendt's political theory which attempts to dispatch with sovereignty altogether. Indeed, this option presents itself as a possible response to the violence that the U.S. has perpetrated to establish and preserve its sovereignty. However, as Smith demonstrates, efforts to abolish sovereignty tend only to displace it. In political theories such as Arendt's, the law itself becomes sovereign. Smith's counter reading of *Billy Budd* demonstrates the law's propensity for violence when it is faced with the problem of its own self-preservation. This line of argumentation is borne out by the violent means with which the United States has endeavored to preserve its own rule of law, as in the borderlands, where the rule of law so often passes over into its opposite: anarchic violence.

⁴¹ Ibid, 71.

⁴² Ibid.

remain the domain of freedom. Cain and not God, after all, is the one who founds Enoch. However, Cain's freedom is not freedom unalloyed. It is a freedom that stands under judgment.

Lest the negation worked by divine judgment forbid any sort of *phronesis* and consign politics to nihilism, Smith is swift to emphasize the negation's determinate character. Even if Cain is not a historical figure, he is a particular character and, Smith reminds us, "God marks this particular individual to negate the power of his particular sin to shape the theater of political life."⁴³ The dialectics of sovereign negation follow the outline of Theodor Adorno's negative dialectics. However, negation alone is not enough, neither for the preservation of *phronesis* (traditionally thought to rely on some apprehension of the good) nor for the logic of Adorno's dialectic. Determinate negation does not dispatch with truth and falsity. Nor does Adorno's project give up on a commitment to the good.

On the contrary, the criticisms undertaken in his *Dialectic of Enlightenment* uphold the goodness of human life as they set out to account for its "total betrayal."⁴⁴ "Determinate negation," Adorno clarifies, "does not simply reject imperfect representations of the absolute, idols, by confronting them with the idea they are unable to match." Instead, "it teaches us to read from [their] features the admission of falseness which cancels its power and hands it over to truth."⁴⁵ This truth does not emerge in a moment of speculative unity, as G.W.F. Hegel averred.⁴⁶ Rather, truth's presence is its absence in the negative distance of non-identity. Like the blood of the slain brother, crying out in the space between life and death, the true and the good endure as the excess that haunts the dialectic. Even as self-determination runs aground in defense of autonomy, it is

⁴³ Ibid, 72.

⁴⁴ Theodor W. Adorno & Max Horkheimer, *Dialectic of Enlightenment: Philosophical Fragments* (Stanford: Stanford University Press, 2002), xvii.

⁴⁵ Ibid, 18.

⁴⁶ C.f., Theodor W. Adorno, *Negative Dialectics* (New York: Routledge, 2003), n.b., 144-163.

the good of human life, the good incarnated in the excluded that refuses to remit us from the task of politics.

Smith's correction refutes the fatalism lurking in Arendt's vision of the political. Indeed, violence has often been the beginning. However, it does not follow "by the same token" that no beginning can be made without violence. The paradox of autonomy lurking in the normative logic of self-determination suggests that none of this violence is an accident. However, contrary to Arendt's reading, the story of Cain and Abel does not resign all political life to such violence. As Smith argues, the mark of Cain revokes the crime's authority to determine the structures of our life together. To this, I want only to add that it is the blood crying out from the ground, the ghost of the murdered brother that denies us permission to acquiescence to despair. Sketching an alternative to the present political imaginary will require identifying the mark by which a stroke of negative sovereignty is worked on our own polities. It will require identifying that good, which, despite its exclusion, continues to disquiet our acceptance of moral necessity's banishment from political right.

The name "Enoch," which Cain gives both to his first-born son and the city he establishes, means "dedicated." Cain and Abel's tale presents us with the possibility that the first city was an instance of freedom dedicated to the good from which Cain's crime sought to escape. The structure of this dedication is that of a haunting. Abel, the shepherd who wandered the land with his flock, is not resuscitated by God. Instead, God makes Cain, the one who dwelled on the land with his crops, into a wanderer. The life denied by the fratricide returns to shape the life that endures the crime. Marked by God, Cain begins again. The blood crying out from the ground, the last remnant of the murdered brother, the claim that God would not refuse, the claim that God would not permit Cain to ignore, asserts that good from which freedom unalloyed seeks to release itself. This good,

embodied in Abel and suppressed by the fratricide, imposes precisely the sort of heteronomy that Walzer and the politics of self-determination strive to suppress. It is not a good authored in the free activity of self-determining subjects. It is the excess of this process. This good is not claimed but makes a claim. Structured according to a principle of autonomy, self-determination will only accept that law which the people give to themselves. The challenge to which the story of Cain and Abel calls us is to discover the relationship between the law and this excess that delimits and hems it in.

Listen!

Blood is crying out from the ground!

Chapter Two:
The Theater of Alienation

“We are the guardians of our Nation’s borders.

We are America’s frontline.

We safeguard the American homeland at and beyond our borders.

We protect the American people against terrorists and the instruments of terror.”

--Ethos of the U.S. Customs and Border Protection Agency

1. The Paradox, Reframed

The paradox of self-determination arises where universal commitments to human dignity collide with particular claims to communal independence. Its effect is to disjoin moral necessity and political right, motivating reasons and formal justifications. In Walzer’s political theory, the collision shows itself in the tension between the “right of closure” and the “principle of mutual aid.” In US Law, the collision leaves its mark in the Refugee Act’s amendments to the Immigration and Nationality Act. These pieces of legislation provide the primary legal framework for the regulation of immigration. Historically, the federal government has enjoyed plenary power to admit, exclude, and remove, without interference from the country’s highest courts. Prior to the Refugee Act, the US primarily addressed refugees’ and asylum seekers’ admission through temporary, *ad hoc* measures. Acknowledging the global refugee crisis’s intractability and

following trends in international law, the Refugee Act of 1980 established for the first time in domestic law permanent procedures for the administration of asylum. Despite proliferating international asylum agreements, nation-states have often shown reluctance to engage in large-scale refugee resettlement, seeing the admission of refugees as a challenge to their sovereignty and territorial integrity.¹ Despite having long engaged in resettlement efforts, US politics have not been immune to this ambivalence. It is reflected domestically in the history of the Refugee Act itself. The act was championed not only by advocates of more expansive migration and asylum policies but also by restrictionists, who saw in the law an opportunity to limit potentially excessive executive power to admit refugees and asylum seekers.² At stake in the interpretation and application of its provisions is the normative status of the other's demand vis-à-vis the state's political right to regulate the boundaries of its territory and national identity.

In the asylum seeker, the paradox takes on flesh and blood and crosses into U.S. territory. U.S. Law distinguishes “asylum seekers” from other classes of immigrants on two grounds. They are distinguished by the circumstances that set them in motion and the exceptional claim they make on the state. According to the Refugee Act of 1980, “refugees” and “asylum seekers” are to be defined in the following terms:

The term “refugee” means... any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such a person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

¹ C.f. T. Alexander Aleinikoff, “State-Centered Refugee Law: From Resettlement to Containment,” *Michigan Journal of International Law* 14 (1992): 120-138. Aleinikoff's article offers a concise history of receiving nation's growing discomfort with refugee resettlement and the growing preference for repatriation. Additional in-depth treatments of the tensions between state sovereignty and international assignment agreements can be found in *Refugees, Asylum Seekers and the Rule of Law* ed. Susan Kneebone (New York: Cambridge University Press, 2009).

² On the history of this law's passage see Carl J. Bon Tempo, *Americans at the Gate: The United States and Refugees During the Cold War* (Princeton: Princeton University Press, 2008), n.b., 167-196.

Any alien who is physically present in the United States or who arrives in the United States whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States Waters, irrespective of such alien's status, may apply for asylum[.]³

The act's language is reminiscent of prior international asylum agreements that had sought to intervene on behalf of the stateless and victimized.⁴ The law makes the dire threat of persecution sufficient grounds for the refugee's admission. It is the moral necessity of admitting such travelers that compels the state to forego its ordinary prerogative in immigration and to make the offer of asylum. In this body of law, to use Walzer's language, the principle of mutual aid overcomes the right of closure and moral necessity imposes itself on political prerogative.

Indeed, the Refugee Act makes the provision of asylum a declaration of the United States' moral character, stating that it is "the historic policy of the United States to respond to the urgent needs of persons subject to persecution in their homelands[.]"⁵ This declaration affirms in the law the ethos penned by Emma Lazarus and emblazoned on the pedestal of the Statue of Liberty:

Keep, ancient lands, your storied pomp!" cries she
With silent lips. "Give me your tired, your poor,
Your huddled masses yearning to breathe free,
The wretched refuse of your teeming shore.
Send these, the homeless, tempest-tost to me,
I lift my lamp beside the golden door!"⁶

If only in the statutes introduced by The Refugee Act, the other makes a moral demand on the state's freedom, and the law answers with approval. The United States is to be a nation committed

³ Public Law 96-212, 101(a)(42)(A)

⁴ C.f., 1951 Convention Regarding the Status of Refugees and 1967 Protocol to the Convention Regarding the Status of Refugees.

⁵ Public Law 96-212, 101(a)(42)(A)

⁶ Emma Lazarus, "The New Colossus," Poetry Foundation, <https://www.poetryfoundation.org/poems/46550/the-new-colossus> (accessed June 8, 2020).

to the “huddled masses yearning to breathe free.” In this instance, hetero-affectivity prevails over autonomous political right. In this body of law, that is, the asylum seeker’s demand throws the constitutive normative structure of US political subjectivity back into question.

Approving the moral demand posed by the asylum seeker would mean surrendering the United States’ exclusive prerogative to regulate the movement of people across its borders. Refugees and Asylum seekers are differentiated from immigrants by the moral claim they make on the state. They are differentiated from one another by their modes of application. Whereas refugees apply from abroad, an asylum seeker may apply for asylum “irrespective of [her immigration] status.” It is the bare fact of her presence in or on the edge of U.S. territory that entitles her to such an application. As such, migrants may invoke asylum applications “defensively,” even after law enforcement has placed them in removal hearings. Once a migrant has declared her intent to apply for asylum, she is entitled to a credible fear interview, in which she may make her case that the country ought to admit her. Thus, the law extends asylum seekers a measure of agency afforded to no other class of alien. Neither “improper entry” nor the initial “avoidance of examination” or “concealment of fact” disqualifies them.⁷ If the courts find the applicant’s fear of persecution credible, it does not matter whether she has transgressed U.S. law to enter its territory. She may be subject to a fine or minor civil penalty, but the state cannot cast her off without slipping into contradiction. Thus, the asylum seeker’s appearance signals an interruption in the regular operation of US sovereignty. Her demand posits the choice between an identity constituted according to a principle of autonomy and one riven by the other's demand.

In the southwestern borderlands, all across the U.S.-Mexico Line, the appearance of South and Central American asylum seekers (and asylum seekers from around the globe) posit this choice

⁷ The law only stipulates that asylum seekers must file their application within 1 year of arrival in the United States.

in vivid detail. Weary travelers at ports of entry, over-crowded detention centers, and growing refugee camps on the Mexican side of the border are all cause for anxiety. On the one hand, the admission of all these individuals might bring about substantive changes in America's national character. Nevertheless, so too would excluding them. Are these not the very "huddled masses" of which Lazarus wrote? Is it not the United States' self-declared "historic policy" to respond to the "urgent need of persons facing persecution in their homelands?" Over-crowded detention centers and sprawling refugee camps on the southern side of the border represent a dereliction of moral duty – an abandonment of estranged siblings in the name of political prerogative. The Refugee Act gives this anxiety a touchstone in the law itself. However, if it is in the borderlands that this tension threatens to become especially visible, it is also in this context that an aesthetic solution proposes itself.

If the figure of the asylum seeker cannot be stricken from the law, the law can be rendered politically innocuous by denying the presence of actual asylum seekers on the landscape. The Refugee Act leaves to the Attorney General the final say in judging who, in fact, *is* an asylum seeker. Moreover, in the credible fear interview, the burden of proof falls entirely upon the applicant. It is up to migrants to prove that they require refuge and not up to the state to prove that these migrants are not their responsibility. The law makes plain that there is no "presumption of credibility."⁸ Moreover, the one conducting the interview enjoys broad discretion in determining credibility or its absence:

[A] trier of fact may base a credibility determination on the demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the applicant's or witness's account, the consistency between the applicant's or witness's written and oral statements... the internal consistency of each such statement, the consistency of such statements with other evidence of record... and any inaccuracies or falsehoods in such

⁸ 8 USC 1158(b)(1)(B)(iii)

statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim, or any other relevant factor.⁹

Not only the applicant's testimony but the applicant herself is subject to scrutiny. She might say the right things, but her narration might strike the wrong tone. Virtually *any* inaccuracy or infelicity, regardless of whether it goes "to the heart of the applicant's claim," can be grounds for rejecting her application. Moreover, the Attorney General can judge her application ineligible if there are reasonable grounds for regarding the applicant as a danger to the United States' national security.¹⁰

Whether a migrant is recognized as an asylum seeker or a danger to the national community depends in part on the antecedent conditions that grant them recognizability. Judith Butler argues that the recognition of life is at once an epistemic, ontological, and political problem.¹¹ The issue is epistemic in that recognition presupposes recognizability, and the latter is furnished only through framing norms and discourses that organize our apprehension of the sensory field. These conditions of recognizability, in turn, make the issue ontological and political. *How* a life is recognized bears implications for *what* a life is recognized to be. Furthermore, the *how* of recognizability and the *what* of recognition invoke and reinforce normative assumptions about common life and the practices that make it possible. Thus, much is at stake in the frames that facilitate life's apprehension.

The Refugee Act provides one framing discourse for the recognition of migrants. However, it cannot do its work alone. The application of the formal category "asylum seeker" to the concrete case of any given migrant relies upon the jurisprudential reasoning of the one responsible for making (or not making) the identification. Enforcement officials conducting

⁹ Ibid.

¹⁰ 8 USC 1158(b)(2)(A)(v)

¹¹ Judith Butler, *Frames of War: When is Life Grievable?* (New York: Verso, 2009).

credible fear interviews must draw on additional framing norms and discourses to make their decisions. Since (at least) the mid-1990s, the material prosecution of border policing in the United States' southwestern borderlands has framed a scene of low-intensity conflict. In this setting, life is caught up in a contest of conflicting principles and ideologies and apprehended through a technological apparatus designed to identify threats on the field of battle. Within this aesthetic scheme, alterity is transmuted into enmity, and estranged siblings appear as alien combatants. The migrant discovered in a theater of conflict, moving along the same paths as the imagined enemy, and apprehended with technologies designed for battlefield surveillance, becomes a natural object of suspicion. Costumed as "transnational criminals" and "terrorists," migrants are perceived as encroaching threats whose admission would undermine the rule of law and subject Americans to the disarray of anarchic violence. Nothing less than national security is at stake. The specter of violence that accompanies migrants' movements in this theater allows the potential danger they may pose completely to overshadow the demand they would otherwise put before the national community. My goal in the following pages is to lay out how the aesthetics of LIC condition us to recognize migrants as "alien combatants" and "threats," rather than "refugees" or "asylum seekers," thereby insulating the American project of self-determination from the moral demand they would otherwise put before the nation.

2. Pushing Migrants out of Sight

The southwestern borderlands came to be identified as a zone of conflict through a series of policy developments implemented over the last couple of decades. In 1994, under the leadership of INS secretary Doris Meissner, senior agents at the border patrol partnered with specialists from the Army's Center for Low-Intensity Conflict to draft a federal border enforcement plan that would put an end to surreptitious crossings. As Meissner tells the story, the *Border Patrol Strategic Plan:*

1994 and Beyond was designed to answer “enforcement-first” concerns about illicit entries.¹² From this perspective, unregulated migration and the growing population of undocumented aliens in the United States had a corrosive effect on the rule of law and undermined national confidence in the federal government’s ability to maintain its territorial integrity.¹³ Therefore, the cure would not be the creation of new pathways to citizenship that might be taken to valorize surreptitious entries. Instead, it was to fortify the borders, put an end to illegal entries, and remove aliens unlawfully present within the country’s interior.¹⁴ Only after the federal government proved it possessed the capacity and will to enforce its existing laws could it consider more comprehensive immigration reforms. Closely attuned to border-state voters’ desires for more stringent enforcement and aware that the drama of border enforcement was increasingly playing out in front of television cameras, President Bill Clinton signed into law new legislation (principally the Illegal Immigration Reform and Immigrant Responsibility Act and the Anti-terrorism and Effective Death Penalty Act) that facilitated increased removals by expanding the list of “aggravated felonies” that qualified persons for removal.¹⁵ Whereas these measures would afford better enforcement in the interior, the escalation of border enforcement technologies and tactics laid out in the *Border Patrol*

¹² Doris Meissner, Donald M. Kerwin, Muzaffar Chishti, and Claire Bergeron, *Immigration Enforcement in the United States: The Rise of a Formidable Machinery* (Washington, D.C.: Migration Policy Institute, 2013), 14-15.

¹³ C.f., Joseph Nevins, *Operation Gatekeeper and Beyond: The War on “Illegals” and the Remaking of the U.S.-Mexico Boundary* (New York: Routledge, 2010). In 1994, Pete Wilson seized on this loss of confidence, touting his record to secure the California-Mexico border, despite the federal government’s failure to do so. In a campaign ad that featured security footage of migrants rushing through the San Ysidro port of entry, he blamed undocumented migrants for the economic down turn the state was experiencing and positioned himself as a strong man who had and would continue to use the National Guard to repel migrants. Nevins notes that although the economic impact that undocumented migration had on California’s economic downturn remains unclear, the images political impact were decisive. Wilson squashed his democratic challenger with a fifteen point margin of victory. Wilson’s successful campaign provided demonstrable evidence of the political efficacy of border theater. He was not alone in using it. Both Patrick Buchanan and Bill Clinton appealed to the promise of border security in an effort to capture the votes of southwestern voters.

¹⁴ Meissner et al, *Immigration Enforcement in the United States*, 14.

¹⁵ See 8 USC 1101(a)(43). Whatever connotations the language of an “aggravated felony” might propose, these crimes are by no means limited to violent offenses.

Strategic Plan would attempt to accomplish the fortification of the border itself and deter future illegal entries. Perhaps more importantly, it would project the image of security.

Before the strategy's introduction, border enforcement was practiced in a reactive mode. After a crossing occurred, officers would attempt to arrest and remove the individual. However, these efforts were widely unsuccessful, and their failures regularly played out in the public eye. At the San Ysidro port of entry in San Diego, illegal crossings that enforcement officials referred to as "Banzai runs" occurred regularly.¹⁶ Large groups of migrants would gather together on foot. As soon as they had sufficient numbers to overwhelm law enforcement, they would race through the port of entry *en masse*. Border Patrol officers could not hope to intercept them all, and the tactic made a mockery of their ability to control the movement of people across the border. This embarrassment was not without political effect. Border state politicians like California Governor, Pete Wilson, released highly successful campaign ads that stoked fears about "illegal aliens" and pilloried the federal government's inability to control the border.¹⁷

In El Paso, the border patrol met with another sort of public humiliation. Latinx Americans living and working in neighborhoods on the border were frequently suspected to be aliens unlawfully present and were made regular targets of racial profiling. In 1992, border enforcement officials became so disruptive and unpopular that the students and faculty of Bowie High School successfully sued the Border Patrol for violating their civil rights.¹⁸ Subsequently, sector chiefs in San Diego and El Paso made these cities the first sites for large-scale build-ups of enforcement personnel, border fencing, and surveillance technologies. These escalations were meant to replace unsuccessful reactive border policing with more proactive enforcement that would stop illegal

¹⁶ Peter Andreas, *Border Games: Policing the U.S.-Mexico Divide* (Ithaca: Cornell University Press, 2009), 87-88.

¹⁷ Pete Wilson, "Campaign Ad on Illegal Immigration," Television advertisement, 1994.

¹⁸ *Murillo v. Musegades*, 809 F. Supp. 487 (W.D. Tex. 1992)

entries from occurring in the first place. Operation Gatekeeper, in San Diego, and Operation Hold the Line, in El Paso, provided templates for the more pro-active enforcement tactics that the national strategy would incorporate.

Marshaling the insights of these localized initiatives, in 1994, the *Border Patrol Strategic Vision* aimed to reform border policing in a way that would “control the borders of the United States” and restore national “confidence in the integrity of the border.”¹⁹ The latter objective revealed the policy’s symbolic importance. No less important (and perhaps more important) than the actual control of the border was the image of border security. This image was to be achieved through the provision of concrete measures that would push migration further from view while placing (ostensibly) successful enforcement measures at center stage.

Planners organized the national enforcement strategy according to a logic of “prevention through deterrence.” This logic, which targeted so-called “economic migrants,” drew on an implicit “rational agent” theory of migration. According to this theory, planners saw migrants as rational self-interested actors motivated to move from one country to another by a form of cost-benefit analysis. A migrant in El Salvador, for instance, might think that he would earn better wages working in the United States than at home. These increased earnings’ potential benefits would outweigh the costs of migrating, even if he had to cross illicitly. As long as the perceived benefits of migrating outweighed the costs, individuals would continue to come to the United States, whether legally or illegally.²⁰

¹⁹ Doris Meissner, *Border Patrol Strategic Plan: 1994 and Beyond* (Washington, D.C.: United States Border Patrol, 1994), 2.

²⁰ For an example of rational agent theory see George Borjas, *Friends or Strangers: The Impact of Immigrants on the U.S. Economy* (New York: Basic Books, 1990); C.f., Tisha Rajendra, “The Rational Agent or the Relational Agent: Moving from Freedom to Justice in Migration Systems Ethics,” *Ethical Theory and Moral Practice* 18 (2015): 355-369. In addition to the theory’s internal logic, rational agent theories seem to enjoy at least some measure of anecdotal evidence. A recent story in the *New York Times* documented the not uncommon perception among poor Salvadorans that they could go to America, work a few years, and return home vastly wealthier. (See James Verini, “How U.S. Policy Turned the Sonoran Desert into a Graveyard for Migrants,” *New York Times* (August 28, 2020)).

Thus, the planners wagered that they could prevent entries by raising the cost of crossing to an intolerable level. First, they would make crossing at ports of entry more difficult by following the leads provided in San Diego and El Paso. During Clinton's presidency, the INS budget increased from \$1.5 billion to \$4.2 billion.²¹ This increased funding would allow the Border Patrol to hire 10,000 new officers and equip them with improved technological assets. This expanded funding also permitted investments in enforcement infrastructure. The proliferation of border fences, anchored in urban areas and snaking out into the desert, channeled migrant traffic into remote stretches of land.

It is worth pausing to note that these investments did not stop with Clinton. Each of the last four American presidents, in one capacity or another, has been a wall-builder. Bill Clinton's Illegal Immigration Reform and Immigration Responsibility Act (IIRIRA) allocated funds for the first spate of barriers constructed in support of PTD. In 2006, then-senator Barack Obama voted in favor of the Secure Fence Act of 2006. The act authorized and partially funded the construction

Anthropologist Jason De León recounts observing similar sentiments in some of the Mexican border-crossers he interviewed. However, De León is also swift to point out NAFTA's effects on the Mexican economy and the political economic demands that have long created "push" and "pull" factors contributing to individuals' decisions to migrate. Counter the economic logics of rational agent theories of migration, Rajendra points to the larger structure-dominant theories of migration and migration systems theories. These theoretical approaches emphasize that migration trends are not simply the aggregates of individual decisions. Structure-dominant theorists point to push and pull factors, like the US demand for exploitable labor sources, as contexts essential for understanding how individual decisions are elicited and informed. Similarly, Migration systems theories see individual choices as a micro-structure situated in larger cultural, political, and economic meso- and macro-structures that develop in distinctive migratory traffics between particular sending countries or regions. In *Migrants and Citizens: Justice and Responsibility in the Ethics of Immigration*, Rajendra proposes that a just response to economic migration from Latin America's northern triangle into the United States requires adopting a Migration Systems Theory. Like Rajendra, I contend that migrant's decisions must be understood relationally. Keying in on the borderlands and the drama of border enforcement, I attempt in this chapter and the next to attend to the constellation of concrete processes that shape the scope and limit of migrant agency, underscoring the way that the presentation of passivity as activity and agency as a lack thereof (and *vice versa*) undermine the straightforward story of agency that the legal actions against border crossers typically presuppose. By focusing on the borderlands, I by no means seek to discredit the contributions of migrations systems theories; rather, I want to emphasize the constraints on migrants' agency present in the "micro-structural" decision to cross surreptitiously. The aesthetics of low-intensity conflict, however, work to disappear these constraints or, failing that, give them the appearance of necessity.

