

When Refugees Are Terrorists: Conceptualizing the Racial Logic of Statelessness

by

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Certificate of Approval

This is to certify that the accompanying thesis by Dennis Young has been accepted in partial fulfillment of the requirements for graduation with Honors in Politics.

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Introduction

When protests first broke out in Syria, the response of the Assad regime was massively repressive, intended to quell the rebellion and coopt those it left standing. But instead of crushing the rebellion, the violence of the Syrian government was met with violence in turn and opposition groups took up arms against the state (Hinnesbusch 2012, 108). The violence continued to escalate and the country was torn apart from within. The use of bombs, chemical weapons, and tanks against the Syrian population left hundreds of thousands dead and entire cities razed to the ground. Since the start of the conflict over 11 million Syrians have been forced to leave their homes and seek refuge elsewhere, whether that be in Syria or outside its geographic confines (BBC News 2016). Due to the cataclysmic destruction in Syria, these people are unable to return home for fear of death. Under the UN definition of refugee,¹ the contemporary Syrian would appear to be an example *par excellence*.

But the response of lawmakers in the United States has continually been to control and limit the stream of Syrian refugees, citing the urgent need to police the borders of the state. State actions like the American Security Against Foreign Enemies (SAFE) Act explicitly subject Syrian refugees to increased scrutiny in order to limit the number of entries and guard against the threat of “Radical Islam,” and “potential terrorists” (American Security Against Foreign Enemies Act 2015). Lawmakers in the United States have drawn on a broader pattern of Muslim racialization which links all Syrians, as inhabitants of a majority Muslim country and possessing certain phenotypic

¹ The UN Protocol on Refugees, which was adopted by the United States in 1967, defines a refugee as someone who “owing to a well founded fear of being persecuted... is outside the country of his nationality and is unable... or unwilling to return to it” (United Nations 1967).

features, with the potential for terrorism. This inherent potential in the Muslim presouenting body requires that the state work to actively prevent “terrorists from reaching our shores (McCaul 2015)” in order to ensure national security.

This sets up a curious paradox in which certain bodies that should be eligible to become refugees are systematically barred from admission to the United States and in doing so are relegated to life outside the political community. The issue raises a more fundamental question of what exactly the relationship is between the refugee and the state, and why some persons are eligible for incorporation into the state as refugees while others are disallowed from entry. While under international law it would appear as though Syrians not only can, but should, be granted refugee status, Syrians have been excluded because they are construed as a threat to the United States’ racial order. When Syrians are racialized as Muslim, in attempting to enter the United States, the link between Islam and “potential terrorism” marks them as ineligible to personhood. This moment serves as a point of departure into an exploration of the racial foundations that prop up, maintain, and ground the United States as a racial state. Thus, the Syrian refugee as part of a history of racial statelessness can help illuminate how the crosscutting matrices of domination have been linked with race in order to continually produce the racial stateless. I begin with the now, our contemporary “refugee crisis,” in order to introduce questions of race, statelessness, and sovereignty, and to recognize the now not as the telos of refugee responsiveness, but as the ongoing legacy of a history of racialized statelessness.

The way in which statelessness is analyzed by dominant refugee studies literature neglects how the racial logic of statelessness fundamentally structures the

relationship between the state and those outside of it. How does the racial logic of statelessness operate? What does an analysis of this logic reveal about the racial state itself? I argue that contrary to the narrative presented by prominent refugee studies literature, race has always and continues to fundamentally structure the relationship between the state and the stateless. The racial logic of statelessness constitutes what types of bodies are eligible to become refugee and which are excluded from the political community and remain in the condition of statelessness. This logic is not singular, but has changed as historical circumstances have allowed different type of bodies to become refugee while simultaneously evicting others from the political community. I argue that this eviction from the normative political order should be understood as being controlled through the racialized state of exception, and that this is the paradigmatic modality of governance for those who are both beyond the state and subject to the exercise of its sovereign power.

Each of the following sections addresses a different piece of the theoretical puzzle and moves between historical moments in order to conceptualize how the racialization of the stateless body functions. I begin by theorizing the differences between refugees and the condition of statelessness and conceptualize how the racial state separates the two. I then move into a more historical analysis, tracing how race became intertwined with the state's coercive apparatus and how race continues to function even when the racialized language of the law is effaced. Due to constraints of space it is not possible to adequately address the entire history of statelessness and so I focus on moments that mark major shifts in racialization. This section begins with a discussion of the origins of the racial state then moves forward through several key

historical moments from 1924 to 1965 to address these concepts. I continue by discussing how racialization structures the relationship of particular stateless bodies in particular contexts to the state. To this end, I trace the racial construction of Cubans, Haitians, and other Latin American stateless groups and how the state reformed itself in response to these influxes beginning in 1965 and moving forward to the 1980's. My final section examines the post September 11, 2001 moment and the reorganization of the state's coercive apparatus to focus on the Muslim stateless body in order to theorize how the racial state of exception operates as the quintessential modality for the management of statelessness. I conclude by briefly reflecting on the implications of theorizing race into the question of statelessness.