²¹ Andreas, *Border Game*, 89; c.f., U.S. Customs and Border Protection, "U.S. Border Patrol Fiscal Year Budget Statistics (FY 1990-2019)."

of 700 miles of additional fencing. President George W. Bush signed the act into law, and the new barriers' construction continued into Obama's first presidential term. At the time of this writing, the Trump Administration has undertaken to construct 100 miles of new and replacement fencing. Much of this new, thirty-foot-tall fencing is being constructed in the Sonoran Desert. Migrants attempting to circumvent the barrier must travel further and further west, away from the nearest towns and closer to the Barry M. Goldwater Air Force Range, one of the largest active bombing ranges in the United States. With tactics like "Banzai runs" rendered ineffective and reduced access to trains and other forms of public transportation afforded at urbanized crossings, routes of entry shifted west.

Migrants would have to make their crossings in the wilderness. Here, the planners expected, migrants might be forced to pay with their lives. "Illegal entrants crossing through remote, uninhabited expanses of land and sea along the border," the document states, "can find themselves in mortal danger."²² Recognizing the landscape's lethal potentials, the planners effectively deputized it as a technology of state:

The prediction is that with traditional entry and smuggling routes disrupted, illegal traffic will be deterred, or forced over more hostile terrain, less suited for crossing and more suited for enforcement.²³

On one reading, the language of "terrain... more suited for law enforcement" might suggest a terrain in which it is easier to track and apprehend migrants'. Alternatively, it might describe a terrain in which law enforcement efforts are less likely to disrupt the lives of citizens living in the borderlands. These interpretations certainly fall within PTD's endeavor to project the image of a secure border. However, we would also rightly read these words as describing a terrain that, by

²² Meissner, *Border Patrol Strategic Plan*, 2.

²³ *Ibid*, 7.

its nature, resists and halts migrants' advance. Against the migrants who find themselves in the wilderness, the Sonoran Desert itself acts as an agent of law enforcement. The state weaponizes its extreme temperatures, rugged terrain, and natural wildlife.

The Sonoran Desert is immense. It stretches from Sonora, Mexico, into Arizona and California, covering nearly 100,000 square miles of rugged mountains, valleys, and riverbeds in its expanse. While the Sonoran Desert is a place of almost otherworldly beauty, home to jaguars and hummingbirds, towering saguaros and organ pipe cacti, this extreme environment is a place of undeniable danger. There is no safe path through the desert. The humanitarian-aid organization, No More Deaths, offers detailed descriptions of the dangers that migrants must face:

Travel by foot through low-desert flatlands involves extreme exposure to sun and wind. There is almost no available potable water. [The] lowlands play host to extreme temperature shifts between day and night. Physical exertion in high heat quickly leads to dehydration and heat-related illnesses. Plummeting nighttime temperatures are equally dangerous, as sweat-soaked clothing cools to degrees that can cause hypothermia.

The serrated volcanic mountains of the northern Sonoran Desert form a maze-like landscape. Jagged rocks, loose boulders, and crumbling ridges above steep slopes often cause border crossers to fall. Resultant blunt-force-trauma injuries are common. The mineral-rich mountains in the desert uplands house abandoned vertical mine shafts, which rarely have visible fencing or signage. If inadvertently entered, one can easily fall to one's death. Like the flatlands, the climate here is characterized by extreme heat and cold. At higher elevations, death due to exposure to cold is common in the winter months.²⁴

These descriptions do not exaggerate the risks that desert crossings pose. They corroborate the federal government's assessment from the *Border Patrol Strategic Plan*. Indeed, many migrants do find themselves in "mortal danger." Many succumb. In the years since PTD's implementation, the Pima County Medical Examiners office reports having received more than 3,200 human

²⁴ La Coalicion de Derechos Humanos & No More Deaths, "Introduction," *The Disappeared Report*, No More Deaths, <http://www.thedisappearedreport.org/> (accessed June 11, 2020)

remains recovered from the desert.²⁵ In more than half of all cases, the remains are too degraded to identify a cause of death. However, in more than eight of every ten cases where medical examiners determine a cause of death, it is traced either to exposure or to blunt-force-injury. While Pima County comprises one of the deadliest stretches of the border, migrant mortality is not a phenomenon unique to this jurisdiction. The Border Patrol reports having collected the remains of more than 6,000 migrants from the borderlands, and some critics suggest that this number may still undercount the tally by as much as 43 percent.²⁶ No economic benefit could outweigh the total loss of life. The *Border Patrol Strategic Plan* counted on this fact.

3. The Aesthetics of Low-Intensity Conflict

Border enforcement's incorporation of lethal force to stem the tide of illegal entries required equally strong legitimation. It was not sufficient simply to enact a strategy of exclusion that relied on placing migrants into situations of mortal danger. Whatever deaths resulted would have to be perceived as justified. Casting the borderlands as a site of "low-intensity conflict" filled this need by wedding "enforcement first" concerns with all the exigency of a battle for self-preservation. The concept of low-intensity conflict was developed during the cold war and was defined, in a 1990 field manual jointly published by the Departments of the Army and the Air Force, in the following terms:

Low intensity conflict is a political-military confrontation between contending states or groups below conventional war and above the routine, peaceful competition among states. It frequently involves protracted struggles of competing principles and ideologies. Low intensity conflict ranges from subversion to the use of armed force. It is waged by a combination of means, employing political, economic, informational, and military

²⁵ Arizona OpenGIS Initiative for Deceased Migrants, "Custom Map of Migrant Mortality," Humane Borders, <https://humaneborders.info/app/map.asp> (accessed June 11, 2020).

²⁶ No More Deaths, "Disappeared: Introduction," 7, n. 1.

instruments. Low intensity conflicts are often localized, generally in the Third World, but contain regional and global security implications.²⁷

The *Border Patrol Strategic Plan* was the first document to associate this doctrine with the practice of border enforcement. In doing so, the plan solidified border enforcement's existential stakes. Those attempting illegally to enter the United States now represented "principles and ideologies" hostile to the United States. While their activities might appear localized to the borderlands, they could be expected to have "regional and global security implications." A border out of control would compromise the whole of national security. Thus, the use of extreme measures to secure the border would appear no less legitimate than the defensive exercises of force legitimated by the just war tradition.²⁸

If the *Border Patrol Strategic Plan* of 1994 left the connection between border enforcement and national security implicit, border enforcement agencies' reorganization under the Department of Homeland Security made it explicit. The September 11, 2001 terrorist attacks raised fears that lax border enforcement policies had allowed America's enemies to claim thousands of lives on the

²⁷ Headquarters Departments of the Army and the Air Force, *Field Manual 100-20: Military Operations in Low-Intensity Conflict* (Washington, D.C., 5 December 1990), 1-1.

²⁸ However, even as the aesthetics of LIC invite us to imagine border enforcement as part of a just war, it is exceedingly difficult to justify PTD under the traditional criteria that the just war tradition has accumulated. This difficulty arises in large part from the fact that LIC is defined as a form of conflict that is "below conventional war." Though the aesthetics of LIC might give PTD the appearance of warfare and draw on similar rhetorics, what actually takes place on the ground fits poorly into the sorts of conflicts that the just war tradition imagines. Consequently, many of the criteria of *Jus ad bellum* and *Jus in Bello* prove remarkably difficult to apply. Permitting the claim that migrants are tantamount to invading guerillas, then PTD may be taken to have followed from a just cause – i.e., national defense against foreign acts of aggression. The conflict might even be pursued with the right intent of restoring peace. However, from this point forward, everything becomes much murkier – even if LIC's claims regarding migrants are permitted. The protracted nature of LIC makes victory rather difficult to define. As such, *ad bellum* criteria of proportionality and probability of success prove difficult to adjudicate. Moreover, whereas the legitimate authority to declare war is typically the province of the US congress, PTD has been implemented and pursued by government agencies like the INS and Border Patrol. The matter does not become any easier as one turns from *ad bellum* to *in bello* criteria. PTD deputizes the environment as an agent of state. However, as I will argue in the next chapter, the Sonoran desert is a blunt instrument incapable of discriminating between combatants and non-combatants and indifferent to excessive uses of force. Therefore, even from the perspective of the just war tradition, the eclipse effected by the aesthetics of LIC provides little more than a thin façade that hides multiplying vices. The façade enjoys credibility as it plays on the emotional residue produced by the history of the region, but, in the final analysis, is unlikely to earn the endorsement of many just war theorists.

nation's soil. Thus, the border became one of the frontlines in America's "war on terror." The "Ethos of the U.S. Customs and Border Protection Agency," in which they explicitly describe themselves as "America's frontline," the American people's protection "against terrorists and the instruments of terror," reflects this development.²⁹ This self-understanding is also indicative of border enforcement's understanding of migrants as encroaching threats. Today, USCBP's first stated goal is to "counter terrorism and transnational crime." Indeed, the watchwords of "prevention through deterrence" have given way to the language of "risk-based strategic planning."³⁰ Under the aegis of national defense, migrants appear not as potential neighbors, nor even as prospective laborers.

First and foremost, migrants are "risks" that must be assessed, managed, controlled, and repelled. The 2020 *U.S. Customs and Border Protection Strategic Plan* locates efforts to surveil the borderlands within the broader intelligence imperative of understanding "the threat environment" created by the specter of global terror.³¹ By controlling this environment, border policing takes its place as a vital element in the President's *National Security Strategy*.³²

The cumulative effect of these developments is the emergence of a material environment that reifies and confirms the conviction that the borderlands are a place of danger. Peter Andreas observes that the Border Patrol Strategic Plan's adoption precipitated border enforcement officials' requisition of technologies initially designed for military use. Magnetic footfall detectors and

²⁹ See U.S. Customs and Border Protection, *Vision and Strategy 2020*.

³⁰ U.S. Customs and Border Protection, *Vision and Strategy 2020*, 10-17; C.f., Meissner et al, *Immigration Enforcement in the United States*.

³¹ *Ibid*, 12.

³² *Ibid*, 7; The *National Security Strategy* is a document published by the president to highlight security priorities. The most recent iteration, published by the Trump Administration in 2017, reaffirms the connection between border enforcement and national security, stating that "strengthening control over our borders and immigration systems is central to national security, economic prosperity, and the rule of law. Terrorists, drug traffickers, and criminal cartels exploit porous borders and threaten U.S. security and public safety." (See United States & Donald Trump, *National Security Strategy of the United States* (The White House, 2017), 9.)

infrared body sensors initially used in Vietnam and an electronic fingerprinting system developed for the Navy's Deployable Mass Population Identification and Tracking system now surveil the borderlands.³³

A host of organizations and contractors support the redeployment of these and other technologies. The San Diego-based Border Research and Technology Center has tested the usefulness of such assets as electric currents to stop fleeing cars, cameras that can see passengers hidden in vehicles, and computers capable of identifying commuters by voiceprint.³⁴ Conferences like the Border Security Expo, produced by Clarion events, bring border enforcement authorities together with military contractors that showcase the latest in airborne and ground-based surveillance, armored vehicles, electro-optic imaging, motion detectors, radar systems, unmanned aerial and ground vehicles, and weapons systems.³⁵

These military technologies constitute a mediated knowledge that pre-interprets migrants' approaches. Where technologies mediate our perceptions, they are organized according to those technologies' purposes. The purpose of these adapted military technologies is to parse the sensory field into an environment of manageable threats. Surveillance technologies reduce migrants to manipulatable data. Human lives are effaced as they are dissipated into a panoply of impersonal information. This information, in turn, is reorganized according to the aesthetics of LIC. Apprehended as blips on radar screens, waves on acoustic sensors, or hazy images on video surveillance systems, migrants enter the frame not as persons or individuals but as encroaching threats, conforming them to the built-in expectations of an aesthetics of LIC. Whatever moral

³³ Andreas, *Border Games*, 91.

³⁴ *Ibid*, 92.

³⁵ "Border Security Expo," Clarion Events, <https://www.bordersecurityexpo.com/> (accessed June 9, 2020); C.f., Longo, *The Politics of Borders*, 49-60. Longo, whose research included attending conferences like the Border Security Expo, offers a succinct description of the "net" of technologies that make the borderlands a "Zone of Surveillance."

demand they might have otherwise made upon us disappears in the wastes of the “threat environment.” The characters who appear in the theater of LIC are first perceived as “alien enemy combatants,” whatever else they may be can only be known after this first identity has been dispelled. Number, location, bearing, rate of travel, these data points tell us nothing of motive or identity. The aesthetics of LIC supply these crucial details. Impersonal data can do little to disrupt the fiction.

The reflexive reinforcement of the aesthetics of LIC and the technological apparatus that surveils the borderlands provide the “frame” for understanding and appraising the phenomena of migration and border enforcement.³⁶ It bears stating that Butler developed her concept of the frame by analyzing war-time photography, noting the photograph’s function in presenting various lives as “grievable” and others as “ungrievable” and presenting some bodies as acceptable targets of violence and others as unacceptable. Depending on its composition, a photograph might encourage us to grieve a fallen soldier but not an enemy combatant – even if the two met their demise in much the same manner. Butler’s insight is that the way the visible field is delimited and organized also exposes it to normative conditions for the apprehension of life and the recognition of subjects. US law, broadly construed, serves a framing function when distinguishing between legal subjects like “aliens” and “citizens.” These two political subjects are not only exposed to differing levels of precarity. Their subjectification also renders these inequalities acceptable. “Aliens” are not US nationals. They are not a part of the “people.” Consequently, it is acceptable that they are subject to exclusion and removal by the federal government. To recognize migrants as “aliens,” rather than “estranged siblings,” is already to undermine their demand's moral force.

³⁶ Butler, *Frames of War*.

The aesthetics of LIC carry the process of alienation further still. The figure of the “alien,” situated within this frame, is identified with that of the “enemy combatant.” While the term “enemy combatant” has historically referred to members of the armed forces of a nation with which the US is at war, it finds expanded meaning under the doctrine of LIC. Enemy combatants may be non-state actors, guerrillas, or subversives. What is definitive of their identity is not that they wear uniforms or wield conventional weapons. Rather, it is that they are perceived to harbor “principles and ideologies” antithetical to the United States.³⁷ Thus, LIC's frame produces a form of recognition disconcertingly reminiscent of the infamous friend/enemy distinction that Carl Schmitt judged to be at the heart of all politics. Of the “enemy,” Schmitt wrote, “it is sufficient for his nature that he is, in a specially intense way, existentially something different and *alien*, so that in the extreme case conflicts with him are possible.”³⁸ Just as for Schmitt, for PTD, the enemy, in her alienation, or the alien, in her enmity, is a worthy subject of violence and a life that need not be grieved. On this view, the migrant deaths anticipated by PTD’s planners can be seen as metrics of success (perhaps even artifacts of justice) rather than repetitions of the crime of fratricide. In sum, LIC frames migrants within a system of names that gather legitimacy around border policing efforts that anticipate and instrumentalize their deaths.³⁹ This framing is not a matter of political

³⁷ Headquarters Departments of the Army and the Air Force, *Military Operations in Low-Intensity Conflict*, 1-9. The doctrine of low-intensity conflict recognizes from the outset the renewed need to differentiate between enemy combatants and noncombatants as traditional modes of distinguishing between the two break down.

³⁸ Carl Schmitt, *The Concept of the Political* (Chicago: University of Chicago Press, 2007), 27.

³⁹ I want to pause here to draw a distinction between “alterity” and “alienness” to which I will return in the following chapters. Derived from the latin *alter*, “alterity” describes that which is different and, at its strongest, that which escapes our ken. “Alterity” may be seen as the possession of another subject, like Emmanuel Levinas’s “other” or who stands beyond our freedom’s ambit. It might also be associated with Karl Barth’s “Holy Other,” who excels the transcendental conditions of our knowledge. However, as Kierkegaard demonstrates in his elaborate play of pseudonyms, “alterity” is also a quality of the self. There is a part of me that escapes my knowledge and my articulation. Not only the outward political process of identification, but also the inward process of self-identification produces a remainder, something *alter* to whatever discourse is meant to provide definition. The “alien,” on the other hand, does not imply this same measure of transcendence. To the contrary, the term “alien” is a name that circumscribes and comprehends an identity, situating it squarely in the forms of recognition afforded by our legal discourse. By no means, then, is it clear that an other’s alterity leads to her classification as an “alien.” To the contrary,

indifference. To the contrary, the theater of LIC effectively insulates the politics of self-determination from the moral challenge that migrants might otherwise pose.

4. Una Herida Abierta

The aesthetics of LIC are not quickly dispelled or resisted. The sense that the borderlands are a theater of protracted conflict attains credibility as it evokes and inverts the history of violence that defined this region's origins. The United States came into possession of the borderlands by right of conquest – the same means by which New Spain had extracted them from the indigenous population. Following Texas's annexation and a skirmish between U.S. and Mexican forces in the disputed territory between the Rio Nueces and the Rio Grande, the United States invaded Mexico. By the end of a two-year war that brought American troops to the streets of Mexico City, the U.S. had claimed the territories that make up modern-day Arizona, California, Colorado, Nevada, New Mexico, and Utah.⁴⁰ On February 2, 1848, in the Villa de Guadalupe Hidalgo, leaders signed the Treaty of Peace, Friendship, Limits and Settlement between the United States of America and the Mexican Republic, transferring no less than half of Mexico's territory to the United States.⁴¹ Thus, when Gloria Anzaldúa describes the borderlands as “una herida abierta,” as “an open wound,” her speech is not purely figurative. Moreover, this characterization helps us to understand the long-standing insecurities that reinforce LIC's aura of realism.

On this land, identity itself is received as a wound. The southwestern borderlands are a testament to what Jörg Fisch refers to as the dilemma of self-determination, the presupposition of

it may also be the case that her alterity becomes that which excels the frame and calls into question the rights and entitlements (or lack thereof) that it ascribes to her.

⁴⁰ Treaty of Peace, Friendship, Limits and Settlement between the United States and Mexico, Article V.

⁴¹ Less than a decade later, with the Gadsden Purchase, the U.S. would claim even more territory from its beleaguered southern neighbor.

freedom from dominion for a situation in which power decides.⁴² Upon the non-identity of concrete existence, armies and state actions impose the principle of identity for which self-determination strains. To this day, the Treaty of Guadalupe Hidalgo and the enforcement apparatuses that impose its results on the U.S.-Mexico borderlands attest this truth. It is true enough that the treaty extended a measure of agency to the conquered. Article VIII of the Treaty of Guadalupe Hidalgo extended a choice to the Mexicans living in the newly American territory: they could remain as resident aliens, emigrate to Mexico, or become U.S. Citizens.⁴³ However, while this article of the treaty extended the conquered people a measure of freedom, it was freedom constrained to the decision foisted upon them by the sudden declaration that the land beneath their feet was U.S. soil. The parameters of their choice had been determined by militarism. Whatever they claimed, they could no longer assert that this land was their home. They would be Americans, or they would be aliens. This disjunction encompassed the extent of their options. The superior might of U.S. cavalry and artillery had seen to that. Whatever right to self-determination the treaty established was conditioned by the right of conquest and distributed unevenly.

The choice that the Treaty of Guadalupe Hidalgo established more than a century and a half ago remains out of joint with the reality it attempts to order today. The borderlands continue to be populated by those at home neither in the United States nor in Mexico. The U.S.-Mexico line cuts through the Tohono O'odham nation's sovereign territory, which comprises lands in both countries. In Arizona, the U.S. Border Patrol has positioned checkpoints on the O'odham reservation's western, eastern, and northern limits. Here, officers of the Border Patrol halt vehicles to check the citizenship of their drivers and passengers. When they intercept members of the

⁴² Jörg Fisch, *The Right of Self-Determination of Peoples: The Domestication of an Illusion* (New York: Cambridge University Press, 2015), 13.

⁴³ Treaty of Peace, Friendship, Limits and Settlement between the United States & Mexico, Article VIII.

O’odham nation, these routine inspections become routine disruptions of any exact binary between peoples.⁴⁴

State-sponsored violence has long played a role in imposing order on the borderlands' inhabitants—especially those considered alien. The United States spent the better half of the nineteenth century pacifying the territory they had claimed and subordinating the region's population under a racial hierarchy dominated by Anglo-Americans. “For many decades,” Timothy J. Dunn explains, “the border was a tenuous social construct, established and maintained by force.”⁴⁵ Dunn proposes that we should understand this region's history according to Mario Barrera’s “internal colonization” thesis.⁴⁶ In a series of land disputes, the U.S. Army and various paramilitary organizations used violent means to consolidate the land under the ownership of Anglo-American settlers while reducing the Mexicano and indigenous populations to the position of dependent colonized laborers. One of the bloodiest chapters in this history was the “Cortina War,” which wracked the Lower Rio Grande Valley with violence from 1859-1860. Citing the Mexicanos’ loss of land through intimidation, legal manipulations, persistent and uninhibited Anglo violence, and the arrogance of Anglo Racism, rancher Juan Cortina rallied the local Mexicanos to retake the land that had been extracted from them. After seven months of conflict, the U.S. Army, assisted by the Texas Rangers, quashed Cortina’s rebellion. This sort of violence did not end with the close of the nineteenth century. In 1915, a series of raids against Anglo-Americans’ ranches, irrigation works, and railroads escalated into a full-scale revolt. The Mexicanos, organized under the “Plan De Santiago,” sought to resist “Yankee tyranny” with a

⁴⁴ C.f., Ofilia Rivas, *Borderland Blues*, directed and produced by Gudrun Gruber (2017; Zurich), DVD. Rivas, an O’odham woman, recounts being held at gunpoint by a Border Patrol officer and compelled to claim Mexican or American identity. Her story evinces the violence that threatens those who disrupt the systems of names meant to order the land.

⁴⁵ Timothy J. Dunn, *The Militarization of the U.S.-Mexico Border, 1978-1992: Low Intensity Conflict Doctrine Comes Home* (Austin: CMAS Books, 1996), 6.

⁴⁶ *Ibid.*

“liberating army of races and people” that would wipe out the Anglo population and establish a new independent republic. Once again, the U.S. Army and the Texas Rangers intervened with a counterinsurgency operation vastly more devastating than the insurgency itself. The raids claimed the lives of some 62 Anglo citizens and 64 U.S. soldiers. While the precise number of Mexicano casualties is unclear, the military response claimed the lives of between 300 and 5,000 Mexicanos and displaced 30,000 more.⁴⁷

Within this contested history of conquest and pacification, which stretched from the nineteenth century into the twentieth, migrants, both legal and illegal, were perceived as “invaders.” When the United States required an expanded labor force, as in the wake of the U.S. Civil War and the World Wars, the borders were made more porous to migrants. The U.S. even actively solicited laborers from China and Mexico. In 1868, for instance, the United States signed the Burlingame Treaty with China, opening its borders to a large number of contract laborers. In 1942, fearing a labor shortage in the agricultural industry, President Franklin Delano Roosevelt signed an executive order initiating the Bracero program, which brought millions of Mexican guest workers to the United States. However, when this labor was no longer necessary, the very same migrants became objects of suspicion and were subsequently expelled from the territory. Supreme Court Justice Stephen Johnson Field’s decision in *Chae Chan Ping v. the United States* expresses with unflinching clarity the threat to national security Americans perceived (legal!) migrants to pose:

To preserve its independence, and give security against foreign aggression and encroachment, is the highest duty of every nation, and to attain these ends nearly all other considerations are to be subordinated. It matters not in what form such aggression and encroachment come, whether from the foreign nation acting in its national character or

⁴⁷ Ibid, 9f. C.f., Joseph Nevins, *Operation Gatekeeper and Beyond: The War on “Illegals” and the Remaking of the U.S.-Mexico Boundary* (New York: Routledge, 2010), 27ff.

from vast hordes of its people crowding in upon us... If, therefore, the government of the United States, through the legislative department, considers the presence of foreigners of a different race in this country, who will not assimilate with us, to be dangerous to its peace and security, their exclusion is not to be stayed because there are no actual hostilities with the nation of which the foreigners are subjects.⁴⁸

Invading armies, Field's ruling suggests, do not always arrive armed and uniformed. The United States had to be vigilant in defending itself from cultural invasions as well.⁴⁹ The invaders might arrive in work-clothes rather than military uniforms, but this would make them no less dangerous. It should be no surprise then that when the Labor Appropriations Act established the Border Patrol in 1924, employment for an agency tasked with regulating migrant labor was advertised as a "soldier's job."⁵⁰ Nor should it be seen as a betrayal of the border patrol's original function that it now operates under the aegis of homeland security.