The Question of Statelessness

In taking up the question of statelessness it is essential to consider the idea of rightlessness, the notion that certain people are denied the right to have rights. Hannah Arendt (1968) suggests that when all spaces are designated as state spaces, people who are forced to leave their homes and live outside of the matrix of states are expelled from all political communities. As Arendt puts it, “Their plight is not that they are not equal before the law, but that no law exists for them” (295). The paradox Arendt presents is that when humans are reduced to the condition of bare humanity, of life outside the state, the supposedly inalienable rights of humanity are taken away (296). The dilemma of the stateless is more than just being forced to leave one’s home; eviction from the state leads to the stripping of eligibility to personhood. Thus, statelessness is not something that can be solved by the state since the state itself is generative of the condition of statelessness.

In the time since Arendt wrote, there have been a number of developments in international law, which ostensibly guarantee certain rights and protections to all refugees who meet the proscribed UN definition. The notion that the state has certain obligations to all those who are permanently and unwillingly outside the state has become one of the core premises of refugee studies. While there are certain issues with the way in which states administer refugee policy and the way refugees are selected, the fundamental premise that all “genuine refugees” deserve and can be granted admission to the state is never questioned. Thus, this literature advocates for continually improving refugee policy so that more refugees can be accepted and admissions processes can be made more humane.

The result of this framework is that narratives about refugees in the United States tend to suggest that political motivations can represent large, even systemic, issues for the process of refugee admissions, but can and should be resolved to admit all “genuine refugees.” Gil Loescher and John Scanlan (1986) take up this idea and trace a narrative of cautious progress, suggesting that since World War II American approaches to statelessness have become less racist and more humane (210). Furthermore they argue that though the policies increased the number and diversity of refugees permitted into the United States, Cold War ideological decisions often have been the decisive criteria in determining which groups were admitted to the United States (*xviii*).

Often, over the last four decades they [the US government] have responded generously to humanitarian appeals but the appeals they have heeded have almost always been consistent with, and have furthered, American foreign policy objectives (*xviii*).

This suggests that the “calculated” nature of United States refugee policy is primarily the result of foreign policy concerns, but refugee admissions can become equitable when foreign policy concerns cease to be the driving factor in refugee policy. Later historians, such as Carl Bon Tempo (2008), also argue that political motivations are the primary reason for certain refugees not being admitted and call for all Americans to take up the issue of refugee protection and fight for an “open door” for refugees (206). While these works offer an insightful critique into how political considerations impact stateless persons, their characterization of the state is still as an entity that genuinely desires to assist the majority of incoming refugees.

Yet, as the example of the Syrian refugee suggests, even if the legal order calls for it, the state does not always mandate the incorporation of statelessness into the

normative political order. In fact, as Giorgio Agamben (2005) argues, this “state of exception” is necessary in order to maintain that selfsame order. Agamben describes the state of exception as not simply a special kind of law but instead as the site where the juridical order is suspended; in other words, the state of exception represents the limit concept of law itself (4). The state of exception is neither inside nor outside the juridical order but creates a zone in which the application of the law is suspended so that the normative force of the law may be maintained (31). The state of exception has always been a paradigm of government and as such, (however paradoxically) the state of exception can be understood as constitutive of extant norms (8). In the case of the stateless person, this idea of the state of exception is especially important to consider; as Arendt (1968) mentions, “the man without a state was ‘an anomaly for whom there is no appropriate niche in the framework of general law – an outlaw by definition...’” (283). The exorcising of stateless persons from spaces of political community reduces them to a state of “bare life,” or life outside of the political community in order to produce that selfsame community.

The difference between the refugee and the stateless person is that where the refugee is included and counted as political life, the stateless person remains in the condition of bare life. I separate the two terms in order to clearly delineate that the process of being recognized as a refugee is a recognition of personhood that is denied to the stateless person. Refugee is both a legal term and a theoretical construct that marks the border of the state of exception, constituted around the stateless person, and the condition of political life. However, while I draw on the work of Agamben, I do not do so uncritically. In particular, many theorists have suggested Agamben’s notion of

bare life does not leave room for resistance or agency of those subject to its conditions.² In this vein, I recognize the ways in which the state of exception is not absolutely constituted but contingent and flexible. The theorization of bare life and the state of exception illustrates the limitations of conceptualizing the state as capable of incorporating all those that should be refugees. However, this account still leaves the question of race uninterrogated.