The institutional connection between the border patrol and the Army's center for LIC, which set the current aesthetic strategy in motion, draws credibility from this history's emotional residue. Indeed, the borderlands are a place where invaders rapaciously claimed lands and subdued nations. The territoriality of the region itself corroborates the existential stakes that the doctrine of LIC evokes. There was a time when this land was not American territory. It belonged to another until it was claimed by right of conquest. Power can decide to whom a land belongs, even against the wishes of those affected. Therefore, any power that might wrest this land back from American hands must be resisted. This imperative remains whether power manifests in conventional armies or covert guerrillas and subversives. Lands claimed and pacified by these means are inherently insecure. The aesthetics of LIC capitalize on this insecurity while recasting the players in the

⁴⁸ The Chinese Exclusion Case, *Chae Chan Ping v. United States*, 130 U.S. 581

⁴⁹ Justice Field's decision invites us to read the history of national origins quotas and racially coded immigration legislations as an instance of national self-defense.

⁵⁰ C.f., Patrick W. Ettinger, *Imaginary Lines: Border Enforcement and the Origins of Undocumented Immigration, 1882-1930* (Austin: University of Texas Press, 2009).

drama. The Americans now play the role of the defenders and the migrants they intercept wear the invaders' costumes. For all the pro-active measures outlined in the *Border Patrol Strategic Plan*, the border enforcement agents on the ground in the Sonoran appear to function purely reactively. Helicopters float in the desert air like hoverflies, jeeps sit motionless on the side of dirt roads, and bored officers mill around at checkpoints staring at their phones. *Then*, an enemy combatant crosses over the border, and propellers are spun into action, engines are thrown into gear, guns are loaded, and officers are deployed to the breach.

5. The Asylum Seeker Eclipsed

The appearance of passivity on the part of border enforcers is fiction. There is good reason to believe that every migrant who passes between ports of entry does not do so to subvert US Laws and institutions. The matter is more complicated than the aesthetics suggest. Enforcement policies that create barriers of access to the asylum system, combined with hostility from individual officers, and inefficiency and historical inequities in asylum admissions all combine to discourage migrants from seeking asylum at legally designated ports of entry.

Asylum seekers must overcome multiple hurdles before gaining refugee status. The immigration courts responsible for hearing the cases of asylum-seekers face an enormous backlog of pending cases. In fiscal year 2000, the number of pending cases sat at 125,734. In Fiscal Year 2019, that number had climbed to 1,023,767.⁵¹ Migrants coming from Guatemala, Honduras, Mexico, and El Salvador file the bulk of these cases. Migrants from these countries, on average, must wait between one and three years before their case is heard.⁵² They may spend part or all of

⁵¹ "Immigration Court Backlog Tool," Trac Migration, (https://trac.syr.edu/phptools/immigration/court_backlog/) (accessed November 15, 2019)

⁵² Ibid.

this time in an immigrant detention facility.⁵³ Even if they have entered the country legally, asylum seekers from the northern triangle are drastically more likely to have their claim rejected than accepted. Immigration courts reject the applications of 82.1% of Salvadorans, 83.4% of Guatemalans, and 84.1% of Hondurans.⁵⁴ These percentages outpace even the rising proportion of rejected asylum applications among all applicants.⁵⁵ In 2018, immigration judges made a record number of decisions in asylum cases. They also denied 65% of all asylum applications.

Before an asylum seeker can even take their chances in this game of numbers, they must successfully declare themselves at a designated port of entry. However, migrants also meet with resistance at this stage. Since the Reagan administration, the United States has employed tactics like interdiction to stop migrants from reaching ports of entry. It has also enlisted the help of Mexican border enforcement to stop migrants before they can make it to the international line. Most recently, under the Trump administration's "Zero Tolerance Policy," Customs and Border Protections have reported the use of a policy called "metering." Ostensibly employed to avoid

⁵³ For a history of the legal mechanisms that have made migrant detention (even for asylum seekers) a standard practice in the United States and Britain, see Daniel Wilsher, *Immigrant Detention: Law, History, Politics* (New York: Cambridge University Press, 2014).

⁵⁴ "Immigration Court Backlog Tool." Apart from Mexican citizens, asylum seekers coming from the northern triangle account for the largest numbers of asylum seekers in America and the largest number of persons apprehended attempting to cross the U.S.-Mexico Border. (C.f., U.S. Border Patrol, *U.S. Border Patrol Nationwide Apprehensions by Citizenship and Sector: FY 2007-2018* (Washington D.C.: U.S. Customs and Border Protections, 2018))

⁵⁵ C.f., Carl J. Bon Tempo, *Americans at the Gate: The United States and Refugees During the Cold War* (Princeton: Princeton University Press, 2008). One might read these numbers and draw the conclusion that a greater proportion of asylum-seekers hailing from the global south are submitting bogus claims. This interpretation of the data has not been without effect. An increasing number of DA's are now filing criminal charges against asylum-seekers judged to be submitting frivolous claims. However, a look at historical trends in American asylum admissions suggest another, more troubling interpretation. As Bon Tempo shows, U.S. asylum law has always been drafted and implemented with an eye to U.S. domestic and foreign policy priorities. The law and the courts are by no means apolitical. In the 1980s, when our current Asylum legislation was being drafted and first implemented, asylum seekers were a powerful political image. Individuals fleeing communist country's provided evidence of the United States moral superiority to the Soviet Union. The optics surrounding asylum seekers fleeing governments allied with the United States were counterproductive to U.S. foreign policy initiatives. Consequently, asylum admission trends reflect a bias toward asylum seekers (particularly Europeans) fleeing communist governments and a general disregard for individuals fleeing oppressive right-wing governments, including those backed by the U.S. in Latin America. (See also Gil Loescher & John A. Scanlan, *Calculated Kindness: Refugees and America's Half-Open Door* (New York: The Free Press, 1986); & Matthew Zagor, "Martyrdom, Antinomianism, and the Prioritising of Christians – Towards a Political Theology of Refugee Resettlement," *Refugee Survey Quarterly* 38 (2019): 387-424.)

over-crowding at ports of entry, this practice limits the number of individuals who can enter on a given day. A 2018 report published by the Department of Homeland Security's Office of the Inspector General describes the proper procedure for metering:

When metering, CBP officers stand at the international line[.] Before an alien without proper travel documents (most of whom are asylum-seekers) can cross the international line onto U.S. soil, those CBP officers radio the ports of entry to check for available space to hold the individual while being processed. According to CBP, the officers only allow the asylum-seeker to cross the line if space is available. When the ports of entry are full, CBP guidance states that officers should inform individuals that the port is currently at capacity and that they will be permitted to enter once there is sufficient space and resources to process them.⁵⁶

Although officials have justified this practice on the grounds of alleged over-crowding, the Inspector General did not find evidence of over-crowding at the ports of entry it visited. Moreover, while the government report was unable to confirm incidents of border enforcement officials unnecessarily turning asylum-seekers away, charges of this sort of misconduct have been widely reported by immigration and human rights advocacy groups.⁵⁷ These third-party reports include allegations of border enforcement officials refusing migrants credible fear interviews, falsifying information about these interviews, intimidating and manipulating migrants into recanting their statements, physically abusing asylum seekers, and denying them necessary access to food, water, and medical treatments while in custody.⁵⁸ These practices' sum effect has made legal entry and affirmative access to the asylum system exceedingly foreboding.

⁵⁶ Department of Homeland Security, "Special Review – Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy," Office of the Inspector General (September 27, 2018), 6.

⁵⁷ E.g., No More Deaths, "A Culture of Cruelty: Abuse and Impunity in Short-Term U.S. Border Patrol Custody" (2011); Human Rights First, "Crossing the Line: U.S. Border Agents Illegally Reject Asylum Seekers" (May 2017); American Immigration Council, "U.S. Customs and Border Protection's Systemic Denial of Entry to Asylum Seekers at Ports of Entry on U.S.-Mexico Border" (January 2017); Amnesty International, "USA: 'You don't have any rights here': Illegal Pushbacks, Arbitrary Detention & Ill-Treatment of Asylum-Seekers in the United States," (2018)

⁵⁸ Human Rights First, "Crossing the Line," 10-14; & No More Deaths, "A Culture of Cruelty," 4-9.

Because of these barriers of access and reported abuses, an increasing number of migrants choose to cross the border surreptitiously, playing their odds in the desert rather than the immigration courts and the ports of entry. Both the border patrol and humanitarian activists suspect that, for many migrants, the choice to cross between ports of entry is motivated by the growing sense of hostility at ports of entry.⁵⁹

The continued escalation of border securitization, taken alongside the apparent absence of reforms in immigration law and policy, suggests the failure of “enforcement-first” concerns ever to transition to substantive policy changes. When PTD was implemented, its stated purpose was two-fold. First, it was meant to “enhance national security,” and, second, it would “safeguard [the US’] immigration heritage.”⁶⁰ Whether the strategy has accomplished either is a matter of scholarly dispute. However, budgetary allocations for border security continue to outpace spending on the immigration courts.⁶¹ Neither Presidents Bush, Obama, nor Trump has signed into law any considerable immigration reforms.⁶² At almost thirty years remove, Meissner notes that the United States has established a “formidable machinery” of border enforcement but has yet to capitalize on this apparatus with policy reform. This evidence suggests that the exigency to “enhance national security” consistently overshadows any need to “safeguard our immigration

⁵⁹ DHS, “Special Review,” 7.

⁶⁰ Meissner, *Border Patrol Strategic Plan*, 2.

⁶¹ C.f., Executive Office of the President of the United States, “Stronger Border Security: 2019 Budget Fact Sheet” (Washington, D.C.: Executive Office of the President of the United States, 2019). Over the past ten years, the backlog of migration cases has grown by nearly 400%. However, the budget for the Executive Office for Immigration Review (EOIR), which oversees these courts, has failed to increase at even a third of this rate. In FY 2010, the EOIR’s budget accounted for less than 2% of border security and immigration enforcement funding. Today, it has seen that share grow to about 2.6% of the more than 23 billion dollar allotment. The lion’s share of this money has consistently gone to USCBP, which consistently consumes more than 60% of the budget.

⁶² By Executive Order, President Obama instituted the Deferred Action on Childhood Arrival (DACA) and Deferred Action for Parents of Americans and Lawful Permanent Residents programs, but President Trump’s attempted termination of these programs and the recent legal challenges that have followed, have demonstrated the precarity of the solutions they produced.

heritage.” The aesthetics of (LIC) function continually to keep this concern at the forefront of our minds, concealing any others.

The practice of border enforcement stacks the deck against asylum seekers by plunging them into a militarized context in which their approach is always already suspect. In the borderlands, the paradox of self-determination becomes an aesthetic problem. The solution, likewise, is aesthetic. The legal collision between the asylum seeker’s demand and the government’s power to exclude cannot be resolved dialectically. The law, as it were, halts in a position of indecision. However, the gap between *de jure* legal categories and *de facto* enforcement creates space for an intervention. The law might be applied generously to extend protections to as many persons as possible, or it might be interpreted more narrowly, for fear that the provision of asylum would mean admitting a pernicious element. A generous application of the law might constitute a real disruption of the routine decisions of admission and exclusion by which the society determines its shape. The aesthetics of LIC intervene against the disruption by making migrants frightfully alien. For an asylum seeker’s gambit at agency to succeed, she must be recognized as a “refugee.” Historically, such recognitions have favored migrants who are “European” and “anti-communist;” that is, migrants that resemble the American mainstream’s current members.⁶³ Asylum seekers from the global south and those fleeing the persecution of right-wing governments have fared disproportionately poorly. These migrants who appear distinctly *alien* rarely overcome the suspicion that greets them in their interviews. The specter of violence accompanies Their approach. Their recognition as encroaching threats is the natural consequence of a border enforcement apparatus that frames the borderlands as a “theater of conflict.” Thus, the aesthetics of LIC insulate political right from moral necessity by

⁶³ C.f., Carl J. Bon Tempo, *Americans at the Gate: The United States and Refugees During the Cold War* (Princeton: Princeton University Press, 2008).

overshadowing the other's moral demand with the existential danger that her admission might pose.

Chapter Three:
The Witness of Fragments

1. The Frame and the Fragments

Even as the aesthetics of low-intensity conflict (LIC) eclipse the asylum seeker, border enforcement's material prosecution multiplies contradictions that undermine the very political project it means to support. No frame completely determines the sensory field it attempts to delimit. The frame facilitates apprehension by positing *a priori* conditions of recognizability that contextualize the visual field. However, the activities and technologies by which these conditions are posited are never entirely invisible. When these framing devices are drawn into view, they become the object of an interpretative scrutiny that they cannot control. The very act of *providing* context proposes that the provision of context could have been otherwise, and the sensory field's indeterminacies determined differently. Put another way, the frame wields the justifying reasons of an "orthodoxy," not the self-evidence of "doxa."¹ Where there are justifying reasons, there are doubts. Where there is orthodoxy, there is the implicit presence of heterodoxy. The aesthetics of LIC may wish to present enmity between migrants and citizens with the aura of natural fact, but they cannot ultimately do so. It is not unreasonable to ask whether the migrant might be perceived

¹ On the distinctions between doxy, orthodoxy, and heterodoxy, see Pierre Bourdieu, *Outline of a Theory of Practice* (New York: Cambridge University Press, 1977), 159-171.

differently if her approach were not captured in technologies built for battlefield surveillance. It is not unreasonable to ask whether her alterity need produce enmity if it were not interpreted through a clash of opposing ideologies. Of course, it is difficult to pose these questions when they appear like distractions from the urgent task of self-defense. Speculation may seem silly when we are told that our lives are on the line.² Nevertheless, ours are not the only ones at stake, and the broken bodies, desolate in the landscape, force the issue.

Ironically, it is in the moment of crowning success, of ultimate exclusion, that the legitimizing aesthetics gathered around our present border enforcement strategy begin to implode. The aesthetics of low-intensity conflict provide justifications for exclusion, in the form of lethal force, by dividing the world into attackers and defenders, friends and enemies. They invest these characters with dispositions (criminality versus lawfulness, terroristic malevolence versus civilized benevolence) that make them the rightful subjects or objects of that power. However, with the drama of migration and border enforcement pressed out of sight, few of us ever witness the conflict directly. Instead, we come to know it only in the remains it produces. Nevertheless, fragmented bones do not display the dispositions of alien enemy combatants.

In arresting our attention, they create a relationship and, perhaps, one more fundamental than any political association. They do not propose sets of dispositions for differentiating those who would rightfully wield or be subjected to power. They only revoke them. Our encounter with the dead is an encounter with a fellow, vulnerable human being. The looming threat of violence that made the combatant in low-intensity conflict appear so frightening dissipates. The bones no longer pose any threat to us. The oppositional relationship of the struggle for self-preservation has come to an end. “Friend” and “enemy” fade like mirages. What remains are two vulnerable,

² C.f., Sara Cobb’s treatment of hardline conflict narratives in Sara Cobb, *Speaking of Violence: The Politics and Poetics of Narrative in Conflict Resolution* (New York: Oxford University Press, 2013)

dependent beings, not quite face to face, one standing among the living, the other banished among the dead. The encounter in the interstitial space between these two domains does not posit a new frame. It fractures the old one. The conflict that necessitated this stranger's death seemed so natural. However, as the bones outlive conflict's climactic moment, they wither the names that its frame supplies. The exigency that demanded their death loses its force, and the moral demand that they posed to us in life returns to the fore. It is no longer clear why one of these beings should be standing among the living and the other exiled among the dead. It is no longer clear why political right should be absolved of moral necessity. As the paradox of self-determination marks American ambivalence toward asylum law, the bones in the Sonoran inscribe on border enforcement the mark of Cain.

With the excluded outsiders' remnants, the paradox spills back into the frame, carrying a chain of contradictions in its wake. The material prosecution of PTD confounds the boundary between the "city" and the "wilderness." As these domains bleed into one another, the distinctions between law, exception, and ultimately, violence suffer a loss of intelligibility. These cascading contradictions call into question whether the political can or even should be loosed from the chain of necessity—moral or otherwise. The very efforts designed to safeguard collective self-determination nihilate the values it professes to hold dear.

The contradictions to be discussed in this chapter stem from the irony that a strategy designed to uphold political right is prosecuted in such a way as to occlude the sort of freedom that self-determination presupposes. Through PTD, the agencies responsible for securing the border create a material environment that entangles free subjects in a reflexive nexus of causes. In his 2015 monograph, *The Land of Open Graves*, Jason De León uses the sociological concept of the

“hybrid collectif” to shed light on what becomes of agency in this environment.³ Introduced by Michael Callon and Bruno Latour, the concept of the “hybrid collectif” suggests that agency is a social phenomenon that extends beyond the causality of singular centers of will. Agency may also be taken to describe the nexus of causes or “actants,” human and non-human, that combine to produce material effects.⁴ On De León’s view, even if the US government does not in discrete instances actively will the death of each individual that perishes in the desert, it does intend for migrants to find themselves in this deadly complex of actants. The mechanisms designed to send migrant traffic between ports of entry see to that. PTD, he contends, is like a perpetual motion device, which wreaks havoc once set in motion. It is the machine that does the damage. Nevertheless, the US government bears responsibility for throwing the switch and authorizing its work.

However, it is not only migrants whose freedom is entangled in the hybrid collectif. Even if we judge that the federal government is responsible for throwing the switch on this perpetual motion device and seeing to its maintenance, it does not act on the hybrid collectif exclusively from without. Its law-enforcement agencies also enter the complex of actants, becoming both subjects and objects of its effects. No longer does government power issue from discrete centers of will. Instead, it is dispersed into an array of actants, many of which fall outside of the state’s capacity for control. By deputizing the Sonoran as an agent of law enforcement, political freedom may appear to release itself from moral necessity, but at the cost of binding itself to natural necessity. However concerned with the Sonoran Desert US border enforcement may be, the desert has little regard for the state’s organizing values or ends. The natural environment metes out life

³ Jason De León, *The Land of Open Graves: Living and Dying on the Migrant Trail* (Oakland: University of California Press, 2015), 38-61.

⁴ Ibid.

and death with indifference to the ethical and the political alike. If, as Hannah Arendt argues, politics is possible only in the situation of equality afforded by the city, then its survival presupposes a meaningful distinction between city and wilderness, law and violence. Border enforcement attempts to preserve these distinctions. However, by embedding itself within the hybrid collectif, it obliterates clear jurisdictional lines and transforms the borderlands into a zone of legal exception, severing the prosecution of border enforcement from the very ends it professes to pursue.

2. City–Wilderness

For many, the city is distinguished from the wilderness as a place of laws from a place of violence. Thomas Hobbes, perhaps, stated the distinction most dramatically when he likened the state of nature to a perpetual state of war and the commonwealth to an order of laws. However, Hobbes is not alone in opposing city and wilderness. As discussed in the first chapter, Arendt (following Herodotus) considered the city a place of freedoms, secured by law, and the wilderness a place ruled by necessity. As political scientist Matthew Longo helps us understand, the distinction between city and wilderness, politics and nature relies on the border's presence.⁵ In his 2018 study, *The Politics of Borders*, Longo observes that the border is “perhaps the oldest political institution.”⁶ Indeed, it signifies the *nemein*, the distribution that divides the world among its inhabitants. “At base,” he writes, “the border is a line of jurisdiction – a legal-topographical instantiation of authority... the boundary is the law, and the law, the assertion of boundaries.”⁷ The Greek term *polis* initially connoted a place with a ringed wall. Likewise, the English word “town,” derives from the German *Zaun*, meaning “fence.” Without some boundary to demarcate inside

⁵ Matthew Longo, *The Politics of Borders: Sovereignty, Security, and the Citizen after 9/11* (New York: Cambridge University Press, 2018), 23-26.

⁶ *Ibid.*, 23.

⁷ *Ibid.*

and outside, there might be an aggregation of houses, but not a political association. Not a community of laws. The idea of city and boundary, law and jurisdiction, are so tightly intertwined that Heraclitus long ago argued that a people should fight for a law “as for a wall.” Likewise, Walzer’s account of political self-determination emphasizes the necessity of law’s jurisdictional limits and, therefore, of borders. Without these political institutions, power might operate indifferently to shared meanings. Freedom would collapse into tyranny and the process of politics into that of nature, where the strong may prey upon the weak. It is the great irony of the present moment, Longo contends, that our efforts to define the border as a line in space are undermined by the “thick” institutions of enforcement that call the border into existence. Moreover, if the border and the *polis* are co-constitutive, as Longo suggests, the confounding of the boundary that separates city from wilderness is no secondary issue. It is the confusion of the city and the wilderness themselves.

In the borderlands, the border and the state are simultaneously at their most and least real. State power is both acutely manifest in regulating bodies and patently incongruous with the site of its exercise. The state’s reality is encountered concretely in border fencing, surveillance towers, highway checkpoints, helicopters, and predator drones. Yet, the border’s self-evidence is refuted by the expanse of an environment where border-fences and national lines appear like unnatural obstructions. There is no sudden change in flora and fauna that marks the transition from American to Mexican soil. For those who must endure its searing heat and navigate its mountains and valleys, the Sonoran Desert is eminently more real than the “United States” or “Mexico.”

On first blush, the web of technologies that turn the Sonoran into a zone of surveillance suggests the city’s expanse into the furthest reach of the wilderness. By conceiving the Sonoran Desert as a “threat environment” that must be surveilled in order that risks might be identified and

resolved, the United States transforms the Sonoran into a veritable panopticon. An array of advanced sensors and tracking systems ensure not only that law-enforcement can track the movements of small vehicles but can also detect the steps of individual migrants moving on foot. The wealth of technologies at USCBP's disposal rivals that of law-enforcement officials in the urban centers of the country's interior. The desert itself has been transformed into an apparatus of state where subjects are made legible and inscribed into the *polis*'s institutions.

However, the effort practically to secure the United States' boundary obliterates any clear line where the jurisdiction of U.S. power comes to an end. Longo has suggested that the practice of partnered countries co-policing international borders has replaced borders with zones of heterogenous sovereignty.⁸ Sovereignty, Longo argues, "shouldn't simply be understood legally (*de jure*) but must also be understood as a matter of control (*de facto*)."⁹ In these zones of heterogenous sovereignty, control over the population is accomplished through the combined efforts of agents authorized by either sovereign and interspersed on both sides of the border. The border, consequently, no longer describes a fixed-line but an amorphous region of control.

The Sonoran Desert carries this ambiguity even further. This ecosystem has no regard for the international boundary, nor for the sovereign jurisdictions it putatively divides. It stretches hundreds of miles in either direction from the border. The environment imposes itself on the bodies of migrants well before they have ever reached the international line. In the Sonoran, the state enlists the services of an agent that refutes the *nemein* that divides the world into states and gives the law legitimacy. In the hybrid collectif, the distinction between border and borderland is rendered superficial. The violence they hold in common unites them. As this violence becomes a norm in the everyday practice of law enforcement, the wilderness overtakes the city. As the city

⁸ Longo, *The Politics of Borders*.

⁹ *Ibid*, 41.

extends into the wilderness, so too does the wilderness extend into the city. Nature's advance is clearest in law enforcement's inheritance of its violence. But this inheritance does not enrich, it impoverishes.

3. Law–Violence

By confounding the distinction between city and wilderness, PTD also undermines the distinction between law, exception, and, ultimately, violence. The aesthetics of LIC render the borderlands a site of low-intensity conflict, a place where our society of laws stands dangerously close to slipping into a state of war. Whatever bulwark is judged necessary to avoid this unhappy fate must be deployed. However, achieving the operational control necessary to shore up the rule of law has required declaring several legal exceptions. The construction of border fences provides an explicit instance of such suspensions. In 2005, the *REAL ID Act* made emergency appropriations for the construction of border fencing in accordance with the *Secure Fencing Act*. This law also gave the Homeland Security secretary authority to waive any laws deemed to interfere with the expeditious construction of border barriers and roads.¹⁰ Within two years, Homeland Security Secretary Michael Chertoff had waived thirty laws that covered environmental protections, Native American autonomy, and historic preservation. Legal challenges were raised but failed to overcome this decision. At the time of this writing, as construction crews race to complete President Trump's new thirty-foot-tall barrier in the western Sonoran Desert, DHS is once again appealing to the *REAL ID Act*. DHS has suspended more than fifty-one laws to facilitate the wall's speedy construction.