² See Edkins and Pin-Fat (2005) for an insightful analysis of how Agamben's theorization can be extended in order to challenge sovereign order.

The Racial Logic of Statelessness

An account of statelessness that does not take race as an ordering premise will not be able to adequately grasp the perplexities of the condition of statelessness. The work of critical race theory has illustrated that race must be conceived of as not simply a biological fact but rather something that has been historically constructed. As Michael Omi and Howard Winant (1994) articulate, “The meaning of race is defined and contested throughout society, in both collective action and personal practice. In the process, racial categories themselves are formed, transformed, destroyed and reformed” (61). Junaid Rana (2011) suggests that racialization, the process by which bodies are categorized and bound to certain racial meanings, is linked to both phenotypic and cultural traits (9). In theorizing race, scholars are examining the ways in which certain bodies are inculcated with meaning. The logic of race is a homogenizing one, in which the differences between ethnic or cultural groups are elided in order to produce a broader racial meaning.

Just as statelessness is constitutive of the state, racial formation must be understood as integral to state formation. As David Theo Goldberg (2002) argues, race is integral to the emergence, development, and transformation of the modern nation-state (4). In this conception, the state and the people within it are defined by their relationship to the “other.” In order for the people of a state to be constituted as a unified people, they must be defined in opposition to something else: “Race is imposed upon otherness, the attempt to account for it, to know it, to control it” (23). In this sense, race is a way to categorize and name otherness, providing a distinct set of meanings to bodies in order to make them intelligible in the context of state formation.

The other becomes a threat that must be guarded against at all costs. In doing so, “The racial conception of the state becomes the racial definition of the apparatus, the projects, the institutions for managing this threat, for keeping it out or ultimately containing it – but also (and again paradoxically) for keeping it going” (24).

Goldberg’s work is an important point of departure in critiquing the limits of current theorizations of statelessness because it foregrounds race in the relationship between the state and those outside it. Race can be thought of as a mode of crisis management, in which those who represent a threat to the state, such as the stateless, can become racialized in order for the state intervene and curtail the unknown outside threat (40). In taking Goldberg’s argument seriously, we see that the stateless person as racial “other” is not merely a by-product of the state system but is fundamentally necessary in order to *maintain* the racial state. The institutions for managing, or keeping out, the racialized other will allow for the continued existence and production of the state. The exercise of power defines the other and the self.

When the racial other is framed as threat, they become subject to control and elimination through the state apparatus. As Michel Foucault (2003) has suggested, race can be understood as the organizing principle that rationalizes and justifies the way in which the state can make some live and disallow others to the point of death (247). This categorization does more than simply mark some bodies as inherently more valuable; “Racism is a killing abstraction. It creates spaces of living death and populations ‘dead-to-others’. It ensures that certain people will live an abstract existence where living is something to be achieved and not experienced” (Cacho 2012, 7). Certain racial bodies are marked as ineligible for personhood, which I define as

being categorically denied the means of political contestation within the state but still subject to the exercise of state violence. Thus, their lives are not apprehended as part of life under the law, but can still be coerced by the legal apparatus.

If both race and the state of exception can be understood as necessary for the ongoing reproduction of the racial state, it follows that an analysis of the state of exception should reflect how race justifies and constitutes the suspension of juridical order. Sherene Razack (2008) suggests,

The zone of non-law into which refugees are plunged is a legally authorized place in which rights are suspended. Simultaneously in the legal order and outside of it, the refugee confirms the terrible power of the state to determine every aspect of his life... Race soothes any worries we have about the display of raw power. It invests the proceedings with a kind of coherency that belies the arbitrary nature of what is unfolding (57).

Razack points to race as the factor that legitimates the state of exception; the exercise of this type of “raw power” would generate panic except that racial logic marks this violence as necessary for order and security. When bodies are invested with certain social meanings, the suspension of rights and the necessity of the eviction of the racialized other becomes legally acceptable; the function of erasing the other is essential to the continuity of the state. Here we see the relationship between the state of exception and the racial state. The two work in tandem to produce the racial other, while simultaneously reaffirming the homogeneity and identity of the state.