¹⁰ Doris Meissner, Donald M. Kerwin, Muzaffar Chishti, and Claire Bergeron. *Immigration Enforcement in the United States: The Rise of a Formidable Machinery* (Washington, D.C.: Migration Policy Institute, 2013), 30-31.

Declaring these exceptions brought about substantive harms. The suspended laws include the environmental protection act, the endangered species act, the clean water act, and the Archeological Resources Protection Act. The wall cuts through the Organ Pipe National monument, a unique ecosystem, like in its idiosyncrasy to Everglades National Park or Olympic National Rainforest. It will disrupt the ranges of endangered species native to the region and undermine their water security. It cuts through the heart of the Tohono O’odham Nation, exasperating the divide in their people, by blocking access to ceremonial sites. As in the past, legal challenges have been raised against the wall’s construction, but cranes move faster than courts. By conceiving the borderlands under a state of emergency, the “rule of law” is increasingly secured by control measures that operate outside its ambit. Thus, the effort to resist anarchic principles and ideologies becomes itself anomic in character.

Nevertheless, these exceptions’ corrosive effects pale in comparison to PTD’s instrumentalization of natural violence. In the Sonoran Desert, migrants face an agent of law enforcement that acts without intention. An agent that acts without intention is an agent that acts without discrimination. Burning sun, searing heat, and parched landscapes do not differentiate between economic migrants or smugglers, asylum seekers or terrorists. They neither conduct credible fear interviews nor recommend migrants for trial. They disregard any procedural protections to which a migrant might lay claim. Moreover, technologies of state that obey the movements of a perpetual motion device do not pause to consider questions of proportionality. U.S. code stipulates a fine not to exceed \$250 or a prison sentence not to exceed six months, the first time an alien is charged with illegal entry.¹¹ Repeat offenders may be charged higher fines or granted harsher prison sentences, but still at a maximum of two years.¹² The desert is drastically

¹¹ U.S. Code 1325(a)(3) & U.S. Code 1325(b)

¹² Ibid.

more harsh. In the cases of thousands of migrants, the Sonoran has met the crime of illegal entry with a death sentence.

At the point of convergence between law enforcement and raw force, state power escapes legal accountability by baffling its operative conceptions of agency. In a trial, prosecutors are tasked with demonstrating not only *actus reus* but *mens rea*. However, the natural environment is not capable of intentionality or voluntarily carrying forward the United States' policies. There is no "guilty mind" of which to speak. The idea of prosecuting the sun or coyotes or vultures for the use of excessive force is farcical. Killing indiscriminately, the desert kills with impunity. The role played by the violence of the natural environment affords Border Patrol a measure of distance from PTD's most dehumanizing effects. In the vast majority of deaths taking place on the border, law enforcement officers do not shoot migrants or run them down with their trucks. In the vast majority of deaths, uniformed officers are not even present. At the level of optics, PTD places agency squarely on the migrants it kills. And yet, in losing control of the agent it authorizes to carry out its work, the law is subordinated to violence. The law may either appeal to the aesthetics of LIC or else give up the notion that its justice is premised on any legitimate *nemein* at all. In a twist on Carl Schmitt's account of sovereignty, which ascribe it to that actor capable of declaring the exception, PTD pushes the law into a situation in which it is unclear where sovereignty resides. We might ascribe sovereignty to the administrative agencies responsible for enacting the strategy, or we might assign it to the natural actants that produce its results.

The construction of border walls may require the suspension of laws, but the instrumentalization of the desert identifies the unalloyed anarchic violence of nature as a control measure vital to the rule of law. This violence goes before the law, striking migrants dead and stopping their advance. The law only arrives after the desert has delivered its sentence. It proposes

to us that these bones belonged to criminals and not to asylum-seekers. Were these individuals not crossing between legally designated ports of entry? However, the bones give us precious little information. They cannot be deposed.

In some cases, medical examiners may identify the sex or the relative age of the deceased. Sometimes the cause of death may be identifiable. However, in half of all cases reported by the Pima County Medical Examiner's office, the cause of death is either listed as "undetermined" or "skeletal remains." Skeletal remains are simply too degraded to yield any meaningful information about the life for which they are the simulacra. The notion that *mens rea* could be inferred from a corpse is minimally less absurd than ascribing it to the sun. The judgment that these bones belonged to criminals or terrorists can only spring from darkness.

In the Sonoran Desert, where national self-preservation has come to animate our border policing, death holds law in its grip. PTD has been cast as a matter of national security. The militarization of the border, it tells us, is the necessary response to the flood of criminals and terrorists who would otherwise wash across the country and destroy our national institutions. The extreme measures that weaponize this hostile environment against migrants are energized by the drive for self-preservation. In the end, it is not freedom but the fear of its demise that drives our efforts in the borderlands. Terrified of our own demise, we displace this grisly fate onto the migrants who would seek asylum within our borders. However, with this move, the law does not escape the grip of death. Instead, the dead make their claim upon the law. Their bones rupture the theater of border enforcement and reveal the self-betrayals that the law must commit in order to preserve the autonomy of political right.

4. The Political Afterlives of the Dead

The broken bodies of the abandoned force the issue. They ossify the contradictions that our border enforcement strategies perpetrate. The ledger of the dead counts the cost at which the American project of self-determination is secured. Self-determination excels bare self-interest as it grounds its politics in the dignity of the individual. Nevertheless, PTD functions through the routine dehumanization of those it excludes. The strategy has precipitated thousands of deaths, and the desert degrades bodies at a rapid pace. Scavengers often scatter the remains of single individuals far from their original place of death.

In some cases, individuals' bones may be so intermingled with others or so widely dispersed that it is impossible to say to whom they once belonged. Despite efforts by medical examiners offices and their community partners, many of the remains go unidentified and as many missing persons reports go unresolved. The failure – the impossibility – of identifying disarticulated bones reveals the ultimate contradiction perpetrated by PTD: a political vision that emphasizes the moral priority of the individual is preserved through the obliteration of identity. In the borderlands, self-determination is rendered indistinguishable from other-termination.

Abandoned to the elements, the dead suffer a double erasure. First, the migrants who perish are stripped of their proper names. We are confronted by the remains' materiality. But the raw material of bone fragments tells us little about how these bones came to be in the place that we discover them. Precise time and place of death escape our ken, let alone the complex of external factors and pivotal decisions that brought them into the Sonoran. Unidentified bodies are bodies without biographies. They lie motionless as if suspended in an eternal present. The bones signify the loss of human life, but nothing can be said of *whose* life has been lost here. Thus, on another level, these bones are not, at once, "immigration criminals" or "alien belligerents." Death mortifies these names as it holds them in its grip. The bones confront us as natural facts. Death confronts

us as natural fact. The names that the aesthetics of LIC would have us assign to them become like loose-hanging costumes that no longer fit.

From the time of their discovery, the bones lie beyond personal recognizability, and, therefore, legal recognizability as well. Nevertheless, in this space beyond the margins of recognizability, the bones regain their agency. They attain an afterlife.¹³ Whatever hegemony this aesthetics might enjoy in the borderlands comes to smash on its incongruity with the bones it can neither hide nor name. The frame is too small. It excludes that life which it cannot capture within its system and this obscene remainder reveals its falsity.

To overcome the breach that self-determination creates between political right and moral necessity requires revoking the legitimacy of the crime that brings it about. The fratricide must be named. The aesthetics of LIC posit a narrative context in which the crime is unrecognizable as such. The bones revoke this narrative context. The natural environment leaves its mark on these bodies, testifying to the violence that infects and subverts the “rule of law” under PTD. The bones in turn mark the autonomy of political right with the terrible cost by which it struggles to escape moral necessity. In their desolation, they reveal the confusion of city and wilderness, law and violence that PTD perpetrates. No society that professes the dignity of the individual can conscience a border enforcement regime that preserves the autonomy of political right by indiscriminately sending migrants to anonymous demise.

¹³ C.f., Jacques Derrida, *Spectres of Marx: The State of the Debt, the Work of Mourning, and the New International* (New York: Routledge, 1994) & Jessica Aughter, *The Politics of Haunting and Memory in International Relations* (New York: Routledge, 2014). Gower unorthodox, the assertion that the dead possess an enduring political significance is not without precedent. It is an idea with champions in philosophy, theology, and political theory. In *Spectres of Marx*, Jacques Derrida suggests that the spectre, neither living nor dead, exceeds and disrupts traditional oppositions between the visible and the invisible, the present and the absent, the real and the unreal. By destabilizing the fundamental distinction between living and dead, Jessica Aughter contends, the ghost calls into question the ontological structures that politics seeks to sustain. On this line of thinking, the political afterlife of the dead consists primarily in their negative function, i.e., the disruption of our political orders. The bones in the Sonoran exercise their agency to similar effect as they call in for judgment the aesthetics of low-intensity-conflict.

PTD promises to protect the law against anarchy. From the perspective of political self-determination, this promise is not monstrous. As Robert Cover has suggested, societies author laws in the service of that which they believe to be good.¹⁴ The laws sketch the blueprint for the ideal self that a society is striving to become. They possess a measure of alterity because the society is yet in the process of becoming. For this reason, in the narrative life of the polity, the laws are experienced occasionally as resistance. Nevertheless, they are, at bottom, an expression of freedom as they facilitate the society's process of self-becoming. Properly framed, the laws resist or halt impulses that betray the society's proper character. However, the bones in the Sonoran read what is false off this ideal. The good of the law is revealed not only in its dynamic relation to the people whose self-becoming it enables, but also the outsiders in whose deaths it becomes complicit. Put another way, a people does not emerge in isolation, but rather in the presence of an other. Political subjects no less than ethical subjects are constituted in their response to this other's demand. In the Sonoran, the exclusions affected by police actions reveal this response. Their deadly effects reveal that when law-making and law-enforcement attend only to the needs of the self and disregard the demand of the other, they hollow out the ideals on which they are founded and collapse into themselves. Freedom, unalloyed by responsibility to the good of the other, is not a good in itself. It is fratricide. The formal possibility of self-determination is secured through the violation of the very good that motivates its pursuit. The violence deployed to secure the borderlands invites the problem of beginnings back into the present. As God marked Cain, so the bones mark our *polity*.

However, the bones' agency is not purely negative. They haunt the *polis* with the good of the life they deny. With the bones in the Sonoran, the other's demand breaks free from the frame

¹⁴ Robert Cover, "Nomos and Narrative," *Harvard Law Review* 97 (1984): 4-68

of LIC and reasserts itself before the polis. Neither in theory nor in practice can the dialectic of identification overcome the experience of hetero-affectivity. It may be that the aesthetics of LIC render the asylum seeker unrecognizable in life or that the Sonoran Desert strikes them dead in their tracks before they can say a word. But the bones that they leave behind attest the material commonality shared by embodied human animals. The sting of life denied stems from a fundamental recognition of the claim that this life makes upon us. Whether by approval or rejection, our political subjectivity is constituted in light of this claim. The bones witness the enduring legacy of this rejection. The good denied is not yet the good forgotten. Moreover, we live with the knowledge that if our present border enforcement strategy continues unchanged for another year, another decade, countless more migrants will be reduced to bones. The decision, then, is always, in some respect, ahead of us, convicting us of our responsibility. We cannot restore life to the ones who have already been slain. But we can choose to be haunted by the good of the life denied. We may still become political subjects formed by the approval of this demand.

Living with the dead requires us to adopt a new form of political subjectivity. Simon Critchley has proposed that ethical subjectivity does not begin with a promethean act of self-determination by which a subject gives the good to herself.¹⁵ Rather, ethical subjectivity is conceived in the self's encounter with a good that comes from without and makes a claim upon her. Ethical subjectivity, that is, begins in a moment of moral experience characterized by approval and demand. A good makes a demand upon the self, disrupting the sovereignty of the I. The individual, for her part, becomes a moral subject as she either approves or rejects this demand. In the bones, the ghost of the estranged brother, the good that self-determination excludes, makes its demand upon us. To accept this demand is indeed to experience a disruption of our capacity for

¹⁵ Simon Critchley, *Infinitely Demanding: Ethics of Commitment, Politics of Resistance* (New York: Verso, 2007).

self-determination. However, it is also to be invited into a new sort of ethical subjectivity and a political moment in which the boundaries that separate the insider from the outsider, the citizen and the alien, the friend and the enemy are overcome.

In sum, the bones in the Sonoran present us with a choice and this choice is the grace inseparable from judgment. Even as the bones call the frame of low-intensity conflict into question, even as they refute the names it supplies, they do not supply a new system of names. The paucity of information ensures that whatever judgment we come to will have been a judgment made in freedom. One option is to forget them. The slain sibling's body can be left behind in the field. Unencumbered by the witness it bears against us, we may accept that those who disappear in the desert are criminals and terrorists who have earned their sentences. Alternately, we might judge that their deaths are tragic, but a consequence of necessity or fate. This view goes so far as to acknowledge that a genuine good has been transgressed but treats the problem of beginnings as inevitable and ineradicable in our politics. The project of self-determination may be haunted by this fact, but the haunting does little if anything to disrupt the life it shapes. Haunting may be our fate, but not our responsibility. The alternative is to face the *aporia*. To wander among the bones and ask their names. In so doing, we risk the boundaries that self-determination produces and requires. The excluded are actively invited back into the polis. Any such admission requires risking our own self-understanding and becoming something other. We may be confronted with a terrible truth. We put these bones here. We are not the victimized sibling sheltering from the anarchic brother that would rise up against us in violence. We are the sibling that slew our kin, in order that we would be free of responsibility for them. Whatever difficulty we may have facing this hard truth, it will be my contention in the next chapter that this is the task to which Christ-like love calls us.

Chapter Four: The Samaritan's Virtue

1. Love and Law

What is left to us after the dead have delivered their judgment? Should the law that conspired in their demise be rejected outright? Must we despair of our politics, consigning them to nihilism? Should the discourse of law be rejected for a discourse of grace?¹ Vincent Lloyd elaborates on the danger that lurks in political theologies that embrace the law's total disintegration.² Undergirding many such theories is a logic of supersessionism. Law creates a problem, which grace overcomes by dissolving law's suffocating limits. At the heart of supersessionist logics, then, is a disjunction that makes of law and grace two mutually exclusive

¹ C.f., Robert Cover, "The Supreme Court, 1982 Term – Foreword: Nomos and Narrative" (1983) *Faculty Scholarship Series*. Paper 2705. http://digitalcommons.law.yale.edu/fss_papers/2705, p. 4. The term "law," in this sense, describes more than specific codes and statutes. It denotes the deep normative system of justice by which a society seeks to order its common life. Thomas Aquinas refers to a law of this sort when he speaks of "eternal law" and "natural law." These are the deep mandates of justice inhering in the divine character and reflected in creation's governance. (*Summa Theologiae*, I-II.90.1-2) Thomas juxtaposes these laws, traced to the divine reason, to "human laws," which serve to specify in particular instances the right application of justice. (I-II.90.3) Today, few contemporary legal systems trace the justice of their laws to the divine reason. Legal scholar Robert M. Cover begins the essay "Nomos and Narrative" with the assertion that "we inhabit a *nomos* – a normative universe." However, Cover's "we" and the attendant "normative universe" are more particular in scope than the "we" that Thomas situates under eternal and natural law. In agreement with Walzer, Cover suggests that this *nomos* is the creation of the society that inhabits it and not of the divine. "For every constitution there is an epic" he writes, "for each decalogue a scripture." What is consistent in these accounts of law is the sense that there is a law before the law – a "normative universe," whatever its source, that finds expression in the more particular codes and statutes that regulate a society's everyday life. US Immigration law, on this view, should specify through its codices the more general norms by which the US understands its relation to outsiders. Crucially, recognizing this division between specific laws and the law generally construed raises the possibility that these two senses of law may fall out of joint with one another.

² See Lloyd's treatment of *Manderlay* in *The Problem with Grace: Reconfiguring Political Theology* (Stanford: Stanford University Press, 2011), 4-9.

possibilities. Lloyd observes that in much Christian political theology this disjunction is reproduced as a disjunction between immanence and transcendence. Law belongs to the immanent, grace to the transcendent. The transcendent, banished by the law, becomes an object of melancholic longing that fascinates the critic.³ In her efforts to recover the loss, she turns against immanence. Grace, conceived acosmically, creates two problems for criticism. At its worst, it licenses violence against this world. Even in the best instance, however, “by dismissing the Law,” Lloyd writes, “Grace is bereft of resources to engage with social context.”⁴ Grace’s abolition of law does not equate to the cessation of violence. Tragically, it often allows us to slip into even deeper strife.⁵ Embracing any stark disjunction between law and grace, then, would not resolve the contradictions discussed in the foregoing pages. To the contrary, it would merely reproduce the contradiction, while allowing the ethical to overwhelm the political. How is this problem to be avoided?

The bones in the Sonoran work a determinate negation on the law. Their deaths are the consequences of specific practices and policies invoked by a specific *nomos* centered on an autonomous political subject. It is not the general idea of a *nomos* that they cast asunder. Rather, their witness reveals the depravity of the political subject that secures political right through the dehumanization of the excluded. They reveal the fratricidal practices by which this subject lashes out against her siblings. Even as they linger between the domains of life and death, they reveal

³ Ibid, 15.

⁴ Ibid, 14.

⁵ C.f., Matthew Zagor, “Martyrdom, Antinomianism, and the Prioritizing of Christians – Towards a Political Theology of Refugee Resettlement” *Refugee Survey Quarterly* 38 (2019): 387-424. Citing Lloyd, with an eye to U.S. asylum admission statistics, Zagor argues that the putative gratuity of asylum policies have often masked invidious practices. When the number of spaces set aside for asylum seekers is finite, providing asylum to one means denying it to another. Zagor argues that the U.S. has consistently extended “grace” to asylees that fit within the religious preferences of American evangelicals. Consequently, grace has turned a blind eye to religious minorities seeking protections in the U.S. Drawing on Zagor’s argument, we might propose that “grace” merely becomes one more word for describing the arbitrary will animating a process of self-determination.

that the excluded are never truly cast from our company, and their demand is never silenced. Their enduring presence confronts our polity with a choice: we may lead a life constituted by the violent rejection of the demand, or we may dedicate ourselves to be haunted by the good of the life we have denied, taking responsibility for our estranged siblings and those who may yet come to share their fate.

In its flight from responsibility for the excluded, self-determination makes a weapon of the law. With it, Cain slays Abel, leaves his body in the field, and deafens himself to the blood crying from the earth. What is needed, then, is an account of law that hears this cry and haunts the law with the *good* that exceeds it. This good is not to be traced to some abstract ground. Rather, it is to be found in the bodies of the excluded themselves. What is needed is a radically incarnational account of the good. Thus, in this chapter, I turn to a close reading of the parable of the Samaritan (Luke 10:25-37). This text, I contend, suggests that the law is interpreted rightly only when it is interpreted by a distinctive sort of subject, the *neighbor*. The neighbor, in turn, is a relational ethical-political subject that emerges through the self's collision with a concrete other who makes a demand upon her. This collision does not unwrite the law. To the contrary, the other and her demand provide the *conditio sine qua non* for the right interpretation of the law. The refusal of this supplement hands the law over to death. Its approval returns the law to life. *Agape*, here, does not express a love that is a law unto itself. It signifies the disposition that joins the law with its outside, thereby making it an instrument of mercy. In so doing, *agape* dethrones self-determination, producing instead a subject inexorably bound and responsible to the stranger.⁶

⁶ At this juncture, the reader may reasonably question whether the argument has traded one form of supersessionism for another. The following argument may reject the disjunctive logic criticized by Lloyd, but does it not weaponize a Christian parable against the political philosophy articulated by a Jewish intellectual in Michael Walzer? Although Walzer has never explicitly identified his political philosophy as a specifically religious philosophy, books like *Exodus and Revolution* have led various commentators to connect his political philosophy with his religious inheritance from Judaism. (See Allan Arkush, "Michael Walzer's Secular Jewish Thought," *Journal of Modern*

2. The Parable's Literary Setting

Just then a lawyer stood up to test Jesus. "Teacher," he said, "what must I do to inherit eternal life?" He said to him, "what is written in the law? What do you Read there?" He answered, "You shall love the lord your God with all your heart, and with all your soul, and with all your strength, and with all your mind; and your neighbor as yourself." And he said to him, "you have given the right answer; do this and you will live."

But wanting to justify himself, he asked Jesus, "And who is my neighbor?" (Luke 10:25-20)⁷

Recognizing *agape's* political dimensions requires treating the parable of the Samaritan within its literary setting. *Agape* has often been conceived as a personal virtue, leading commentators to underdetermine its connections to the domains of law and politics. In his landmark work, *Agape and Eros*, Anders Nygren goes further, setting *agape* and *nomos* in outright opposition. For Nygren, *agape* is paradigmatically revealed by the cross and, as such, most properly describes God's gracious action on behalf of undeserving sinners. He grants that the Hebrew Bible venerates

Jewish Studies 11 (2012):221-241; Alan Revereing, "Eschatology in the Political Theory of Michael Walzer," *The Journal of Religious Ethics* 33 (March 2005): 91-117; & Edward W. Said, "Walzer's 'Exodus and Revolution': A Canaanite Reading," *Grand Street* 5 (Winter 1986):86-106 Edward W. Said, in an article published in the wake of *Exodus and Revolution*, attacked Walzer's political philosophy for its reproduction of dangers implicit in any monotheistic religion; namely, the idea that one people might enjoy divine favor and that the violence they perpetrate against outsiders might be ruled morally inscrutable. I would seek to differentiate my position from Said's on two grounds. First, the trouble in Walzer's account of self-determination is not that it denies the moral necessity of attending to the stranger. The problem is that by giving lexical priority to the "right of closure," Walzer inadvertently drives a wedge between the moral necessity and political prerogative he means to bind together. Second, as Alan Arkush points out, Walzer's faith may have disposed him positively to receive certain tenets of liberalism and communitarianism, including the right of closure, but we would err in supposing that these ideas originated in Judaism. To the contrary, Arkush points out that the distinctively "Jewish" element in Walzer's thought is an account of justice that is especially concerned with the poor and oppressed, that elevates "value" over narrow communal "self-interest." Contrary to Said, then, it might reasonably be argued that the lexical priority Walzer lends to the right of closure has more to do with his inheritance from liberal and communitarian philosophy and less to do with Jewish theology. Furthermore, one might even propose that a more thoroughgoing application of a Jewish theory of justice, as identified by Arkush, would have ultimately resisted prioritization of closure. Finally, as I shall propose in this chapter, when read in its literary context, the Parable of the Samaritan bears on a debate regarding the right interpretation of law which is internal to Judaism. Therefore, neither does the parable dispatch with the account of justice that Arkush identifies. Rather, it seeks to revivify this notion in a contested social environment.

⁷ Except where stated otherwise, I use the English translation provided in the New Revised Standard Version.

love of God and of neighbor, but contends, “even so, fellowship between God and man is based on justice and regulated by law.”⁸ Thus, he distinguishes the “Jewish” understanding of law from the primitive (read: true) Christian view with the following formulation: “love set within the scheme of law – love breaking down the scheme of law.”⁹ Even as he has been refuted, Nygren’s influence has been incredibly far-reaching.¹⁰ Such treatments of *agape*, and even the Parable of the Good Samaritan, are not alien to discussions of migration. Dana W. Wilbanks finds in the parable “an imaginative perspective about neighbor love rather than legalistic prescriptions.”¹¹ However, the notion that *agape* delivers life from the damning prescriptions of *nomos* misreads the text.

The parable’s narrative setting, a legal dispute between Jesus and a character Luke describes as a “lawyer,” comprises a sequence of questions and answers that gradually reveal the law to be out of joint with the concrete situation in which the two live.¹² The challenge is not how to do away with the law; rather, it is how to get it on the side of life once more.

⁸ Anders Nygren, *Agape and Eros* (Chicago: University of Chicago Press, 1953), 250.

⁹ *Ibid.*, 251. Nygren arrives at his account of *agape* through a methodology of motif exegesis (pp. 34-40). This method purports to extrapolate the concept of *agape* from the word’s various appearances in the New Testament materials. This approach appears to be inductive, until one notes the conspicuous absence of verses in which *agape* is presented unfavorably or indistinctly from “lesser” loves. (e.g., Mat 5:46; Lk. 6:32, 11:43) When these verses are taken into view, Nygren’s motif exegesis reveals itself to be procrustean. Moreover, the concept that guides the various admissions and exclusions renders the method blind to the literary setting in which the various appearances are located. Thus, it may be that Nygren’s rarified *agape* is fundamentally opposed to *nomos*, but this concept of *agape* is not commensurate with the depiction of *agape* that is found in the parable.