The governance of the racialized stateless takes place through this racialized state of exception. To become stateless is to exist in a condition in which the stateless persons are systematically evicted from the political system. To be stateless is to be denied “the right to have rights” (Arendt 1968, 296). In a racial state those who are “other” are imbued with specific social meaning in order to be managed and controlled.

Racial meaning determines the limits of the racial state itself and demarcates which types of bodies can be folded into the political community and which must be excluded. Statelessness then is not a condition under the law but a condition that is produced by the law in order for the normative order to continue to exist. Moreover, that condition is always linked to a racial order. Unlike the refugee, the threatening stateless body does not compel aid from the state, on the contrary the state must deny the racialized other in order to ensure its continuity. The state of exception can thus be understood as the mechanism through which the stateless are both produced and managed.

Constructing Racial Borders – The Imagined Homogeneity

The very founding of the United States is predicated on two major racial wounds, the trans-Atlantic slave trade and the elimination of the indigenous people through the logic of settler-colonialism. As Patrick Wolfe (2006) argues, “Territoriality is settler-colonialism’s specific, irreducible element” (388). The process of creating the racial state required both the positive creation of the new colonial nation and the negative dissolution of indigenous peoples and cultures. The very presence of indigenous peoples was an impediment to the settler-colonial process of expansion and in order to claim this land, the settler-colonial state needed to eliminate the native. The only type of native that could exist was one that had ceased to be native, whether this was through actual murder or through assimilation into the dominant modality of being (Wolfe 2006, 397). In this sense, the indigenous population of what would become the United States must be understood as one of the original stateless others, the population that needed to be systematically excised from the state or else made white so that the state could literally be created. At the same time, the black plantation slaves must also be thought of as a stateless other. Achille Mbembe (2003) argues,

Indeed, the slave condition results from a triple loss: loss of a “home,” loss of rights over his or her body, and loss of political status. This triple loss is identical with absolute domination, natal alienation, and social death (expulsion from humanity altogether). (21)

As Mbembe insightfully illustrates, the condition of slavery can be conceptualized as the process through which the stateless other was forcibly created in order to ensure the prosperity of the newly inaugurated state. Slaves were forcibly taken from their homes, and because of their racialized condition, were subjected to the absolute loss of their eligibility to personhood. The violent system of exploitation of slaves that massively

disenfranchised the black population was essential to the success and continuation of the racial state. The history of the production and management of the stateless other in the United States stems from these two groups of people and the reverberations continue to be felt throughout the entirety of its history.

However, as the racial state develops, the processes by which the exterior “other” is constructed, managed, and given meaning morph in order to reflect the transition into modernity. Race continues to serve as the mechanism governing alterity, and becomes enshrined in the states’ coercive apparatus. Goldberg (2002, 142) suggests that the law is integral to the management of both the interior and the exterior and uses race as an ordering principle. As race becomes ingrained in state institutions, racial rule also becomes synonymous with the rule of law. Thus, addressing the ongoing legacies of race as it relates to the question of statelessness demands an interrogation of how race is enshrined as a cornerstone of interactions between the racial state and those beyond it. Using this framework, the 1924 Immigration Act can be examined as a moment in which the state officially codified race as a means of determining who could become part of the state.

The Immigration Act codified the first numerical restrictions on the number of immigrants who could enter the United States from the various regions of the world. The quota system determined a number of immigrants for each state that could be admitted every year in proportion to the number of United States inhabitants that could trace their ancestry to that geographic region. However, the law stipulated that there were a number of major racialized exceptions including “ineligibility for citizenship,” immigrants from the Western hemisphere, the descendants of slave immigrants, and the

descendants of Native Americans (Ngai 2004, 26). At the time, all Chinese, Japanese, and “South Asian” persons were considered ineligible for citizenship, and the descendants of slave immigrants’ clause discounted the entire black population of America from being included in the quota system. Furthermore, though some countries such as China, or Japan were allotted a miniscule number of immigration visas per year, these visas were actually only permitted to be given to non-native (white) persons travelling to the United States from that country (Ngai 2004, 27).

These restrictions were rooted in a series of studies designed to determine which types of new immigrants should be granted access to the United States (Daniels 2004, 54). As historian Mae Ngai (2004) demonstrates, these studies were not simply pseudo-scientific studies in race, rather they followed the discipline and methodology of an anthropological system deeply rooted in racial ideas (32). As such, these studies boiled down each nation to its “immutable (racial) essence” and used it to legally embody a racial hierarchy of entrants to the United States. Those racialized as white were equated with the imagined American consensus and desirability.

Thus, in determining who counted towards the quota system, the 1924 law systematically excised all non-white persons from the American political imaginary. The law could be considered as constitutive of a white race, which took as its basis a shared assumption of European origin. In doing so, as Ngai (2004) rightly suggests, “It [the quota system] also divided Europe from the non-European world. It defined the world formally in terms of country and nationality but also in terms of race. The quota system distinguishes persons of the ‘colored races’ from ‘white’ persons from ‘white’

countries” (32).³ The non-white races were imagined outside the concept of nationality and therefore citizenship. The state reconstituted itself to suggest that the racial other was not capable of being assimilated or becoming part of the state. Where the law was intended to restrict all immigration, the result was the reification of a racialized geography of the exterior. White racialized Europeans outside the state were eligible for inclusion while the non-white other was rendered invisible and systematically excised from the legal imaginary.

Entering A New Racial Era

“Now of course, the refugee has got to be checked because, unfortunately, among the refugees there are some spies, as has been found in other countries. And not all of them are voluntary spies - it is rather a horrible story but in some of the other countries that refugees out of Germany have gone to, especially Jewish refugees, they have found a number of definitely proven spies.”

– Franklin Delano Roosevelt 1940, 495

Refugee studies tends to mark the end of the WWII as a profound shift in the United States approach to the question of statelessness and argues political markers became the primary determinant of whether a stateless person could become refugee. However, it is essential to examine how racial dimensions interact with these political identities. At the end of WWII, the Jewish population of Europe had been understood as not quite white. In particular, during the war, Jewish refugees were directly linked with the idea of being German spies (Breitman and Kraut 1987, 122). Akin to the discourse of terrorism, being Jewish became implicitly associated with the meaning of threat and the stateless Jew in particular was directly implicated as being recruited by an external threat to the sovereign nation. It was impossible to tell which Jews seeking refuge in the United States were spies, and which Jews required relief from

³ However, it is worth noting that the creation of a “unified Europe” was contingent, and groups that were considered not quite white, in particular the European Jewry, were often exempted from this categorization.

persecution. In this process, all people perceived to be Jewish became “potential spies,” illegal simply by being. While Jews had been subject to discrimination and exclusion, this process of becoming the potential spy can be understood as intrinsically linking Jewish statelessness with non-white racialization and in doing so, completely barring them from the state as a threat to national security.

However, following WWII the Jewish population became reconstituted along racial lines to become part of Europe in the United States’ racial geography. This process began in 1944 with the use of the President’s power of parole to bring 983 Jewish refugees from across Europe to Oswego (Breitman and Kraut 1987, 122). Though this action made little difference in the flow of refugees in Europe, it represented a shift in the racialization process of the United States. In this moment, the Jew could become part of the state; the Jewish person was no longer disallowed entirely from the right to have rights. This subtle, though critical, reordering of the racial state marked an alteration in the ongoing process consolidating the United States response to statelessness.

The Displaced Persons Act of 1948 continued this trend and attempted to bring in refugees outside the quota limits established in 1924. The Act specifically targeted regions in Europe that had been affected by WWII, in particular focusing on Nazi occupied regions or those with recently created communist governments. It is essential to recognize that though this law attempted to remedy the condition of statelessness, only the white, European body prompted inclusion through becoming refugee. The language of the act specifically mentions Europe as the only site of refugees (Displaced Persons Act 1948), reifying the principle that to become refugee one first had to be

European. Equally importantly, the Displaced Persons Act also emblemized the notion that those who were eligible for citizenship in the United States, as determined by the 1924 Act, were still the only ones who were recognized as meriting inclusion. Those displaced in North Africa or in the Pacific theater of war were not recognized as part of an ongoing “refugee crisis” because of their ineligibility to citizenship under extant United States law.

The explicit omission of non-Europeans created a divide where statelessness could only yield to becoming a refugee when there was a body intelligible as white. By constructing only Europeans as eligible to refugee status (Displaced Persons Act 1948), the Act made it clear that for the fundamental humanity of those outside the state to be affirmed, they must necessarily become white, or become conducive to the promotion of the United States’ (white, homogenous) values. In structuring Europe as the privileged site of statelessness, it also substantiated the work of the 1924 law in subsuming the heterogeneity of European ethnic identities under the broader racial category of white. The changing framework of racial homogeneity allowed the Jewish person to become, if not fully white, at least eligible for personhood within the state framework. The inclusion of the Jewish body into whiteness allowed for the construction of regions of the world outside Europe as inimical to life in the United States, and as such necessary to control.⁴

The Raceless State

In the history of statelessness, 1965 marked a profound shift in what previously had been clearly delineated racial boundaries. The passage of a major amendment to