¹⁰ For criticisms of Nygren’s theory of *agape* see, for instance, Paul Ramsey, *Basic Christian Ethics* (Louisville: Westminster John Knox Press, 1950); & Timothy P. Jackson, *Political Agape: Christian Love & Liberal Democracy* (Grand Rapids: William B Eerdmans Publishing Company, 2015). Scholars like Ramsey and Jackson have endeavored to demonstrate *agape*’s political significance, suggesting that, in some cases, love may “rise above” but never falls below the requirements of justice.

¹¹ Dana W. Wilbanks, *Re-Creating America: The Ethics of U.S. Immigration & Refugee Policy in a Christian Perspective* (Nashville: Abingdon Press, 1996), 103.

¹² In this chapter, I follow the NRSV in rendering the Greek term *nomikos* as “lawyer.” We might variously translate this term, derived from *nomos*, as “one relating to the law,” “expert” or “learned in the law,” or, more simply, “lawyer.” The appearance of the *nomikos* is the second of only two in Luke-Acts. Luke earlier refers to the *nomikoi*, in conjunction with the pharisees. However, unlike the term “pharisee,” *nomikos* does not refer to any distinctive religious sect or class. (See Birger Gerhardsson, “The Good Samaritan – The Good Shepherd?” *Coniectanea Neotestamentica* 16 (1958): 3-31.) These two parties are only grouped together on the grounds that they have refused John’s baptism and, thereby, “God’s purpose for themselves.” (Lk 7:30) Taken together, they provide a foil for those

Jesus's conversation with the Lawyer follows the triumphant return of the seventy disciples tasked with going before him and declaring the coming Reign of God. "Just then," as Jesus has finished celebrating their return, the lawyer, meaning to test Jesus, poses his question: "What must I do to inherit eternal life?" (Lk 10:25) The timing of this question suggests the identity of "eternal life" with participation in the Reign of God.¹³ The content of the question regards *poiesis*, i.e., the practices constitutive of life in the Reign of God. The glimpse that Luke provides of the lawyer's motive has led many interpreters to treat the conversation as a kind of rhetorical duel. The lawyer means to extract a statement from Jesus that shows the practices constitutive of the Reign of God to be violative of the law.¹⁴ Instead of risking self-incrimination, Jesus's responds with a question of his own, "What is written in the law? What do you read there?" (v. 26) The Lawyer responds, "You shall love the Lord your God with all your heart, and with all your soul, and with all your mind, and with all your strength; and your neighbor as yourself." (v. 27) This response cites the injunctions of Deuteronomy 6:5 and Leviticus 19:18, binding them together in the single command "you shall love." The twin injunctions to the love of God and the love of the neighbor, here captured in a single verb, *agapeseis*, provide for the Lawyer the pillars of the law. Jesus answers approvingly, "You have given the right answer; do this and you will live." (v.28) Contrary to

who have received John's baptism and anticipate the coming *basileia theou*. In the following verses, Jesus lumps the pharisees and the *nomikoi* together with "the people of this generation" (v. 31) and depicts them as taunting John and Jesus (vv. 32-34). The scene depicted in chapter seven, then, poses the *nomikoi* in an adversarial relationship to Jesus and the *basileia theou*. The controversy in chapter ten bears a similar tone. The narrative timing of the *nomikos*'s question is significant. Just as in chapter seven, this mention of a *nomikos* comes quick on the heels of a declaration regarding the *basileia theou* and its reception. Upon the return of the seventy, Jesus "rejoices in the holy spirit," saying "I thank you father, Lord of heaven and earth, because you have hidden these things from the wise and the intelligent and have revealed them to infants." (v. 21) "Just then," a *nomikos*, a stand-in for the "wise and intelligent" speaks up and interrupts Jesus's celebration. Just as in chapter seven, the *nomikos* serves as a foil for Jesus's followers. His question probes what it means to "welcome" Jesus and be drawn near to the *basileia theou*. Though, as I shall argue below, reading the *nomikos* as a foil for Jesus and the disciples need not imply that he is their opponent.

¹³ In Chapter 18, in the story of Jesus and the rich ruler, Luke has Jesus directly equate "eternal life" with the "Reign of God."

¹⁴ See, for instance, John J. Kilgallen, "The Plan of the Nomikos," *New Testament Studies* 42 (1996):615-619 & Joshua Marshall Strahan, "Jesus Teaches Theological Interpretation of the Law: Reading the Good Samaritan in its Literary Context," *Journal of Theological Interpretation* 10 (2016): 71-86.

Nygren's interpretation, we can already see in the parable's setting that Love does not "break down" the law; love vivifies it. The lawyer is motivated by a different problem. The love commands themselves have slipped into indeterminacy. Wanting to be justified, he asks, "who is my neighbor?"

I want to propose that the lawyer does not pose this question (nor even the preceding one) in bad faith. Rather, it is a genuine question, prompted by the collapse of the social world in which the term "neighbor" enjoyed its first intelligibility. The injunction to neighbor-love appears in the Holiness Code, a far-ranging collection of social mandates that together defined the distinctive moral identity of the people Israel. The precise date of Leviticus's composition is disputed and variously attributed to the seventh century BC and the post-exilic period.¹⁵ In either case, it occurred at a time when the people Israel had relative autonomy over their land. Thus, the *plesion* appears within a web of terms that, taken together, connote kinship within a single landed people. In the nineteenth chapter, "neighbor" is variously connected with terms like "brother/sister," "one's own people," and "the children of one's own people." This lexical web yields the likely interpretation that "neighbor" did not refer vaguely to any other human being, but to one's own kin, a fellow member of the people Israel.¹⁶ This identification is strengthened by the distinction the Holiness Code draws between those who possess the land and those who are merely resident within it. In the Septuagint, this is the distinction between the *plesion* and the *proseluto*, a term variously rendered as "resident alien" or, perhaps more woodenly, "the sojourner that sojourns in your land."¹⁷ However, by Jesus and the Lawyer's lifetimes, the people Israel were a contested

¹⁵ C.f., Julius Wellhausen, *Prolegomena to the History of Ancient Israel* (New York: Meridian Books, 1957) & Yehezkel Kaufmann, *The Religion of Israel* (Chicago: University of Chicago Press, 1960).

¹⁶ C.f., Joel Kaminsky, "Loving one's (Israelite) Neighbor: Election and Commandment in Leviticus 19," *Interpretation* 62 (2008):123-132 & Charles A. Kimball, *Jesus' Exposition of the Old Testament in Luke's Gospel* (Sheffield: JSOT Press, 1994).

¹⁷ These terms, which appear in the parable itself, are Greek translations of the original Hebrew *rea* and *ger*.

social group dispossessed of their land. The neighbor had become an ambiguous figure and the love command a survival of a life-world now passed.

Luke sets Jesus's birth under Publius Sulpicius Quirinius's rule as legate of Syria. More precisely, Luke suggests that Jesus was born during the imperially ordered census that Quirinius was to carry out. This action followed the banishment of the ethnarch Herod Archelaus and functioned to subsume the province of Judea into Syria, placing it under direct Roman administration. This aggressive exercise of Roman power made the Jews captives in their own land and undermined the notion of a landed people presupposed by Leviticus 19.

Judea's subordination to direct Roman rule was not peaceful and met with violent resistance. Josephus, a rough contemporary to the author of Luke, reports the appearance of a sect of extremist zealots, who worked tirelessly to stir up a popular uprising against the Romans.¹⁸ Their efforts included assassinations that only occasionally targeted Romans and, more frequently, were directed at fellow Judeans judged to be traitors. The zealots' willingness to assassinate their neighbors revealed a rift in the identity of the people Israel and exploded the web of relationships that once bound them as a common people. Josephus writes, "such were the consequences of this, that the customs of our fathers were altered, and such a change was made, as added a mighty weight toward bringing all to destruction."¹⁹ Roman dispossession from without, and factionalism from within, cast into disarray any fixed notion of the people Israel and with it, any ready understanding of the neighbor (and the sojourner).

¹⁸ Josephus, *Antiquities of the Jews*, XVIII, 1. When discussing this "fourth sect of Jewish philosophy," Josephus traces its origins to "Judas the Galilean." Jesus of Galilee, whom the lawyer confronts, comes from the birthplace of this dangerous philosophy. Noting this connection, we might wonder whether the lawyer's questions provide the occasion for distinguishing the Reign of God, which Jesus preaches, from the sole lordship of God, which the Zealots sought violently to introduce.

¹⁹ *Ibid.*

The lawyer poses his questions in the ruins of the conceptual and social worlds where the love command was once at home. Love's proper object and practice, consequently, appear lost to indeterminacy. Absent the web of relationships in which neighbor love was to be practiced, the command itself is agonizingly disjoined from life. Permitting this reading, the lawyer, here, becomes a more sympathetic character and his dialogue with Jesus a movement toward reconciliation. His alleged "legalism" is not impiety. To the contrary, his concern for the law is revealed as a deep expression of piety – a desire for justification – for life among the people of God. Tragically, in this historical moment, the law is homeless and threatens to become a dead letter. It stands in need of a supplement. The ensuing parable reconceives love as the disposition that joins the law to its supplement.

3. A Priest, A Levite – A Samaritan

Jesus replied, "A man was going down from Jerusalem to Jericho, and fell into the hands of robbers, who stripped him, beat him, and went away, leaving him half dead. Now by chance a priest was going down that road; and when he saw him, he passed by on the other side. So Likewise a Levite, when he came to the place and saw him, passed by on the other side. But a Samaritan while traveling came near him (Luke 10:30-33a)

Before providing the supplement, the opening action of the parable reasserts its necessity. The characters that appear on the mountain road render the Lawyer's question more confounding, exploding orienting category after orienting category. First, it does little to dispel the ambiguity around the identity of the neighbor or to determine again the boundaries of the people Israel. Jesus describes the one whom we might expect to be the proper object of love in exceedingly vague terms. He is an *anthropos*, the broadest Greek word on offer for describing a human being. Every other actor in the parable receives a more distinct description. There are robbers (*lestes*), a priest (*ierus*), a Levite (*levites*), and a Samaritan. An interpreter might take the direction of this

character's travel, from Jerusalem to Jericho, as evidence of his Jewish identity. Others have suggested that, by stripping the man, the robbers remove from him any garb that might have hinted at his identity. The text leaves the resolution of these ambiguities interminably undecided. Based on the opening action all we can know about this character is that he is a human being suspended at the perilous juncture between life and death. (v. 30)²⁰ To the passerby, he may be little more than a presumptive corpse.

The triad of characters travelling between Jericho and Jerusalem further explodes the web of connections that once lent precision to the term "neighbor." The parable plays on the expectations associated with a rhetorical convention common in Jesus's day. When referring to the nation of Israel, speakers would use the phrase, "a priest, a Levite, and all the people Israel."²¹ First, a priest comes down the road. (v. 31) Next comes a Levite. (v. 32) Jesus's listeners – Luke's readers – would expect the third figure coming down the road to complete the triad. But instead of some representative of the people Israel, now comes a Samaritan. (v. 33) Precisely what expectations might have surrounded this figure are unclear. However, Luke's ironic use of these figures in his narrative plays on a general attitude of disfavor directed toward Samaritans. They belong to the general category of outsiders that Luke makes a priority of Jesus's scandalous mission.

One literary tradition in the Hebrew Bible traces the Samaritans' origins to the Cutheans – a people that the Assyrians planted in the land following the deportation of the northern Israelites.²² On this view, it is possible to perceive the Samaritans as interlopers in the land. By inserting the Samaritan into the triad, Jesus holds "all the people Israel" under erasure and repeats rhetorically

²⁰ In fact, while *anthropos* is a masculine noun, we cannot even be sure whether this character is male or female.

²¹ See Michel Gourgues, "The Priest, the Levite, and the Samaritan Revisited: A Critical Note on Luke 10:31-35," *Journal of Biblical Literature* 117 (1998): 709-713.

²² See 2 Kings 17.

the historical deportation. Josephus's *Antiquities of the Jews* suggests an even more troubling possibility. In book XVIII, he describes an episode in which a group of "Samaritans" snuck into the Temple on Passover and defamed it by spreading corpses around its cloisters.²³ What might this Samaritan, traveling to Jerusalem, do with the presumptive corpse to which he draws near? If the episode Josephus describes inhabits the community's living memory, then the Samaritan appears as a natural object not only of suspicion but of enmity.

Making the Samaritan the exemplar of neighborliness (vv. 36-37), then, produces two dissociative effects. First, the interloper appears as the model neighbor. This substitution blasts the term out of the original web of lexical connections that associated it with the kinship of a common landed people.²⁴ Second, the characters' actions on the road confound the associated distinction between the neighbor and the sojourner.²⁵ The Greek term *proseluto* is derived from the verbal phrase *pros elthen*, meaning literally "to come toward" or "to draw near," hence the plausibility of translating *proseluto* as "sojourner" rather than "alien." The parable plays on this verbal form. Both the priest and the Levite function as anti-types for the Samaritan. They

²³ Josephus, *Antiquities*, XVIII.2. C.f., Reinhold Pummer, *The Samaritans in Flavius Josephus* (Tübingen: Mohr Siebeck, 2009). Pummer's sweeping analysis of recent readings of Josephus underscores his general ambivalence toward the "Samaritans." At times, as in the cited episode, they are portrayed as enemies to the Jewish returnees to the land. At other times, they appear in a more positive light. One factor contributing to this ambivalence is the broader ambiguity as to the precise identity of the Samaritans. It is never entirely clear when the name "Samaritan" refers to a people (e.g., the descendants of the Cutheans) or the religious community convened on Mount Gerizim.

²⁴ C.f., Francois Bovon, "The Samaritan or Eternal Life as an Inheritance" in *Luke 2: A Commentary on Luke 9:51-19:27* ed. Francois Bovon, Helmut Koester & Donald S. Deer (Minneapolis: Augsburg Fortress Publishers, 2013): 49-65 & Lenn E. Goodman, *Love Thy Neighbor as Thyself* (New York: Oxford University Press, 2008); Scholars like Bovon and Goodman note that this more universal manner of interpreting the law is by no means alien to Judaism. Bovon proposes that in coming to this hermeneutical perspective, the parable reaches a similar conclusion to one championed by Philo of Alexandria.

²⁵ Emerson Powery, "Under the Gaze of the Empire: Who is My Neighbor?" *Interpretation* 62 (2008): 134-144. Powery notes the peculiarity that Jesus who has much to say about love of neighbor and even the love of the enemy, omits the Levitical charge to love the *ger/proseluto*. Powery proposes that the second Levitical command likely fell from prominence in an imperial context, in which the Jews did not strictly possess the land they occupied. The interpretation I offer here takes a different tack. The parable implicitly blends Leviticus 19:18 and 19:34 together through the characters' actions.

antiparelthen – they go away from the half-dead man.²⁶ As readers familiar with the parable know, the Samaritan does the opposite and “draws toward” the stranger. The consequence of this action is a swirl of identifications. The Samaritan is the sojourner. The sojourner is the neighbor. The parable creates a rhetorical storm that revokes both kinship and common territorial possession as methods for identifying the neighbor.

If the lawyer’s question was difficult when first posed, now it has been rendered wholly impossible to answer, at least according to the old frames of recognition. The confusion produced by the parable reproduces the confusion experienced by pious Jews in the wake of recent catastrophes. The moral, it seems, is that the lawyer’s question cannot be answered as it is posed. The neighbor, the object of the command, can have no antecedent definition belonging to any system of qualifying identifications. The social realities that made these identifications possible are gone and the parable makes no effort to restore them. Absent this social reality, the law itself becomes like the half-dead man. It continues to make a claim on the lawyer (and on Jesus), but it has passed beyond the world where it enjoyed its first life. It is not yet a dead letter, but neither is it straightforwardly viable. If its practice is to be an avenue to eternal life, then the law must be vivified once more, this vivification relies on a supplement that sojourns beyond the law and beyond its previous social location.

4. The Stranger as Supplement

²⁶ C.f., Bovon, “The Samaritan or Eternal Life as an Inheritance” & Thomas Kazen, “The Good Samaritan and a Presumptive Corpse,” *Svensk Exegetisk Årsbok* 71 (2006): 131-144. Much ink has been spilled on the priest and Levite’s motivations. It has been variously argued whether purity law would require them to avoid contact with a presumptive corpse or, conversely, to attend to this corpse’s burial. Where the priest and levite are judged to have left the half-dead man alone, they are typically accused of wrongly elevating ritual piety over morality. This road leads to anti-Judaism and supersessionist logics. Whatever the priest and the Levite’s motivations, I do not know them. Moreover, in a literary unit that offers glimpses into the internal lives of several characters (the lawyer and the Samaritan), the omission of their motivations seems to suggest that they are not the point of the parable. More significant, it seems to me, is the function of the rhetorical triad, of which they make up two-thirds.

And when he saw him, he was moved with pity. He went to him and bandaged his wounds, having poured oil and wine on them. Then he put him on his own animal, brought him to an inn, and took care of him. The next day he took out two denarii, gave them to the innkeeper, and said, 'Take care of him; and when I come back, I will repay you whatever more you spend.' Which of these three, do you think, was a neighbor to the man who fell into the hands of the robbers?"

He said, "the one who showed him mercy."

Jesus Said to him, "Go and do likewise." (Luke 10:33b-37)

The parable leaves in ruins the conventional measures for identifying the love-command's object and draws out another interpretation, proposing to us that the neighbor is not an object at all, but a subject. In the end, Jesus asks the lawyer, "which of these three was a neighbor to the man," and not "which of these three recognized as a neighbor the man who fell into the hands of the robbers?" (v. 36) Moreover, the parable proposes to us that the neighbor is a subject that is constituted by the demand of an other.²⁷ The neighbor is not formed under the principle of autonomy. She is not the one who adopts the law and gives it to herself as her own maxim. Such a formulation would do nothing to answer the lawyer's question. On their own, the terms of the love-command remain undefined variables open to an abstract infinity. The neighbor's maxim would only make of the

²⁷ C.f., Virginia Held, "The Meshing of Care and Justice," *Hypatia* 10 (Spring 1995): 128-132; Virginia Held, "Care and Justice in the Global Context," *Ratio Juris* 17 (June 2004):141-155; Margaret Urban Walker, "Moral Understandings: Alternative 'Epistemology' for a Feminist Ethics," *Hypatia* 4 (Summer 1989): 15-28. I would pause here to note two significant affinities that my argument shares with feminist ethics of care. The first regards anthropology. Even if approached from different points of departure, the accounts of ethical and political subjectivity that I develop here share care ethics' emphasis on relationality and interdependency as opposed to atomistic individualism. Second, like Margaret Urban Walker, I connect this anthropology with an alternate moral epistemology that begins in interpersonal phenomena of empathy and compassion and favors practices of responsibility over unalloyed rational agency. By identifying these resonances, I hope to signal a point of contact between ethics of care and ethics premised on *agape*, where the two might be mutually illuminating. Where ethics premised on *agape* risk sliding into abstraction, the ethics of care underscore the particular, interdependent relationships within which the virtue of love is developed and practiced. Furthermore, I hope that by understanding the relationship between particular encounter and general norm according to the relationship between "supplement" and "law," I may yet leave open the possibility of future discussions of the relationship between care and justice that avoid the pitfall of assigning these values to separate social or institutional domains. (*pace* Held) If this tendency to bifurcation stems from accounts of care that begin outside the supposed bounds of the political, then the Parable of the Samaritan provides a striking case in which the practice of care is developed amid an explicitly legal dispute.

law a dead letter, an ever-present signifier of the subject's alienation from the life she means to practice. The neighbor emerges in the encounter between the Samaritan and the half-dead man. In this encounter, the injunction's infinity is incarnated in a concrete body, and the practices by which it is to be fulfilled are conformed to the site of the encounter. According to the parable, law finds its supplement in the encounter with the stranger.

“And when he saw him, he was moved with pity” – verse thirty-three captures the moment of collision, in which the stranger enables the neighbor's emergence as subject. This subject's emergence occurs in a distinctive moral epistemology that decenters the self and subordinates the principle of autonomy to a good which exceeds it. Some common English translations, including the King James Version and New International Version, render the Greek “he had compassion on him” or “he took pity on him.”²⁸ However, these renderings put in the English active voice that which the Greek places in the passive voice. In doing so, they paper over a critical detail in the parable. The verb in question is *esplagxnisthe*, the aorist passive conjugation of *splagx nizomai*. This word, derived from the noun *splagxnon*, refers to the *viscera thoracis* (the hearts, lungs, liver) and conveys a deep bodily reaction.²⁹ In the Greek New Testament, this verb only appears in the passive voice, meaning “to be moved with compassion.”³⁰ This verb always locates the proper

²⁸ It is standard convention to translate the aorist passive into the English active voice. But this practice is an endeavor to make normal in English that which is strange in the Greek. This endeavor's consequence is to emphasize the familiar and to let slip that which is most foreign and challenging. As Walter Benjamin writes, “translation finds itself not in the center of the language forest but on the outside facing the wooded ridge; it calls into it without entering, aiming at that single spot where the echo is able to give, in its own language, the reverberation of the work in the alien one.” (See Walter Benjamin, “The Task of the Translator” in *Selected Writings: Volume 1: 1913-1926* ed. Marcus Bullock and Michael W. Jennings (Cambridge: The Belknap Press, 1996), 258-259)

²⁹ See the entries for *splagx nizomai* and *splagxnon* in *Lidell and Scott's Greek English Lexicon* (New York: Oxford University Press).

³⁰ This parable is not the only case in which Luke presents us with compassion's movement. He uses the verb *splagx nizomai* on two other occasions: in Jesus's meeting with the widow at nain (vv. 7:11-17) and in the parable of the prodigal son (vv. 15:11-32). In both instances it appears in the passive voice following an act of vision. When Jesus sees the widow leading her son's funeral procession, Jesus is moved with compassion. (v. 7:13) When the prodigal's father sees him approaching, he is moved with compassion. (v. 15:20) In each case the response that compassion inspires restores someone who was “dead” to life. Jesus literally resuscitates the widow's son. The prodigal's father twice declares, to his servants and then to his eldest son, that the prodigal “was dead and has come

agent of the action *outside* the subject/object it affects. Compassion moves us and not the other way around. In the interaction between the Samaritan and the half-dead man, the Samaritan is not the lone actor. One does not choose to become a neighbor by adopting one maxim or another. Compassion does not begin in the will.

The Samaritan does act. This much is true. He sees the half-dead man. The Greek text describes this vision in the active voice. However, we quickly learn that the Samaritan's gaze is not the bare apprehension of an object that is his dispassionately to judge. Over the span of three short words, the Samaritan's moment of activity gives way to passivity. The parable makes vision the setting where the positions of subject and object are reversed. The man, beaten and stripped on the side of the road, arrests the Samaritan's attention. Compassion moves the Samaritan – bodily. It is not simply that the Samaritan changes course; crossing over the road to meet the man. Compassion makes the body a site of moral experience. It collapses the space separating the Samaritan and the wounded stranger. Body reaches out to body. Compassion seizes heart and lungs.

Moreover, it seems not insignificant that, in this parable, no word is spoken between the Samaritan and the beaten man. There is an ineliminable alterity in compassion's movement. It is present in bodily responses that lie on the hither side of language and cannot be captured without flights of poetry. The beaten man, who lies beyond the law's conventions for recognition, grasps that in the Samaritan which is unutterable. There is nothing to be said. This parable, after all, is about *poiesis*, practice, and not profession. Moved, the Samaritan now moves and, in the acts that follow, reveals himself to be a neighbor. He pours oil and wine on the man's wounds and bandages

to life.” Strikingly, taken together, this triad of compassion-stories describe a widow, an orphan, and a sojourner – the three figures to which the prophetic literature directs God's steadfast love and justice. (N.b., vv. 15:12, 19, & 21; the prodigal son effectively declares himself an orphan first by demanding from his father that which would be his only upon his father's death and twice more by declaring himself no longer worthy to be called his father's son.)

them. (v. 34) He lifts the man onto his own animal and removes him to the safety of an inn. There, he continues to care for him, ultimately pledging to cover the total expense of his recovery. (v. 35) In compassion's movement, bodies comes to know a good that language does not; a good which goes before the normative formulations of law.

The exchange that begins this pericope regards the practices by which one participates in the reign of God. The Samaritan's actions identify this practice with a movement toward the other, who lies on the borderline between life and death, and decides for life. The lawyer characterizes this practice as the work of *eleos*, "mercy." (v. 37) Elsewhere in the Gospel of Luke *eleos* describes God's redemptive action on behalf of God's covenant people. Mary's song of praise connects it with the restoration of the poor, lowly, and excluded. (vv. 1:46-56) In giving birth to John, Elizabeth is identified as an object of God's mercy. (vv. 1:57-58) Finally, in Zechariah's prophecy over John, God's mercy is identified in the provision of a messiah and the redemption of those "who sit in darkness and in the shadow of death." On the lips of Mary, Elizabeth's family members, Zechariah, and this lawyer, Luke identifies mercy with activity that rescues life from the grip of death.

By resurfacing the language of practice, the final exchange in the parable proposes an answer to the lawyer's first question: "Teacher, what must I *do* to receive eternal life?" Participation in the reign of God requires the right interpretation of the law. Right interpretation of the law is not possible if the law is conceived as a closed universe of injunctions and prohibitions. It is possible only where some supplement enables its proper reading. Thus, the parable's first dialectical movement is negative. It underscores the law's dependence on a life-world by revoking it. Again, this revocation was not artificial. By the time of Jesus and the lawyer's encounter, the life-world that previously supplied the law's supplement lay in ruins.

Ironically, it is the approach of the stranger, the one who stands out of joint with the conventional frames of recognition, that signals the positive moment in the dialectic – even if this positivity appears in excess of the dialectic. The neighbor is the one who takes up the practice of mercy, but she knows it only in the moment that she is grasped by a good that precedes the law. She discovers the law's supplement in her encounter with those who cry out to her from the liminal space between life and death. Compassion carries her into this liminal space, illuminating that alterity in her, and in the other, which exceeds the law's injunctions and even language itself. This alterity becomes the supplement by the light of which law must be reinterpreted. But the alterity that compassion reveals is not abstract alterity. Within the narrative of the parable, this encounter is not a hypothetical encounter with an abstract other. On the contrary, it is a deeply embodied collision with a man, naked and wounded, lying in the dust of a mountain road. The neighbor's response, then, is not arbitrary. Rather, his action is shaped by the material contours of the concrete situation, and this action supplies determinate content to the command.

All the same, Jesus's parable is not a straightforward answer to the question that the lawyer originally poses. The parable's structure de-emphasizes the *deontological* love command and presents *agape* in *aretological* terms. Jesus does not refute the lawyer's determination to place *love* at the center of the law, but he does refuse the question. No word of recognition is spoken between the Samaritan and the half-dead man. The neighbor, *qua* object, cannot be defined. Compassion and mercy constitute and reveal the neighbor, even as their movements blur the boundaries between object and subject. Jesus encourages us to consider *agape* as the disposition of the neighbor's character, which lays her open to the call and response of compassionate, merciful activity. In love, the body knows the neighbor, and in the concrete site of this encounter,

the law stands a chance of moving from the side of death to that of life. Love is the fulfilling of the law.

5. The Samaritan and Self-Determination

Luke-Acts' concern for the dialectics of *agape* and *nomos* are not limited to the parable. The gospel's structure repeats the dialectic's movements on continuously expanding scales through the stories of Jesus and the martyrs. Jesus' crucifixion by the Roman powers manifests the opposition between the *Basileia Theou* and the *lex* of the *Imperium Romanum*, alienating his followers from the normative world the *lex* would uphold. As they find themselves on the wrong side of the law, Stephen and Paul bear witness to the disjuncture between law and life. Like the half-dead man before the Samaritan, these characters make a demand on the reader, eliciting her compassion. The continuance of their stories depends on whether or not the reader approves or rejects their claim. The dialectic's expanding significance within the gospel suggests that it bears not only on the relationship between *agape* and Torah but the relationship between *agape* and law more generally. Subjects of an imperial power, Luke's readers cannot expect to cast off the law, but they can expose it to the transvaluation of values that compassion demands. As it creates martyrs, the law at once witnesses its willingness to create estranged siblings and, in so doing, its opposition to life. However, the blood of the martyr, the good of the life denied, marks the law and asserts that it is the relationship between the subject the law produces and the subject it estranges that is most fundamental. *Agape* opens the subject to the movement of compassion, dedicating her to the good of the life denied.

Today, no less than in the second century, one compelled to witness by Luke's narrative is thrust into the middle position between two normative worlds. The *Imperium Romanum* indeed has passed away. But the nation-state nevertheless insists on its sovereignty to create and enforce

law. The Emperor's law held legitimacy because it was the provision of a living god. Luke-Acts signals the crisis of legitimacy that occurs when the Living God appears in the Emperor's domain. While the United States has no singular personified sovereign, neither does U.S. law dispatch with sovereignty altogether. Rather, as Alexis de Tocqueville observed with keen acuity so long ago, "above all the institutions and beyond all the forms, there is a sovereign power, that of the people, which can abolish or change them as it pleases."³¹ The people, the *demos*, lend legitimacy to the law.

However, in a word, the American people are not a brute fact but a contested reality. Border enforcement and the lives it claims are evidence of this contest. In the Sonoran, the law has come disjoined from life. In its scramble to escape the claim that the stranger would make upon it, border enforcement nihilates the values it is designed to uphold. The political subject structured by the principle of autonomy is a dead end. The *nomos* it produces turns dystopian.

The parable of the good Samaritan, and the broader narrative of Luke-Acts, suggests that law, rightly used, ought to be an instrument of *mercy*. Law, made an instrument of mercy, is law caught up in compassion's movement. Yet, compassion's effect is to obscure the boundaries of the people. The neighbor is not structured according to a principle of self-determination. This subject is not premised upon a claim to reality autonomously asserted. On the contrary, the neighbor emerges where the self falls under the sway of another. Compassion reveals a good that outstrips and captures the self. The neighbor, *qua* ethical-political subject, is structured by an experience of hetero-affectivity, according to the sovereignty of that good. To self-determination, compassion is disruptive and destabilizing. It cannot deign to know beforehand who is in and who is out. Compassion's movement decenters the subject that retains the prerogative to admit and

³¹ Alexis de Tocqueville, *Democracy in America* (New York: Harper & Row, 1969), 173.

exclude. But this is not a subject worth saving. The bones in the valleys have already revealed the enduring non-identity on the edges of our political subjectivity and the desolation that attempting to hide this truth yields. Likewise, compassion makes indeterminate the people that is supposed to provide legitimacy to the law. However, those marked by the virtue of *agape* approve this indeterminacy, re-reading the law in the encounter with the stranger.

Lloyd situates the virtue of love in the tension between general norm and particular practice. Love, conceived as a virtue, is a “capacity to suspend norms and negotiate practices in proximity to another, to put one’s self, in all its complexity, at stake.”³² Love is a *political* virtue because it is a training for life together, for “negotiating between practices and social norms.”³³ Luke’s parable brings us to a similar tensive space between general norm and concrete practice. The general mandate of the law is indispensable for salvation. The *nomos* orders a world of general norms by which we are to be reconciled to one another. However, as this world ossifies, it ceases to serve its proper purpose. Treated as a closed system of injunctions and prohibitions, the law’s accommodation of concrete existence can be procrustean at best and, at its worst, turns hostile toward that which escapes its control. In love, the neighbor allows the stranger to leave her mark on the *nomos*. She discovers in the stranger’s demand a new connection between general norm and concrete existence. The stranger’s demand suspends norms in a relation between two, wherein the entire self is at stake. *Agape* permits law and life to be justified to one another by the movement of compassion. However, this justification redounds to no identifiable foundation and, subsequently, provides no new grounds of legitimacy. That is, the community of neighbors is something other than the *demos* that the politics of self-determination requires. The *ekklisia*, the ones called out, are rather a people between worlds.

³² Lloyd, *The Problem with Grace*, 47.

³³ *Ibid.*

For now, with a better sense of love's virtue in hand, I conclude this chapter by outlining U.S. border enforcement's besetting vice. The processes of identification and alienation that yield self-determination's subject produce a population of estranged siblings. This remainder attests the fragility of the reality that self-determination asserts and, by its exclusion, threatens that reality's legitimacy. Thus, a politics committed to an unalloyed principle of autonomy appears doomed to repeat the crime of fratricide. When he willed to be rid of his brother, Cain sought to leave him in the field. Likewise, the United States has disappeared countless estranged siblings in remote stretches of the Sonoran Desert. Luke-Act's suggests that our task is not to disappear our estranged siblings but to be reconciled with them. Compassion reveals to us that we are of one body. The divisions we draw between subjects and objects, selves and others, are constructions. There is a common good that the body knows. *Agape* is that virtue which attempts to reconcile the law with this good. To refuse this good is to revolt against our humanity. To reject the creation given to us and to insist upon another reality of our own design.

The apparatus named under the phrase "prevention through deterrence" (PTD) endeavors to insulate self-determination from its remainder by creating an aesthetics in which the movement of compassion is precluded from the outset. Compassion moves in the ruins of every old category of recognition. The parable plays on the crisis of intelligibility effected by the disjuncture between old frames of recognition and the political strife facing Jesus and the lawyer. Conversely, PTD brings to bear a conspiracy of mechanisms to make the forms of recognition native to a low-intensity conflict appear uniquely real. Practices like metering, bad-faith fear interviews, and the threat of criminal prosecution for frivolous applications serve to erode the grounds of agency that the law provides to migrants, especially asylum-seekers. In effect, they combine to discourage legal admission through ports of entry. Border fences and a bulwark of surveillance technologies

force migrant traffic even further from the sites where legal crossing is putatively available to them. To many migrants who exercise their agency under constraint, a treacherous desert crossing appears like the most viable option. Such a crossing is illegal. Moreover, when these crossings occur so far from the public eye, it is easy to confuse them for clandestine efforts to infiltrate a territory. The theater of border enforcement, with its narrative of attack and defense, conditions us to recognize migrants as subversives and combatants rather than asylum seekers.

Failing this (mis)recognition, it endeavors to occlude compassion by sending migrants down roads that no would-be “Samaritan” will ever traverse. The parable presents compassion as a visceral bodily experience that begins in *vision*. The Sonoran Desert is vast and sparsely populated. The desert undertakes the work of law enforcement in secret, far from the public eye. A migrant who collapses from heat exhaustion or dehydration is unlikely to be seen by one passerby, let alone three. In this extreme environment, presumptive corpses rapidly become actual corpses. Between the collaborative work of sun and scavenger, corpses quickly become disarticulated skeletons and, eventually, mere fragments of bones. If compassion is to emerge, it must be through attention to these fragments, the last traces of those lingering between the world of the living and the oblivion of anonymous demise.

Chapter Five:
Samaritans in the Sonoran

When I see people who are going to undertake a crossing of the desert or who are in the desert or who stumble out of the desert into our town... I see these bones at the same time.

--Scott Warren, Testimony in District Court of Arizona, 2018

1. Encounters on a Different Road

In the early hours of January 17, 2018, Kristian Perez-Villanueva, a national of Honduras, and Jose Arnaldo Sacaria-Goday, of El Salvador, arrived at a building in Ajo, Arizona, known to locals as “the Barn.”¹ At the Barn, they had heard, they could find food and water. After a grueling trek through the Sonoran Desert, they were dehydrated, malnourished, and suffering severe blisters and swelling in their feet.² For most migrants who find themselves in Ajo, this town is no more than a pit-stop along the way. It is not a destination.

Between Ajo and Tucson is another 132 miles of wilderness. The prospect of food and water could mean the difference between surviving the journey or succumbing to the desert

¹ “Criminal Complaint,” Document 1, *The United States v. Scott Daniel Warren* (District of Arizona, 2018)

² C.f., Liz Kinnamon, “United States v. Scott Daniel Warren,” *The New Inquiry* (June 27, 2019). Despite reports that the men were in good spirits, the medical expert called to testify in the ensuing trial judged that the migrants were in poor health and ill-equipped to continue their journey.

environment. In the early hours of January 17, 2018, two men yet suspended at the crossing between life and death paused in their journey along a desert road.

A few hours after their arrival, Perez-Villanueva and Sacaria-Goday were discovered by a local resident named Scott Daniel Warren. A cultural geographer by profession, Warren was an active volunteer with the humanitarian aid organizations, No More Deaths and the Ajo Samaritans. Unaware of the migrants within, he had come to the barn to prepare to receive a group of volunteers who would be staying at the Barn while working in the desert. Upon discovering Perez-Villanueva and Sacaria-Goday, Warren was moved by compassion. He “took care” of them, offering them food, water, beds, and clean clothes.³

Warren, along with Perez-Villanueva and Sacaria-Goday, was subsequently arrested by officers of the United States Border Patrol. The migrants, who were reportedly fleeing violence in their home countries, were charged with unlawful entry.⁴ After being deposed for their testimony against Warren, they were handed over to the Department of Homeland Security to be removed.⁵ Perez-Villanueva and Sacaria-Goday never entered asylum proceedings. They were promptly repatriated to the countries from which they had fled. Warren was charged with two counts of harboring, in violation of Title 8, USC, Section 1324(a)(1)(A)(iii).⁶ The ensuing trial situated Warren at the point of collision between the demand of an other and a legal agenda designed to bolster the autonomy of political right. By removing Perez-Villanueva and Sacaria-Goday and criminalizing Scott Warren, the law would loose political right from moral necessity.

³ “Criminal Complain,” *US v. Scott D. Warren*

⁴ Warren maintains that Perez-Villanueva and Sacaria-Goday were fleeing violence in “USA v. Scott,” Ora Dekornfeld & Isabel Castro (*The New Yorker*, 2020), Video Documentary.

⁵ “Order,” Document 34, *United States v. Scott Daniel Warren* (District of Arizona, 2018)

⁶ Warren would ultimately be involved in two trials. The first trial included an additional charge of conspiracy, however, when this prosecution ended in a mistrial, he was tried again on only the harboring charges.

The United States v. Scott Daniel Warren would not be the first trial of this sort to take place in the borderlands. Nor would it be the first high-profile trial to play out in the Pima County Courthouse in Tucson. The southwestern borderlands have long been the site of popular resistance to US efforts to secure its borders from asylum seekers. In January of 1985, members of the Tucson Ecumenical Council, including Jim Corbett and John Fife (and fourteen others), were tried on charges of conspiracy and harboring for their involvement with the Tucson Sanctuary Movement. The co-conspirators were not petty criminals or smugglers, they understood their work as a concerted effort to answer the moral demands that asylum seekers had made upon them. In light of this demand, they sought to put a check on the federal government's plenary power in matters of admission, exclusion, and removal by helping Salvadoran migrants reach the US and sheltering them in their churches.⁷ They referred to their work as "civil initiative," which they understood to be a "legal right and moral responsibility of society to protect the victims of human rights violations when government is the perpetrator."⁸ In their view, they were acting under an obligation enjoined upon them by God and international law by enacting the Refugee Act when the federal government refused to do so.

⁷ The Sanctuary trials were quick to draw the attention of scholars and journalists alike. See Ignatius Bau, *This Ground is Holy: Church Sanctuary and Central American Refugees* (New York: Paulist Press, 1985); Renny Golden & Michael McConnell, *Sanctuary: The New Underground Railroad* (Maryknoll: Orbis Books, 1986); Angela Kathryn Stout, *Sanctuary in the 1980s: The Dialectics of Law and Social Movement Development* (University of Delaware: Dissertation, 1989); Susan Bibler Coutin, *The Culture of Protest: Religious Activism and the U.S. Sanctuary Movement* (UMI Dissertation Series, 1990); Robert Tomsho, *The American Sanctuary Movement* (Austin: Texas Monthly Press, 1987); M. Hilary Cunningham, *God and Caesar at the Rio Grande: Sanctuary and the Politics of Religion* (Minneapolis: University of Minnesota Press, 1995); Ann Crittenden, *Sanctuary: A Story of American Conscience and the Law in Collision* (New York: Weidenfeld and Nicholson, 1988).

⁸ John Fife, "Civil Initiative" in *Trails of Hope and Terror: Testimonies on Immigration* ed. Miguel A. De La Torre (Maryknoll: Orbis Books, 2009), 172. Members of the Sanctuary movement appealed for justification to the Nuremberg Principles of international law, which state that individuals have "international duties that transcend the national obligation of obedience imposed by the individual state." (See *United States v. Goering*, Judgment of the International Military Tribunal, 6F.R.D.69, 110 (1946).)

The organizers of the Tucson Sanctuary Movement were well aware of the challenge they were putting before the project of self-determination. “[Declaration] of sanctuary... puts the government on notice that its crimes undercut its own ability to rule,” Corbett wagered, “the U.S. government is being offered the choice of either ignoring the undocumented refugees who are receiving sanctuary (thereby conceding its own lack of legitimacy in this matter) or else asserting its legitimacy by taking action against those who are publicly harboring undocumented refugees.”⁹ For a self-determining nation, the choice that the Sanctuary movement was putting before the government was no small matter. It pressed the moral necessity of protecting “fellow human beings who are fleeing from torture and murder” against the political prerogative to determine the polity’s shape autonomously. Moreover, civil initiative’s claim to be a form of direct action by “the people,” revealed a fracture in the very entity meant to supply state action with legitimacy. The “choice” that Corbett and his co-conspirators put before the government was the choice between becoming a polity constituted by the demand of the outsider or one defined by the refusal of that demand.

Warren’s activities posed the same issue, if on a smaller scale. To allow Warren to continue with his work unimpeded would mean permitting the demand of the necessitous other to supersede the sovereign right to regulate the border. In the borderlands, the choice to be an ethical subject constituted by approval of the other’s demand is inevitably to find one’s self at odds with the current political order. The US government meets those who make this choice with no less hostility today than it did in the 1980s. Warren’s own arrest occurred amid a crackdown aimed at suppressing individuals and organizations dedicated to mitigating the lethal effects of the United States’ border enforcement strategy.

⁹ Jim Corbett, “Some Comments on the Underground Railroad for Central American Refugees,” Sanctuary Trial Papers, MS 362, Series 1, Box 1, Folder 1, University of Arizona Special Collections.

By now, the political functions of PTD, along with its long history, should be clear to the reader. However, the particular charges that the state brought against Warren reflect a recent effort by the Trump administration to further invigorate the strategy by raising the cost of crossing not only for migrants but for those who would lend them aid.

Following the election of President Donald J. Trump, the border patrol was empowered and encouraged to act against organizations like No More Deaths. On April 11, 2017, then Attorney General Jeff Sessions traveled to the Arizona-Mexico line to deliver a speech to border enforcement officials. In a rhetorical blitz well-fitted to the aesthetics of low-intensity conflict, Sessions referred to the border as “ground zero” in the fight against the gangs and cartels “that turn cities and suburbs into warzones, that rape and kill innocent citizens and who profit by smuggling poison and other human beings across our borders.”¹⁰ “Depravity and violence are their calling cards,” he continued, “including brutal machete attacks and beheadings.”¹¹

Pivoting, he explained that the President understood the stakes and was committed to “arming” for the fight the border patrol and the prosecutors with whom they worked.¹² “Under the President’s leadership and through his executive orders,” Sessions assured his audience, “we will secure this border and bring the full weight of both the immigration courts and federal criminal enforcement to combat this attack on our national security and sovereignty.”¹³ For his part,

¹⁰ Jeff Sessions, “Remarks Announcing the Department of Justice’s Renewed Commitment to Criminal Immigration Enforcement,” Nogales, Arizona (April 11, 2017).

¹¹ *Ibid.*

¹² Trump’s embrace of the aesthetics of low-intensity conflict are reflected in his own rhetoric as well. A Boston Globe article published in August of 2019, found that, over the preceding year, Trump had described migration across the southern border as an “invasion” in thirty-three different speeches, tweets, and interviews. (See Zoe Greenberg & Christina Prignano, “Despite condemnation of hate, Trump has ramped up his use of ‘invasion’ rhetoric in recent months,” *Boston Globe* August 5, 2019 (<https://www.bostonglobe.com/news/politics/2019/08/05/despite-condemnation-hate-trump-has-ramped-his-use-invasion-rhetoric-recent-months/4tDIwWiWdbYawAS7vjhAoK/story.html>) (Accessed March 23, 2021))

¹³ Sessions, “Remarks Announcing the Department of Justice’s Renewed Commitment to Criminal Immigration Enforcement.”

Sessions saw to it that every U.S. Attorney's office (at the border and in the interior) would appoint an Assistant U.S. Attorney to act as their district's Border Security Coordinator. These prosecutors would be required to consider prosecution for an array of offenses in which humanitarian aid workers might be implicated, principally, for "the transportation or harboring of aliens."¹⁴ In this way, border enforcement would "shut down and jail those who have been profiting off this lawlessness."¹⁵ Although it played out in a trial court on the fringe of US territory, the trial was animated by a political purpose that bore the weight of national self-preservation.¹⁶

Warren's trial (and others like it) evince the resistance with which those guided by the Samaritan's virtue are bound to meet. The number of harboring prosecutions per fiscal year has increased with every year from 2017 to the time of this writing.¹⁷ 86% of these prosecutions have taken place in the borderlands' California South, Arizona, New Mexico, Texas West, and Texas South US District Courts.¹⁸ Nevertheless, these cases also provide a setting for examining the dialectic between love and law as it takes shape in the present moment. Luke-Acts' narrative climaxes are capital trials. No less today than in the memory of the Gospel, the courtroom presents itself as a site of agency both for and against the neighbor. In this setting, narrative practices lend defendants and their attorneys the opportunity to draw the law to the side of life. If the defendant

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Moreover, it is worth noting that Warren's, by no means, has been the only legal battle between humanitarian aid workers and the US government. Leaked documents from the Trump Administration's Operation Secure Line included a database of government surveillance targets that included not only suspected immigration criminals but community organizers, journalists, and ministers. Among these names was that of Rev. Kaji Douša, a New York pastor and co-chair of the New Sanctuary Coalition, whom the government subjected to interrogation and detention. Rev. Douša subsequently sued the DHS for their violation of her religious liberties. (See Amnesty International, "Brief for Amnesty International as *Amicus Curiae* in Support of Respondent," *United States v. Evelyn Sineneng-Smith* (The Supreme Court of the United States, 2020)).

¹⁷ Trac Reports, "Along the US-Mexico Border, Prosecutions for Harboring Immigrants Continue to Climb" April 13, 2020 (<https://trac.syr.edu/tracreports/crim/603/>) (accessed March 23, 2021)

¹⁸ Ibid.

can make a compelling case to the court, they stand a chance of resisting or even transforming the law's normative subtexts.

In this final chapter, with reference to Warren's trial, I will argue that *agape* is afforded a capacity for political intervention as it lays hold of juridical power to safeguard those who would build new coalitions with the excluded. Love marks and is marked by the law. Even as it makes this intervention, the good revealed by compassion's movement must be translated into a language intelligible to the courts. This translation is not completed without losing something. In the end, the moral force of the other's demand is replaced by the right of individual conscience. As such, these interventions do not straightforwardly use juridical power to transform the United States into a polity approvingly constituted by the other's demand. Rather, their witness haunts the law with the good of the life it too often denies.

2. Compassion for the Stranger

In the words of his defense attorneys, Greg Kuykendall and Amy Knight, Warren was "morally, ethically, and spiritually bound to offer assistance to human beings in need of basic necessities."¹⁹ Warren was "bound." It is worth pausing to consider the significance of this diction. This language implies not absolute freedom but freedom constrained. The Samaritan in Luke's parable is moved before he moves. His ethical subjectivity is reconstituted in the moment that body cries out to body and compassion impels him to close the distance between. Indeed, the neighbor is an ethical subject constituted by her bond to the stranger. In love, she embraces this binding as her responsibility. In vice, she resents and rejects it. The lawyer, in Luke, recognizes

¹⁹ "Motion to Dismiss Counts 2 and 3," Document 42, *United States v. Scott Daniel Warren* (District of Arizona, 2018).

the Samaritan as a “neighbor” by her practices of mercy. Do Warren’s attorneys press us to a similar recognition? What was the nature of this binding?

The parable locates compassion’s movement in the act of vision. The Samaritan sees a broken body, suspended at the crossing between life and death. Crying out from this position of danger, the stranger lays hold of him. The sight binds him, viscerally, to the wounded stranger. Warren was called to testify on the fifth day of his trial. When asked why he provided humanitarian aid to migrants, the Ajo Samaritan fumbled for an answer before articulating a moral experience analogously structured to the one in the parable.