⁴ This is not to say that Anti-Semitism miraculously disappeared following World War II, rather in the United States the reimagining of the boundaries of the state opened the possibility of inclusion for the Jewish population of Europe, where previously they had been evicted from the nomos of political life.

the Immigration Act reordered the formal American immigration system. This structural shift was in many ways precipitated by the passage of the Civil Rights Act of 1964 on the heels of a massive swell of black political organizing. As Mary Dudziak (2000) illustrates, the importance of the Civil Rights Act was that it constituted true “evidence” of social change and demonstrated America’s conviction to the principles of liberty and equality, particularly to its foreign allies (213). Thus, in order to remedy the situation, it was necessary for the United States to implement structural changes, which masked the racial structure without necessarily overturning it. The 1965 Immigration and Nationality Act followed in the footsteps of the Civil Rights Act, and worked to actively expunge the racist overtones that had characterized the bald-faced exclusions of previous immigration legislation.

The legislation itself made several crucial changes that moved towards a race neutral, or race blind, policy action while still reifying certain types of exclusion. Arguably the most important change was that the 1965 amendments completely abolished the national origins quota system that had become the central pillar of American responses to those outside the state. It instead revised the quota system to allocate admissions to people from the Eastern and Western Hemispheres (Zolberg 2006, 333). This was the first time the United States had built a refugee admission policy into the main framework of the legal code, constituting it as a positive obligation for the state (333). At this time, refugees were redefined as “aliens who... because of persecution or fear of persecution on account of race, religion, or political opinion have fled... from any Communist or Communist-dominated country or area, or from any country within the general area of the Middle East...” (1965 Immigration and

Nationality Act). These amendments established a mandate on the part of the United States to resolve the “problem” of statelessness by providing refugee status in certain situations. But, the very definition of when statelessness was intelligible as a problem remained both geographically and ideologically constrained (Hamlin 2015, 324). In this sense, statelessness became formally bound to the projects of security and national consolidation; the stateless were sublimated to foreign policy in order to continually police the acceptable bounds of the American populace.

This ideological fixation of the stateless person constructed a legal order that effaced the direct rhetoric of race perpetrated by the national origins system. By moving away from the language of national origins the United States appeared to be affirming its commitment to genuine equality; the abolition of a racist quota system was a landmark step forward into an era of color blindness. The logic was that if all countries have the same maximum quota, then all persons have equal opportunity to enter the United States. Yet, the preference system indicates that the law was *intended* to perpetuate the imagined homogenous citizenry of the pre-WWII nation. Ideally those racially similar to the people already in the United States would make up the majority of new arrivals.

But, the appearance of non-discrimination was crucial in the context of the Cold War because as Sohail Daulatzai (2012) illustrates, the Cold War liberal logic argued that racism in the United States should be opposed because it undermined the United States’ global goals, namely anticommunism and control over the former colonies (12). The core of this liberalism’s race narrative was that black equality in society would cement the United States’ moral legitimacy as a global power (13). However, while

official policy increasingly moved towards liberal ideals of antiracism, the result was a dramatic shift towards a “raceless” racial state. Goldberg (2002) illustrates how the claim to state modernity is deeply linked with an insistence on racelessness. In the final form of the modern racial state, race becomes absorbed into the elevation of whiteness or white property as the capstone of modernity (206). In short, whiteness implicitly becomes the site of aspiration and in doing so erases the exclusions that form its foundation. The colorblind state mandates that whiteness, and the values associated with it become invisible as both the societal norm and telos. The racial project of the state then maintains this invisible norm without necessarily naming it. The 1965 Amendments built off previous laws and worked to establish a principle of color-blind citizenship, where invisible whiteness became implicitly linked with citizenship (Ngai 2004, 238). In other words, when citizenship is intimately tied to whiteness, but whiteness is effaced from the law, it becomes possible for citizenship to necessarily exclude certain types of racial non-citizens. In this sense, though the language of race was subsumed under the Cold War ideology of national security, the very bedrock of this national security was racial.

Though the 1965 amendments were intended to preserve the American imaginary of a white citizenry while simultaneously effacing the formal logic of race, the results did not align with this vision. In the decades following the Act’s implementation there was a dramatic shift in the types of bodies seeking refuge in the United States. In turn the racial logic of statelessness needed to contend with a massive influx of migrants and refugees from Asia and Central America. As Jodi Melammed (2011) suggests, racial liberalism’s black/white racializing scheme could not

encompass a multiracial population (27), and necessitated a refiguring of the racial logics of statelessness in order to address a new situation in which the vast majority of the world's potential refugees were no longer European in origin. The question became one of which bodies could become, if not entirely white, then whitened and deemed acceptable to the racial state. The Jewish stateless population had already become whitened and later, Cubans, and certain Asian bodies were designated as eligible for incorporation. But other types of bodies marked the site of a more radical form of difference and black, Latin American, and Muslim bodies were overwhelmingly left in the condition of statelessness.