For Warren, the decision had already been made. “It feels a little choiceless,” he explained, “if you live in a place where people are dying by the dozens around you every year, how could you not respond.”²⁰ “Perez-Villanueva and Sacaria-Goday were not the first migrants Warren had encountered. As he explained in his testimony, to witness migrants stumbling out of the wilderness and into Ajo was a daily occurrence. He had met countless migrants before Perez-Villanueva and Sacaria-Goday. So had his neighbors. However, as a volunteer with the Ajo Samaritans and, later, No More Deaths, Warren had also joined “search and recovery” trips into the desert; trips with the express purpose of recovering lost human remains. The first trip marked a sea-change in his life. In his testimony, Warren expressed being “haunted” by the bones he had found.²¹ They never ceased to be with him, ever-present in his vision:

When I see people who are going to undertake a crossing of the desert or who are in the desert or who stumble out of the desert into our town, I see these bones at the same time. It’s almost like a split screen or something. Not that I see them as bones, but I see that disturbing, disturbing reality of how people who are living can become lost and disappeared in the desert.²²

²⁰ “Trial Transcript: Day Five” Document 289, *United States v. Scott Warren* (District of Arizona, 2018), 186.

²¹ *Ibid.*, 175.

²² *Ibid.*

In Warren's vision, to see a migrant crossing through the desert was to see a person suspended at the perilous crossing between life and death. This way of seeing bound him to act. He had no choice but to intercede, to attempt to keep these strangers among the living. By January 17, 2018, when Warren arrived at the barn and discovered Perez-Villanueva and Sacaria-Goday, he had recovered the remains of no fewer than nineteen individuals. By this time, his manner of relating to the dead had fundamentally changed his sense of responsibility for the living.²³ He had no choice but to bandage their wounds, offer them food and water, and grant them shelter. He was already an ethical subject bound by the claim that strangers, living and dead, had made upon him.

Moreover, like the Samaritan of the parable, whose practices of mercy were conformed to the concrete needs of the stranger, so too were Warren's. Aware of the danger of dehydration, Warren had many times hiked into the valleys of the Sonoran to leave caches of food and water. His decision to provide Perez-Villanueva and Sacaria-Goday with shelter while their blisters healed might have been all the difference between life and death. It is 132 miles from Ajo to Tucson. Most of that expanse is sparsely inhabited wilderness. They would likely have to walk for several more days in the desert. Injured feet would slow their progress and prolong the amount of time they would spend exposed to the Sonoran's oppressive heat and parched landscape. As Warren explained in his testimony, it is impossible to carry sufficient water for the journey. Blisters that slow progress and lengthen the duration of the journey are a death sentence for many migrants.

Kuykendall put the matter emphatically in his opening statement.

²³ Ibid, 193-194. In his testimony, Warren attempted to explain his personal ritual of attending to deceased migrants. First, he would face them. Then, he would turn and face the direction they had been facing, trying to see the last things they had seen before their deaths. He would kneel to the ground and scoop up a handful of soil, allowing it to slip through his fingers. In all these ways, Warren sought to be with these individuals who died in isolation. In these ways he allowed their subjectivity to penetrate his own.

In all that wilderness... there's nothing out there... Scott Warren understands this, and he understands it intimately. It's what motivates him. The understanding of the lethal sequence of slowing down, getting abandoned, being lost and dying, that lethal sequence is what explains Scott's intent. When he legally gives most basic survival tool that there is, knowing where they are, where they are in this gigantic desert,... when he gives them water, when he gives them food, when he gives them a place to recuperate, that predictable sequence of not keeping up, being abandoned, dying, that's precisely what Scott is trying to prevent.²⁴

“He's nothing more nor less,” Kuykendall asserted, “than a Good Samaritan.”²⁵ Warren's activities were consistently motivated by the effort to rescue from death lives that are too often abandoned. Warren's testimony suggests that this “Ajo Samaritan” came by the name honestly. Bound by the moral demands of migrants traveling roads stalked by death, compassion compelled him to works of mercy. These works conformed to the site of their exercise. To Perez-Villanueva and Sacaria-Goday, Warren offered orientation, water, food, and shelter. For four days, and three nights, Warren “took care” to stave off the grisly fates that had claimed thousands of other migrants before them. However, Kuykendall's assertion goes further. What Warren did was *legal*. Warren's practices of mercy were informed by a right interpretation of the law.

3. The Demands of Conscience

According to the parable, love vivifies the law as it brings it into contact with a good that excels it. This good's transcendence of the law does not derive from its abstraction. To the contrary, it is a good revealed concretely in the body of the stranger. The encounter between strangers, in all its materiality, lends content to the legal injunction to neighbor-love as the site of encounter informs the neighbor's response. Likewise, Warren's moral subjectivity and practice appear not

²⁴ Ibid, 15-16.

²⁵ “Partial Transcript of Jury Trial: Day One,” Document 384, *United States v. Scott Daniel Warren* (District of Arizona, 2019), 10.

to have been formed by abstract notions of the good or even a general understanding of the dangers the desert environment posed to migrants. Warren was haunted by the materiality of the bones he had discovered in the Sonoran. This haunting permeated his vision and left him no choice but to approve the claims that Perez-Villanueva and Sacaria Goday made upon him.

However, demonstrating the legality of Warren's case would require translating it into a legal context that had little interest in the other's demand. By the time the trial began, both migrants had already been deposed and removed. These strangers would never appear physically in the courtroom. The trial's outcome was irrelevant to their legal status. Instead, the trial focused on Warren's putative criminality and, so, came to turn on his "intent."

As Teresa Godwin Phelps explains, trials apply general laws to specific cases narratively. Narrative's legal function goes beyond the provision of the law's normative significance at the macro level. It bears on the everyday *doing* of the law at the micro level. Legal practice is narrative practice.²⁶ It is up to the attorneys to tell the story of how a given act or actor fits within the frame that the law provides. Thus, lawyers are not free to tell whatever narrative they like. They must improvise within the narrative conventions that the statute in question might presuppose. For instance, as Godwin Phelps explains, laws regarding self-defense require lawyers to tell stories about immanence, equal force, and attempted retreat. Moreover, the shape that these stories take may differ depending on what sort of confrontations the law traditionally imagines. If the narrative conventionally presupposes two equally sized men confronting each other in an alley, then a woman, facing domestic abuse in the confines of her home, will have to find a way to make her own story resemble the traditional one, even as she modifies its conventions. In a word, if the courtroom is a setting for narrative agency, it at once facilitates and constrains this agency. This

²⁶ Teresa Godwin Phelps, "No Place to Go, No Story to Tell: The Missing Narratives of the Sanctuary Movement," *Washington and Lee Law Review* (1991), 124.

ambivalence is precisely the difficulty that led Warren’s defense team to emphasize Warren’s “intention” over the stranger’s demand.

Under 8 USC § 1324(a)(1)(A)(iii), conviction for harboring requires that the prosecution demonstrate several things. First, they must demonstrate that the non-citizen entered or remained in the United states in violation of the law. Second, they must demonstrate that the defendant knew or recklessly disregarded this fact. Third, they must establish that “the defendant concealed, harbored, or shielded from detection the noncitizen in any place, including any building or any means of transportation.”²⁷

As with any other criminal charge, demonstrating Warren’s guilt required demonstrating both *mens rea* and *actus reus*. Regarding the matter of *actus reus*, the prosecution enjoyed court precedents that trended toward interpretations of the law favoring criminal liability. There was little question as to the citizenship of Perez-Villanueva or Sacaria-Goday or the legality of their entry. As for Warren’s actions, courts have generally defined “concealing” in plain terms as “hiding or preventing discovery of a noncitizen person” and “shielding from detection” as “the use of any means” to prevent this detection.²⁸ With respect to the issue of *mens rea*, most courts favored increased criminal liability in their interpretation of the element of knowledge or reckless disregard, judging circumstantial evidence sufficient to establish this element.²⁹

Anticipating the possibility of a defense premised on free-exercise, the prosecution submitted, along with the jury instructions, a memorandum briefing the jurors on how best to go about appraising such a defense.³⁰ The jurors were charged to consider three points: first, the

²⁷ 8 USC § 1324(a)(1)(A)(iii).

²⁸ Julie Yihong Mao, Jan Collatz, Dan Kesselbrenner, & Paromita Shah, “Understanding the Federal Offenses of Harboring, Transporting, Smuggling, and Encouraging under 8 USC § 1324(a),” National Immigration Project of the National Lawyers Guild (September 28, 2017), 2-3.

²⁹ *Ibid.*, 4.

³⁰ “Government Proposed Additional/Revised Jury Instructions,” Document 244, *United States v. Scott Daniel Warren* (District of Arizona, 2018)

defense would have to demonstrate that Warren was not “recklessly disregarding the law,” but that his actions “were an exercise of his spiritual beliefs.” Second, the defense would have to show that to uphold the statute would “impose a substantial burden on [Warren’s] exercise of his spiritual or religious beliefs.” Third, jurors would have to determine whether the criminal charges in the case “further a compelling interest” of the state and whether the government had demonstrated that permitting Warren’s free exercise would inhibit the furtherance of this interest.³¹ In matters of migration, “national security” has typically provided a compelling interest for safeguarding the federal government’s power to exclude or remove noncitizens from its territory.

The decision of the infamous Chinese Exclusion trial, written by Justice Stephen J. Field, helped to establish this precedent, adding that invaders do not always come armed and uniformed.³² Fields averred that cultural invasion also constituted a threat to national security, requiring decisive response by agents of the federal government that would be dangerously encumbered by the courts’ intervention. In his April speech, Sessions had identified the very same compelling interest. The unregulated movement of bodies across the border and the inhibition of DHS activities posed a threat to national sovereignty and security.

Persuading the jury of the state’s compelling interest tasked the prosecution with fitting Perez-Villanueva and Sacaria-Goday into the aesthetics of LIC. In the sanctuary trial, the prosecution accomplished a similar task by censoring migrants’ testimonies and allowing their illicit actions to eclipse entirely the contexts in which they were acting. While the prosecution attempted through motions *in limine* to block any reference to the Trump administration, they

³¹ Ibid, 2.

³² Stephen Johnson Field and the Supreme Court of the United States. U.S. Reports: The Chinese Exclusion Case, 130 U.S. 581. 1888.

chose to include as evidence video from Perez-Villanueva's and Sacaria-Goday's depositions.³³ The jury's ruling in the trial suggests that this testimony's inclusion failed to advance the government's case on this score.

The depositions, taken alongside the testimony of a medical expert, served to humanize these migrants, throwing them out of joint with the images of blood-thirsty, machete-wielding criminals invoked by the likes of Sessions. On the contrary, it is worth considering that even the limited inclusion of these migrants' stories provided them a measure of narrative agency uncommon in such proceedings.³⁴ If the rhetorical work of the prosecution was to narrate the facts of the case into the law, here the facts slipped the control of a narrative about smuggling and created space for a narrative about humanitarian aid.

In this space, Kuykendall kept the jurors focused on the issue of "intent," positing that the prosecution's case was a "house of cards built on a foundation of faulty assumptions about [Warren's] intent."³⁵ Prosecutors insisted that the evidence would show that Warren not only "intend[ed] to help shelter and shield" Perez-Villanueva and Sacaria-Goday in the Barn, he supplied them with directions on how to avoid Border Patrol as they made their journey further north.³⁶ In response, the defense emphasized that the Border Patrol officers that were surveilling the barn came from a unit called the "disrupt unit," tasked with investigating smugglers. Suspicious from the outset, they presumed that Warren intended to smuggle the migrants north and interpreted ambiguous observations according to these suspicions. Ultimately, the testimony of the officers charged with surveilling Warren could only point to an incident in which they

³³ "Government's Motion *in Limine* Regarding the President of the United States," Document 363, *United States v. Scott Daniel Warren* (District of Arizona, 2018)

³⁴ C.f., Godwin Phelps, "No Place to Go, No Story to Tell." Phelps considered the Sanctuary Trials of the 1980s a lamentable masterclass in enforcing traditional narratives through the suppression of voices that would unsettle their hegemony.

³⁵ "Partial Transcript of Jury Trial: Day One," *United States v. Scott Warren*, 10.

³⁶ *Ibid*, 3.

observed Warren standing outside with Perez-Villanueva and Sacaria-Goday and gesturing toward the mountains to the north. In the end, waving hands did little to demonstrate criminal intent. Instead, Kuykendall was able to make a compelling argument that Warren's "intentions were and always have been quite simply, to legally prevent death and suffering."³⁷ Kuykendall consistently asked Warren to testify about his "spirituality," his willingness to cooperate with Ajo law enforcement, and the protocols he observed to ensure that neither he nor any of the other volunteers he organized ran afoul of the law.

The success of this defense was its ability to demonstrate the sincerity of Warren's spiritual beliefs and to fit his case within the narrative conventions of a free-exercise defense. This was no small accomplishment. The Religious Freedom Restoration act of 1990 may have improved individuals' chances of winning such cases. However, religious protections had historically done more to support religious convictions that aligned with more conservative values. Here, the defense successfully upheld the religious rights of a man whose spirituality led him to extend aid to individuals that the state judged to be criminals.

Legal scholar Jason A. Cade proposes that Warren's trial may lay the groundwork for a "right to rescue."³⁸ Cade draws this language from a recent French trial, in which their Constitutional Council "recognized a right to provide humanitarian aid to unauthorized migrants, so long as there was no remuneration."³⁹ While Warren's trial yielded no such explicit recognition, Cade contends that the jurors' initial failure to convict and their ultimate decision to acquit Warren proposes that a meaningful number of Americans are reticent to brand humanitarian aid a crime. For Cade, when taken together with No More Deaths' endeavor to cast light on the deadly

³⁷ Ibid, 10.

³⁸ Jason A. Cade, "'Water is Life!' (and Speech!): Death, Dissent, and Democracy in the Borderlands," *Indiana Law Journal* 96 (2020): 261-311.

³⁹ Ibid, 308.

consequences of border militarization, Warren's acquittal at the very least presses Americans to consider that a humane border enforcement policy must include some legal right to rescue.

Nevertheless, the defense of conscience against state impingement was only a measured victory. Even if it had produced an explicit judgment for a right of rescue, this would be a right born and possessed by the citizen. That is, the legal intervention would come primarily to the defense of the citizen and only secondarily to the threatened migrant. In this case, there was no direct intervention for the men whom Warren intended to deliver from anonymous demise. Instead, following his acquittal, he could only deliver a few words on the courthouse steps. After thanking his legal team, he turned his attention to Perez-Villanueva and Sacaria-Goday. He reminded the crowd that it was "migrants like Jose and Kristian, who are truly the ones at the center of this story."⁴⁰ But this center had vanished amid the legal drama. As of July 2020, it was still unknown what had become of Perez-Villanueva or Sacaria-Goday following their repatriation. The law had indeed come to Warren's defense. It won a precedent for those who would practice mercy on behalf of migrants in the borderlands, perhaps even laying the groundwork for a "right to rescue." Despite all this, Warren would still have to wonder what had become of the men he hoped to help. For all his efforts, Perez-Villanueva and Sacaria-Goday remained suspended at the crossing between life and death.

4. The Neighbor's Politics in the Twenty-First Century

The outcome of the *United States v. Scott Warren* is at once inspiring and frustrating. Warren embodies what it means to become a neighbor in the United States' southwestern borderlands. Nevertheless, was Warren's intervention a *political* intervention? Did the defense

⁴⁰ Hannah Hafter, "The Acquittal of Scott Warren: A Humanitarian Perspective," *Unitarian Universalist Service Committee*, November 26, 2019 (<https://www.uusc.org/the-acquittal-of-scott-warren-a-humanitarian-perspective/>) (accessed March 23, 2021)

of his religious free-exercise do anything to disrupt the deadly contradictions that American self-determination perpetrates in the borderlands? More importantly, did it propose any meaningful alternative to our political imaginary? To pose this question is to ask whether it is any longer possible, in our present political moment, for the demand of the other to displace the sovereignty of the I and reform our political subjectivity. It is to ask whether the practice of mercy is a politically generative practice or a strictly ethical one. It is to ask whether the choice that the stranger lays before us is foreclosed upon in the very same moment it appears. Intent's eclipse of the stranger, the disappearing center at the heart of the trial, might suggest as much.

In *Embracing Hopelessness*, Miguel A. De La Torre chastises Christian ethicists naïve enough to suppose that actors in the borderlands can wield any positive agency against the priorities of the federal government.⁴¹ Reforming border policing practices would require addressing politicians in Washington, D.C.. However, to speak persuasively in Washington, one must adopt a language that appeals to the norms of the nation-state. To engage in this translation, De La Torre seems to suggest, is already to have lost. The United States history of economic and military interventions, in his view, demonstrates an imperial politics and extractive economics, the purpose of which is the enrichment of the imperial center. Seeking a more humane approach to immigration, asylum, or border enforcement is tantamount to asking the United States to forego the means vital to achieving its avaricious ends. “Justice is but a platitude,” De La Torre concludes, “liberation an impossibility, salvation denied.”⁴²

For De La Torre, the most that one can hope to do is to survive the “chaos and madness of the moment.” Survival, De La Torre proposes, might mean adopting what he calls an “ethics para

⁴¹ Miguel A. De La Torre, *Embracing Hopelessness* (Minneapolis: Fortress Press, 2017), 127-156.

⁴² *Ibid*, 149.

joder.” That is, an ethics that fosters an effective response to the consequences of oppressive social structures by disrupting their operations. In his own words:

A *joderon* is one who strategically becomes a royal pain in the ass, purposely causes trouble, constantly disrupts the established norm, shouts from the mountaintop what is supposed to be kept silent, and audaciously refuses to stay in his or her assigned place. To *joder* is to create instability, upsetting the prevailing panopticon social order designed to maintain the law and order of the privileged.⁴³

De La Torre’s ethics are not inattentive to the context of the borderlands. To the contrary, De La Torre himself has made multiple trips into the Sonoran. He cites John Fife, who continues to be active with Humane Borders, No More Deaths, and the Tucson Samaritans, as his primary conversation partner.⁴⁴ For many actors in this setting, it may indeed seem that the only “effect” born by their efforts is negative. At best, they can “disrupt,” “step out of place,” “create instability,” and “upset.” Twenty-five years of border enforcement premised on prevention through deterrence and supported and expanded by politicians on both sides of the aisle suggest that the American project of self-determination will go on creating a body of excluded outsiders and will continue to dis-member this body until it is nothing more than disarticulated bones.

On this view, if actors like Warren stage any political intervention at all, it is strictly negative in effect. The *United States v. Scott Warren* may have disrupted the Trump administration’s crackdown on people of faith aiding migrants in the borderlands. It may have drawn national media attention to an individual who shouted from the mountain top what was meant to be kept silent. However, it remains dubious to suggest that this disruption or shouting will yield any lasting change.

⁴³ Ibid, 150.

⁴⁴ Ibid, 130.

Nevertheless, I want to propose that this trial evinces at least two possible forms of positive intervention. First, I have sought to demonstrate in this dissertation that avarice is not the single guiding norm of American politics. Rather, human dignity and the right to collective self-determination have played a historic role in shaping US foreign and domestic policy – even as they have become vicious in the grip of a political subject that rejects as a threat to its own vitality the other’s demand. In Luke, love’s virtue is to allow compassion to blast the law out of its original normative context and reinscribe it in the encounter with the stranger. This re-inscription does not entail providing a new set of internally consistent definitions. There is an ineliminable alterity in compassion’s movement. Love vivifies the law by binding it to a supplement that it can never completely integrate. Warren’s testimony does this work as it exposes the law to the very same kind of haunting that he experiences.

Strikingly, after some prompting from Kuykendall, Warren’s language shifts from the experience of a vision haunted by bones to the articulation of norms more familiar to our politics. Asked about his intention for providing humanitarian aid, Warren responded:

For me, the immediate one is basic relief of suffering... basic relief of suffering, acknowledgment of human dignity, and self-determination, for people to make decisions for themselves about what they see best in their life.⁴⁵

However, even as Warren recovers the language of “dignity” and “self-determination” it is not without a difference. He evokes these terms not in the service of political right, but in the service of moral necessity. They are stamped by the demands of the other and transposed into a different normative order than the one in which they might be taken to have their first life. Warren’s testimony, along with Perez-Villanueva’s and Sacaria-Goday’s, allow the demand of the other to

⁴⁵ “Trial Transcript: Day Five,” *United States v. Scott Warren*, 189.

spill into the courtroom. They make audible that good for which the law cannot account. In their testimony, it echoed through the language with which the law is familiar. While US law is unlikely to acknowledge an explicit right to asylum, as Cade points out, this echo may yet bear positive effect in the recognition of a right to rescue.

Second, Warren's victory points to the complexity of power's operation in the United States. As Bonnie Honig notes, sovereign power, in the context of American democracy, does not describe the unfettered power of a singular dictator (*pace* Schmitt) or imperial center (*pace* De La Torre).⁴⁶ Rather it describes the field of power that persists amid a constellation of administrators, legislators, and courts, each vying to solidify their place in the day to day activities of governance. Within this field, two distinctive modes of governance emerge. Honig terms the first mode "administrative governance." This approach emerges through the proliferation of new agencies empowered to act with discretion and tasked with overcoming unwieldy situations by (one hopes) just judgment. The second mode of governance, which she terms "juridical governance," seeks to check administrative governance's potential for decisionism by bringing the law to bear on the situation. Honig characterizes the contest between these two modes of governance as "the rule of man versus rule of law."⁴⁷

In preceding chapters, I have contended that the Sonoran Desert attains an agency of its own as it is deputized by the state. This "deputization" has been accomplished through the concerted effort of multiple government agencies invested with considerable discretionary power to overcome the challenge of securing the border. They include the INS, the Border Patrol, US Customs and Border Protection, and the Department of Homeland Security. Restated in Honig's diction, the irony of American border policing is palpably clear, ostensibly protecting the rule of

⁴⁶ Bonnie Honig, *Emergency Politics: Paradox, Law, Democracy* (Princeton: Princeton University Press, 2009).

⁴⁷ *Ibid*, 68.

law, the state subordinates the rule of law to the rule of man, which ultimately collapses under the rule of necessity – of the inhuman. Thirst, the need for shelter, and the beating sun ultimately decide fates in the Sonoran.

If *agape* shifts normative priority to the demand of the other, then the juridical governance exercised in the courts proposes itself as a means of checking PTD’s deadliest effects. The *United States v. Scott Warren* demonstrates that this intervention is not uncomplicated. It is indirect at best. Kuykendall and Knight won a victory for humanitarian aid, not for a more generous admissions policy. Nevertheless, the case helps to make the law a shield for faith-based organizations and actors seeking to assist migrants caught at the crossing between life and death. The history of litigation in the American Southwest demonstrates that this Samaritanism is not an apolitical activity. The ties of compassion that bind actors like Warren, and organizations like the Ajo Samaritans, to the strangers whom they assist, not only disrupt the regular operation of political sovereignty. They glimpse the possibility of a life together that transcends the categories of “citizen” and “alien” and transgresses the border that divides them.

5. What Must We Do to Live?

To date, Christian ethicists have not failed to realize the terrible costs of border policing, but they have generally sought to offer ethics of migration that accommodate the international system constitutive of our present political reality.⁴⁸ Thus, in the American context, they place the center of political agency in Washington D.C. and are challenged to offer compelling moral arguments

⁴⁸ See, for instance, Dana W. Wilbanks, *Re-Creating America: The Ethics of U.S. Immigration & Refugee Policy in a Christian Perspective* (Nashville: Abingdon Press, 1996); Ilsup Ahn, *Religious Ethics and Migration: Doing Justice to Undocumented Workers* (New York: Routledge, 2013); Robert W. Heimburger, *God and the Illegal Alien: United States Immigration Law and a Theology of Politics* (New York: Cambridge University Press, 2018), & Rajendra, *Migrants and Citizens*.

capable of overcoming or else baptizing the political and economic exigencies that motivate policy makers.

In these pages, I have attempted to offer a different approach. One informed by the transitional nature of the borderlands themselves. In this place, “reality” is contested. Here, the international system must be asserted again and again, on a daily basis, through exercises of power that uphold territorial integrity and community independence through the regulation of bodies. However, this work comes at a terrible cost. Whether borders, conceived abstractly, may retain any moral legitimacy is a question I have not meant to settle here. However, a border that is asserted and maintained through the creation of death, like the United States’ southwestern border, reveals the paradox at the core of the politics of collective self-determination. This politics may draw its motivational force from the commitment that all human life has dignity. However, it cannot at once uphold the universality of this commitment and the formal right autonomously to determine the boundaries of the *polis* and its people. Yet, even as the self-determining subject rejects the demand of the other, it cannot deny the constitutive role this demand plays in its own emergence. To negate the demand is not to sunder the relationship with the stranger.