The Hierarchy of Refugees

The ascension of Francois Duvalier to the Haitian presidency in 1957 and the rise of Fidel Castro in 1959 prompted a massive movement of people towards the United States. Castro, a communist leader promising radical equality for all Cubans, was a major threat to the United States' imperative of Cold War hegemony. The first group of Cubans to become refugees in 1959 was primarily composed of white presenting, upper and middle class families with professional training and high levels of education (Masud-Piloto 1996, 33). Afro-Cubans were far less likely to depart, as racial equality was one of the key promises of the Communist Revolution in Cuba (Current 2010, 12). This first wave of Cuban refugees became constitutive of the Cuban refugee population as a whole and created a singular image of the white Cuban refugee who merited inclusion within the racial state.

In the years following 1959, the number of Cuban refugees entering the United States increased dramatically, and the state continued to reform itself to include Cubans as refugees. The establishment of the Cuban Refugee Program is one example of the United States' investment in these refugees. This program provided financial assistance for relocation, employment, housing, food, and other necessities to the majority of Cubans entering the United States (Masud-Piloto 1996, 49). The passage of the 1965 Immigration Act, even though it ostensibly enacted limits on the number of refugees that could be inducted into the state, did not slow the movement of Cuban refugees because the United States implemented an "open door" policy for Cuban refugees from Communism. Moreover, the United States signed a Memorandum of Understanding with Cuba establishing the Freedom Flights Program, in which the United States

provided air transportation to Cubans seeking to become refugees. Furthermore, in 1966 the United States took major action to normalize the aberrant status of these Cuban refugees with the implementation of the Cuban Status Adjustment Act, which greatly expedited the process for Cuban refugees obtaining citizenship (Bon Tempo 2008, 129).

The case of the Cubans is indicative of the state's work to legitimate and protect certain bodies apprehended as eligible for inclusion in the state. Racialized as white, Cubans became a crucial juncture at which the mandates established in refugee law became applicable; the Cuban became the site of necessary intervention. This is not to suggest that political motivations were irrelevant, but to highlight that these political considerations were also linked to racial bodies. Statelessness demanded inclusion when foreign policy goals were wedded to appropriate racialization. Where stateless bodies were disallowed from the political community, the white Cuban was targeted for inclusion in political life through access to resources and the opportunity to become refugee that was denied to stateless populations.

The Cuban experiences dramatically contrasts with that of Haitians who found themselves systematically evicted from the juridical order and categorically rejected from the even the possibility of inclusion. The Duvalier government was openly repressive and categorically disenfranchised the vast majority of Haitians. Yet, even so, the United States did not take any actions to recognize Haitians as refugees, relax immigration rules, or grant any type of permanent residency status (Loescher and

⁵ The Cuban experience is not monolithic, and there has been significant scholarship to illustrate some of the limitations of the "welcome exiles" myth, and to reflect the diversity of Cuban experiences within the United States. For more information, see Torres (1999). However, in theorizing statelessness I am primarily concerned with those the state recognizes as refugee posed in distinction to those left outside the state, and so focus on the inclusion of Cubans in the refugee system.

Scanlan 1986, 79). While Cubans were receiving special treatment, approximately 30,000 Haitians attempted to enter the United States by boat to become refugees. Of these 30,000, perhaps 25 or 30 received refugee status.

Unlike the Cuban refugees, the vast majority of the Haitian population was poor and black, which crucially barred them from eligibility to personhood. The process of racialization constructed the tide of black Haitians travelling towards the United States as a threat, one that sought to undermine the integrity of the United States as a cohesive entity. An integral component of the Haitian excision from the refugee system was their construction as economic migrants, rather than political refugees, despite the clear brutality of the Haitian government (Zucker and Zucker 1996, 34). As economic migrants, the Haitians were comprehended as being undeserving rather than in need of protection. Because Haitians were simply seeking “better opportunities,” the Haitian body became imbued with ideas of greed and laziness, the hallmarks of the undeserving and the criminal. In this sense, the criminalization of the stateless Haitian body impelled the exercise of legal power against the Haitian body, but denied Haitians the means to contest its execution. To become a refugee, it would require the Haitians to have been able to recuperate social value, to demonstrate that they were worthy of inclusion in the United States. But racialized as black, criminal, and threatening, the Haitian was left outside the normative juridical order of the United States, even as they were forced to abandon their homes.