Too quickly to accommodate the putative reality of the nation-state system is to allow the borderlands, border policing, and the deep political paradox at their core to slip from view. It is to risk leaving the bones of our estranged siblings lying in the field. It risks making actual corpses out of the presumptive corpses that yet lie in the dust of mountain roads.

Blood cries out from the earth – listen! This was God’s charge to Cain: to be haunted by the sibling he slew, never to be at home on the face of the earth, always to be called away by the cry ringing in his ears. Even in the city of Enoch, Cain would be a wanderer. This alienation was his fate and his responsibility. Even when she is cast beyond the veil of death, the excluded one

still makes a claim upon us. Our self is not straightforwardly ours to determine. It is always determined, whether as responsible or as defiant, by the other that sojourns with us.

Truly to love the neighbor means to draw the law into this dynamic, to allow our normative and political worlds to be permeated by alterity. The parable of the Samaritan teaches us that this alterity is not to be conceived in vague abstraction. Rather, it is to be encountered in the concrete body of the stranger, poised at the cross-roads between life and death. Today, PTD is scattering the bones of our estranged siblings in the valleys of the Sonoran. In the time it has taken me to write this dissertation, 469 human remains have been recovered from the desert.⁴⁹ These bones make a claim. Organizations like No More Deaths and volunteers like Scott Warren now model for us how juridical governance might be used to challenge self-determination's deadliest impulses and to respond to the lives of the excluded. If Washington D.C. cannot be made to budge, we need not despair over the injunction to love the neighbor. There remain sites of agency where the law may yet be haunted and made a defense for the excluded.

If the parable of the Samaritan is to be taken seriously, then love will not remit us from this task. While scholars like Anders Nygren have conceived love in opposition to law and justice, the parable of the Samaritan resists this interpretation. "What must I do to live?" This is the first question put to Jesus. "What is in the law? What do you read there?" This is the question with which Jesus responds. Contrary to Nygren, the parable concerns love's revivification of the law. The right reading of the law, the parable suggests, depends upon love's aretological dimension.

This virtue lays the subject open to the movement of compassion, disposing her to work mercy on behalf of the other to whom she is drawn. Compassion's ineffable and embodied movement exposes the law to that excess of moral meaning which bodies know yet language does

⁴⁹ Arizona OpenGIS Initiative for Deceased Migrants, "Map of Migrant Mortality," Humane Borders, (<https://humaneborders.info/app/map.asp>) (Accessed September 23, 2020).

not. A word is not spoken between the Samaritan and the beaten man. Perhaps no word can be spoken. Those witness to compassion's movement can only judge that law's revivification, its reconciliation with life, can only be accomplished as its injunctions and prohibitions are reinterpreted within the concrete contours of this encounter. The law stands in need of a supplement. Love discovers this supplement in the stranger, making of us neighbors.

Love's political consequence is the reintroduction of a non-identity that disrupts divisions between "insiders" and "outsiders" and begins to form new political coalitions. The politics of self-determination rely on a dialectics of identification and exclusion and seek to emphasize the priority of identity in this process. This prioritization elevates the moments of fixity in the dialectic and suppresses moments of negation. The "people" appears as though it were a static extant and not a perennially deferred reality. In this way, the people provides decisions of admission and exclusion with the appearance of legitimacy and allows the circle of political (if not moral) concern to be constrained to the polity's members. Americans are given to care about fellow Americans (read: citizens), but what fate befalls migrants cast into the wastes of the Sonoran need not be their concern. They may judge this moment tragic, but they need not accept any responsibility for it. Love insists otherwise. The "I" does not come into existence without its dialectical connection to the "not-I," and membership's significance as a social good cannot be determined without the excluded. They too play a role in fixing its meaning. Our society's character is disclosed not only in its decisions of admission, but in its decisions of exclusion as well. To grant this truth is to destabilize the fixity of the people and to raise the possibility of new political coalitions. The parable of the Samaritan is not unaware of this disruptive fact. To the contrary, it counts on it. The Samaritan is the sojourner. The sojourner is the neighbor. To be a neighbor is to be bound to those we exclude and to find ourselves pressed beyond collective self-determination's limits.

It must be noted in concluding, however, that even as there are now glimpses of the reign of God, this politics is not yet realized. It may be asked, as Honig proposes regarding the success of juridical power, what do we lose by winning? Returning to the case of the United States v. Warren, Perez-Villanueva and Sacaria-Goday were not admitted into the United States. Following their deposition, they were deported. While they exercised a measure of agency in telling their stories, they did not get to enjoy the fruits of their labors. Standing on the courthouse steps after his acquittal, Warren could only hope that Perez-Villanueva and Sacaria-Goday were well. For now, exercises of juridical power still prioritize the political agency of citizens.

Moreover, while the trial set a precedent for defending faith-based actors providing humanitarian aid that reimagines the barriers of the *polis*, it did not put an end to the thousands of immigration trials on illegal entry that function to shore up the very same boundary. The law remains an ambivalent tool, capable both of reinforcing and breaking down the fixity of the border. For now, as we witness exercises of juridical power motivated by a transvaluation of self-determination's values, we may glimpse the reign of God. However, these are only glimpses, and the very same power continues to play both sides in the preservation and the passing away of this political reality.

There are bones in the valleys of the borderlands, and a question sounds from heaven, "son of man, can these bones live?" As we walk back and forth among them, we must recognize that these bones are our own. The excluded have been exiled to die in the Sonoran in our name – on our behalf. They are ours because our communal independence is built upon them. But they are ours for another reason. They are ours because they witness the desolation of American virtue. They are ours because when one sibling dies, both are estranged from the world of the living. To be

haunted by those who have been cast aside and tread underfoot begins to challenge self-determination's proclivity to other-termination. It may even draw the law over to the side of life. To be haunted, to remember dis-membered bodies, this is the task that compassion lays before the loving.

But thousands of remains have yet to be identified. Thousands more missing persons have been entirely disappeared in the desert's wastes. For too many, biography and identity has been wholly erased and consigned to oblivion. After we have exhausted our every avenue of agency, these losses remain. Faced with these irreparable denials, at the end of our striving, we must still sound the question back to heaven, "Son of Man, can these bones live?"

Bibliography

- Adorno, Theodor W. *Negative Dialectics*. New York: Routledge, 2003.
- Adorno, Theodor W., and Max Horkheimer. *Dialectic of enlightenment: Philosophical Fragments*. Stanford: Stanford University Press, 2002.
- Agamben, Giorgio. *The Time that Remains: A Commentary on the letter to the Romans*. Stanford: Stanford University Press, 2005.
- Ahn, Il-sup. *Religious Ethics and Migration: Doing Justice to Undocumented Workers*. New York: Routledge, 2013.
- Aleinikoff, T. Alexander. "State-Centered Refugee Law: From Resettlement to Containment." *Michigan Journal of International Law*, 1992: 120-138.
- American Immigration Council. "U.S. Customs and Border Protection's Systemic Denial of Entry to Asylum Seekers at Ports of Entry on U.S.-Mexico Border." 2017.
- Amnesty International. "USA: 'You don't have any rights here': Illegal Pushbacks, Arbitrary Detention, & Il-Treatment of Asylum Seekers in the United States." 2018.
- Amstutz, Mark R. *Just Immigration: American Policy in Christian Perspective*. Grand Rapids: William B Eerdmans Publishing Company, 2017.
- Andreas, Peter. *Border Games: Policing the U.S.-Mexico Divide*. Ithaca: Cornell University Press, 2009.
- Anzaldúa, Gloria. *Borderlands: La Frontera: The New Mestiza*. San Francisco: Aunt Lute Books, 2012.

Arendt, Hannah. *On Revolution*. New York: Penguin Books, 1963.

Arkush, Allan. "Michael Walzer's Secular Jewish Thought." *Journal of Modern Jewish Studies* 11 (2012): 221-241.

Auchter, Jessica. *The Politics of Haunting and Memory in International Relations*. New York: Routledge, 2014.

Augustine of Hippo. *Concerning the City of God against the Pagans*. New York: Penguin Classics, 2003.

Azaransky, Sarah. *Religion and Politics in the American Borderlands*. Lanham: Lexington Books, 2013.

Bau, Ignatius. *This Ground is Holy: Church Sanctuary and Central American Refugees*. New York: Paulist Press, 1985.

Benhabib, Seyla. *Another Cosmopolitanism*. New York: Oxford University Press, 2006.

Benjamin, Walter. "The Task of the Translator." In *Selected Writings: Volume 1: 1913-1926*, by Marcus Bullock, & Michael W. Jennings, 258-259. Cambridge: The Belknap Press, 1996.

Bon Tempo, Carl J. *Americans at the Gate: The United States and Refugees During the Cold War*. Princeton: Princeton University Press, 2008.

Borjas, George. *Friends or Strangers: The Impact of Immigrants on the U.S. Economy*. New York: Basic Books, 1990.

Bourdieu, Pierre. *Outline of a Theory of Practice*. New York: Cambridge University Press, 2013.

Bovon, Francois. "The Samaritan or Eternal Life as an Inheritance." In *Luke 2: A Commentary on Luke 9:51-19:27*, by Francois Bovon, Helmut Koester, & Donald S. Deer, 49-65.

Minneapolis: Augsburg Fortress Press, 2013.

Burggraeve, Roger. "'Am I my Brother's Keeper': On the Meaning and Depth of Our Responsibility." *Ephemerides Theologicae Lovanienses*, 2008: 341-361.

Butler, Judith. *Frames of War: When is Life Grievable*. New York: Verso Press, 2009.

Cade, Jason A. "'Water is Life!' (and Speech!): Death, Dissent, and Democracy in the Borderlands." *Indiana Law Journal* 96 (2020): 261-311.

Carens, Joseph. "Aliens and Citizens: The Case for Open Borders." *The Review of Politics*, 1987: 251-273.

Carter, Warren. "Singing in the Reign: Performing Luke's Songs and Negotiating the Roman Empire (Luke 1-2)." In *Luke-Acts and Empire: Essays in Honor of Robert L. Brawley*, by David Rhoads, Davide Esterline, & Jae Won Lee, 23-43. Eugene : Pickwick Publications, 2011.

Cavell, Stanley. *Disowning Knowledge in Seven Plays of Shakespeare*. New York: Cambridge University Press, 2003.

Cobb, Sara. *Speaking of Violence: The Politics and Poetics of Narrative in Conflict Resolution*. New York: Oxford University Press, 2013.

Corbett, Jim. "Some Comments on the Underground Railroad for Central American Refugees." *Sanctuary Trial Papers*. University of Arizona Special Collections, n.d.

- Coutin, Susan Bibler. *The Culture of Protest: Religious Activism and the U.S. Sanctuary Movement*. UMI Dissertation Series, 1990.
- Cover, Robert. "Nomos and Narrative." *Harvard Law Review*, 1984: 4-68.
- Critchley, Simon. *Infinitely Demanding: Ethics of Commitment, Politics of Resistance*. New York: Verso Press, 2007.
- Crittenden, Ann. *Sanctuary: A Story of American Conscience and the Law in Collision*. New York: Weidenfeld and Nicholson, 1988.
- Cuéllar, Gregory. *Resacralizing the Other at the U.S.-Mexico Border: A Borderlands Hermeneutic*. New York: Routledge, 2020.
- Cunningham, M. Hilary. *God and Caesar at the Rio Grande: Sanctuary and the Politics of Religion*. Minneapolis: University of Minnesota Press, 1995.
- De La Torre, Miguel A. *Embracing Hopelessness*. Minneapolis: Fortress Press, 2017.
- De Leon, Jason. *The Land of Open Graves: Living and Dying on the Migrant Trail*. Oakland: University of California Press, 2015.
- Derrida, Jacques. *Spectres of Marx: The State of the Debt, the Work of Mourning, and the New International*. New York: Routledge, 1994.
- Dunn, Timothy J. *The Militarization of the U.S.-Mexico Border, 1978-1992: Low Intensity Conflict Doctrine Comes Home*. Austin: CMAS Books, 1996.
- Ellacuría, Ignacio. "The Crucified People: An Essay in Historical Soteriology." In *Ignacio Ellacuria: Essays on History, Liberation, and Salvation*, by Michael E. Lee. Maryknoll: Orbis Books, 2013.

- Ettinger, Patrick W. *Imaginary Lines: Border Enforcement and the Origins of Undocumented Immigration, 1882-1930*. Austin: University of Texas Press, 2009.
- Fanon, Frantz. *Black Skin, White Masks*. London: Pluto Press, 1986.
- Fife, John. "Civil Initiative." In *Trails of Hope and Terror: Testimonies on Immigration*, by Miguel A. De La Torre, 170-174. Maryknoll: Orbis Books, 2009.
- Fisch, Jörg. *The Right of Self-Determination: The Domestication of an Illusion*. Cambridge University Press: 2015, New York.
- Fretheim, Terence E. "Genesis 4:1-26 Commentary." In *New Interpreters Bible Commentary*. Nashville: Abingdon Press, 1994.
- . *God and World in the Old Testament: a Relational Theology of Creation*. Nashville: Abingdon Press, 2005.
- Gerhardsson, Birger. "The Good Samaritan - The Good Shepherd?" *Coniectanea Neotestamentica*, 1958: 3-31.
- Golden, Renny, and Michael McConnell. *Sanctuary: The New Underground Railroad*. Maryknoll: Orbis Books, 1986.
- Goodman, Lenn E. *Love Thy Neighbor as Thyself*. New York: Oxford University Press, 2008.
- Gourgues, Michel. "The Priest, the Levite, and the Samaritan Revisited: A Critical Note on Luke 10:31-35." *Journal of Biblical Literature*, 1998: 709-713.
- Grant, Ulysses S. *Personal Memoirs of U.S. Grant*. New York: Charles L. Webster & Company, 1885.

- Haley, Shawn D., and Curt Fukuda. *Day of the Dead: When Two Worlds Meet in Oaxaca*. New York: Berghahn Books, 2014.
- Hartman, Saidiya. *Scenes of Subjection: Terror, Slavery, and Self-Making in Nineteenth Century America*. New York: Oxford University Press, 1997.
- Headquarters Departments of the Army and the Air Force. "Field Manual 100-20 Operations in Low Intensity Conflict." Washington, D.C., 1990.
- Heimburger, Robert W. *God and the Illegal Alien: United States Immigration Law and a Theology of Politics*. New York: Cambridge University Press, 2018.
- Held, Virginia. "Care and Justice in the Global Context." *Ratio Juris* 17 (2004): 141-155.
- Held, Virginia. "The Meshing of Care and Justice." *Hypatia* 10 (1995): 128-132.
- Heyer, Kristin. *Kinship Across Borders: A Christian Ethic of Immigration*. Washington, D.C.: Georgetown University Press, 2012.
- Honig, Bonnie. *Emergency Politics: Paradox, Law, Democracy*. Princeton: Princeton University Press, 2009.
- Hoover, Robin. "The Story of Humane Borders." In *A Promised Land, A Perilous Journey: Theological Perspectives on Migration*, by Daniel G. Groody, & Gioachhino Campese, 160-173. Notre Dame: University of Notre Dame Press, 2008.
- Jackson, Timothy P. *Political Agape: Christian Love & Liberal Democracy*. Grand Rapids: William B Eerdmans Publishing Company, 2015.
- Jørstad, Mari. "The Ground that Opened its Mouth: The Ground's Response to Human Violence in Genesis 4." *Journal of Biblical Literature*, 2016: 705-715.

Kaminsky, Joel. "Loving one's (Israelite) Neighbor: Election and Commandment in Leviticus 19." *Interpretation*, 2008: 123-132.

Kaufmann, Yehezkel. *The Religion of Israel*. Chicago: University of Chicago Press, 1960.

Kazen, Thomas. "The Good Samaritan and a Presumptive Corpse." *Svensk Exegetisk Arsbok*, 2006: 131-144.

Kilgallen, John J. "The Plan of the Nomikos." *New Testament Studies*, 1996: 615-619.

Kimball, Charles A. *Jesus' Exposition of the Old Testament in Luke's Gospel*. Sheffield: JSOT Press, 1994.

Kinnamon, Liz. "United States v. Scott Daniel Warren." *The New Inquiry*, June 27, 2019.

Kneebone, Susan. *Refugees, Asylum Seekers, and the Rule of Law*. New York : Cambridge University Press, 2009.

Lazarus, Emma. "The New Colossus." *Poetry Foundation*. n.d.

<https://www.poetryfoundation.org/poems/46550/the-new-colossus> (accessed June 8, 2020).

Lenin, Vladimir. "Declaration of the Rights of the People of Russia." In *A Documentary History of Communism: From Lenin to Gorbachev*, by Robert Vincent Daniels, 66-67. Burlington: University of Vermont Press, 1993.

Lloyd, Vincent. *The Problem with Grace: Reconfiguring Political Theology*. Stanford: Stanford University Press, 2011.

Loescher, Gil, and John A. Scanlan. *Calculated Kindness: Refugees and America's Half-Open Door*. New York: The Free Press, 1986.

Longo, Matthew. *The Politics of Borders: Sovereignty, Security, and the Citizen after 9/11*. New York: Cambridge University Press, 2018.

Mao, Julie Yhong, John Collatz, Dan Kesselbrenner, and Paromita Shah. "Understanding the Federal Offenses of Harboring, Transporting, Smuggling, and Encouraging under 8 USC 1324(a)." *National Immigration Project of the National Lawyers Guild*. September 28, 2017.

Meissner, Doris. *Border Patrol Strategic Plan: 1994 and Beyond*. Washington, D.C.: United States Border Patrol, 1994.

Meissner, Doris, Donald M. Kerwin, Muzaffar Chishti, and Claire Bergeron. *Immigration Enforcement in the United States: The Rise of a Formidable Machinery*. Washington, D.C.: Migration Policy Institute, 2013.

Miller, Amanda C. *Rumors of Resistance: Status Reversals and Hidden Transcripts in the Gospel of Luke*. Minneapolis: Fortress Press, 2014.

Murdoch, Iris. *Metaphysics as a Guide to Morals*. New York: Penguin Books, 1992.

Nevins, Joseph. *Operation Gatekeeper and Beyond: The War on "Illegals" and the Remaking of the U.S.-Mexico Boundary*. New York: Routledge, 2010.

No More Deaths. "A Culture of Cruelty: Abuse and Impunity in Short-Term U.S. Border Patrol Custody." 2011.

Nygren, Anders. *Agape and Eros*. Chicago: University of Chicago Press, 1953.

- Office of the Inspector General. *Special Review - Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy*. Washington, D.C.: Department of Homeland Security, 2018.
- O'Sullivan, John L. "The Great Nation of Futurity." *The United States Democratic Review*, 1839: 426-430.
- Phelps, Teresa Godwin. "No Place to Go, No Story to Tell: The Missing Narratives of the Sanctuary Movement." *Washington and Lee Law Review*, 1991: 123-138.
- Powery, Emerson. "Under the Gaze of the Empire: Who is My Neighbor?" *Interpretations*, 2008: 134-144.
- Pummer, Reinhold. *The Samaritans in Flavius Josephus*. Tübingen: Mohr Siebeck, 2009.
- Rajendra, Tisha M. *Migrants and Citizens: Justice and Responsibility in the Ethics of Immigration*. Grand Rapids: William B Eerdmans Publishing Company, 2017.
- Rajendra, Tisha M. "The Rational Agent or the Relational Agent: Moving from Freedom to Justice in Migration Systems Ethics." *Ethical Theory and Moral Practice*, 2015: 355-369.
- Ramsey, Paul. *Basic Christian Ethics*. Louisville: Westminster John Knox Press, 1950.
- Revering, Alan. "Eschatology in the Political Theory of Michael Walzer." *The Journal of Religious Ethics* 33 (2005): 91-117.
- Rowe, C. Kavin. *World Upside Down: Reading Acts in the Graeco-Roman Age*. New York: Oxford University Press, 2009.
- Said, Edward W. "Walzer's 'Exodus and Revolution': A Canaanite Reading." *Grand Street* 5 (1986): 86-106.

- Santos, Fernandra, and Rebekah Zernansky. "Arizona Desert Swallows Migrants on Riskier Trails." *New York Times*, October 23, 2015.
- Schmitt, Carl. *The Concept of the Political*. Chicago: University of Chicago Press, 2007.
- Sessions, Jeff. "Remarks Announcing the Department of Justice's Renewed Commitment to Criminal Immigration Enforcement." Nogales, April 11, 2017.
- Simpson, Brad. "Self-Determination and Decolonization." In *The Oxford Handbook to the Ends of Empire*, by Martin Thomas, & Andrew S Thompson, 417-430. New York: Oxford University Press, 2018.
- Smith, Ted A. "The Mark of Cain: Sovereign Negation and the Politics of God." *Modern Theology*, 2020: 56-73.
- Sontag, Susan. *Regarding the Pain of Others*. New York: Farrar, Straus, and Giroux, 2003.
- Stendahl, Krister. "The Apostle Paul and the Introspective Conscience of the West." *Harvard Theological Review* 56, no. 3 (July 1963): 199-215.
- Stout, Angela Kathryn. *Sanctuary in the 1980s: The Dialectics of Law and Social Movement Development*. Newark: University of Delaware: Dissertation, 1989.
- Strahan, Joshua Marshall. "Jesus Teaches Theological Interpretation of the Law: Reading the Good Samaritan in its Literary Context." *Journal of Theological Interpretation*, 2016: 71-86.
- Swenson, Kristin. "Care and Keeping East of Eden: Gen 4:1-16 in light of Gen 2-3." *Interpretation*, 2006: 373-384.
- Taubes, Jacob. *The Political Theology of Paul*. Stanford: Stanford University Press, 1993.

Tomsho, Robert. *The American Sanctuary Movement*. Austin: Texas Monthly Press, 1987.

Tocqueville, Alexis de. *Democracy in America*. New York: Harper & Row, 1969.

U.S. Customs and Border Protection. *Vision and Strategy 2020: U.S. Customs and Border Protections Strategic Plan*. Department of Homeland Security: Washington, D.C., 2015.

United States Border Patrol. *U.S. Border Patrol Nationwide Apprehensions by Citizenship and Sector: FY 2007-2018*. Washington, D.C.: United States Customs and Border Protection, 2018.

United States v. Goering, Judgment of the International Tribunal. 6 F.R.D. 69, 110 (1946).

Urrea, Luis Alberto. *The Devil's Highway: A True Story*. Little, Brown and Company: 2004, New York.

Verini, James. "How U.S. Policy Turned the Sonoran Desert into a Graveyard for Migrants." *New York Times*. August 18, 2020.

<https://www.nytimes.com/2020/08/18/magazine/border-crossing.html> (accessed August 24, 2020).

Walker, Margaret Urban. "Moral Understandings: Alternative 'Epistemology' for a Feminist Ethics." *Hypatia* 4 (1989): 15-28.

Walzer, Michael. *Spheres of Justice: A Defense of Pluralism and Equality*. New York: Basic Books, 1983.

Welker, Michael. *Creation and Reality*. Minneapolis: Fortress Press, 1999.

Wellhausen, Julius. *Prolegomena to the History of Ancient Israel*. New York: Meridian Books, 1957.

- Wilbanks, Dana W. *Re-Creating America: The Ethics of U.S. Immigration & Refugee Policy in a Christian Perspective*. Nashville: Abingdon Press, 1996.
- Williams, Bernard. *Moral Luck: Philosophical Papers: 1973-1980*. New York: Cambridge University Press, 1981.
- Wilsher, Daniel. *Immigrant Detention: Law, History, Politics*. New York: Cambridge University Press, 2014.
- Wilson, Woodrow. "Message to Congress." *Records of the United States Senate*. Washington, D.C.: National Archive, January 8, 1928.
- Yamazaki-Ransom, Kazuhiko. *The Roman Empire in Luke's Narrative*. New York: T & T Clark, 2010.
- Yoder, John Howard. *The Politics of Jesus: Second Edition*. Grand Rapids: William B Eerdmans Publishing Company , 1994.
- Yoder, Joshua. *Representatives of Roman Rule: Roman Provincial Governors in Luke-Acts*. Boston: De Gruyter, 2014.
- Zagor, Matthew. "Martyrdom, Antinomianism, and the Prioritising of Christians - Towards a Political Theology of Refugee Resettlement." *Refugee Survey Quarterly*, 2019: 387-424.