However, race is not static; it is culturally contingent, contested, and as a result the meanings linked with racial bodies shifts over time. The Mariel Boatlift represents a pivotal moment in the racialization of Cubans and marks a transition in which a

privileged refugee group was racially recast and found their fundamental assertion of personhood questioned. In 1980 when the Cuban government agreed to open the Port of Mariel, President Carter agreed to “provide an open heart and open arms” for those who wished to enter the U.S. (Zucker and Zucker 1996, 34). As such, there was a massive exodus of Cuban refugees. Between April and October of 1980 more than 125,000 Cubans entered America by boat (Masud-Piloto 1996, 83). This new wave of refugees represented a stark contrast with previous groups. For the first time, the majority of Cuban refugees were Afro-Cuban, poor, and there were a number of these refugees that had been recently released from Cuban prisons (Mirabel 2003, 366). Race, class, and criminal status worked in conjunction to produce a new racial image of the Cuban refugee, one that no longer comported with the United States’ acceptable ideals. Even as many Cubans were granted entry, they found the door slammed shut behind them. In the waning months of the boatlift, the state took dramatic action to curtail not only this stream of Cuban refugees, but also to prevent future movement. This left Cuban refugees with only the possibility of a perilous boat crossing to escape from Cuba (Zucker and Zucker 1996, 63).

Where Cuban refugees had previously enjoyed a form of white privilege in the context of admission to the United States, in the months following the Mariel Boatlift Cuban refugees were increasingly racialized alongside the majority of other Latin Americans seeking refuge in the United States. When the Cuban refugee was racialized to become the Cuban stateless person it mandated a fundamental shift in the management of Cuban stateless bodies and they found themselves increasingly evicted from the normative legal order. The newly reconstituted racial body removed the

Cuban stateless persons body from the opportunity to be included in the state, but did not exempt them from the exercise of legal power. Cuba remained a communist country, but when those seeking to enter the United States were no longer appropriately racialized, they no longer qualified to become refugees. The vast majority of Cubans found themselves grouped with the “racial other” that the United States needed to police and control in order to keep the political integrity of the nation intact.

The move toward the increasing displacement of Cuban refugees worked in tandem with ongoing targeting of Haitians and the complete erasure of the possibility of Haitian personhood in refugee law. Around the time of the Boatlift there was a surge in movement from Haiti to the United States and around 15,000 Haitian refugees attempted to enter the United States. The movement of Haitians compelled the creation of the “Haitian Program.” This program worked to process and quickly expel as many Haitians as possible (Loescher and Scanlan 1986, 176). Haitians were provided with little to no translation support and the lawyers representing the Haitians were often expected to be at three or four cases at the same time, while overseeing hundreds of complex asylum cases (176-177). The result was a dramatic rise in the number of asylum claim denials and increased numbers of deportations (177). Even though the Haitian population was a fraction of the size of the incoming Cubans, the Haitian stateless population was actively targeted for removal and never recognized as eligible to move from statelessness into becoming refugee.

The history of racialized statelessness however, is complex and contingent. The absolute exclusion of racial others gave way to a racial logic in which tolerable

forms of racial difference could be transformed into refugees. The defeat of non-Communist regimes in the Vietnam region, and the fall of Saigon in particular, prompted the movement of hundreds of thousands of Vietnamese, Cambodian, and Laotian people who had resisted the communist government (Loescher and Scanlan 1986, 103). In 1975 alone the United States incorporated 130,000 Vietnamese refugees into the state. Notably, even though these refugees were phenotypically non-white, they were generally well educated, and members of a higher social class (116). As such, they tended to be very successful in finding employment and were not considered a strain on the welfare system (117). Critically, this allowed the Vietnamese to be constructed as “model refugees,” hardworking, well motivated, and capable of demonstrating their commitment to American values. Anthropologist Aihwa Ong (2003) argues that the social status of these Vietnamese refugees clearly marked them as part of a whitened, though still non-white, racial group stereotyped as being entrepreneurial self-starters (87).⁶ The moral justification for the admission of the Vietnamese refugees was linked to both their political identity as refugees from Communism and the fact that their norms were considered closer to those desired in the American citizenry (86). Thus, as the types of bodies seeking entry to the United States changed, the racial logic shifted to accommodate and ideologically whiten those that were considered conducive to the promotion of the racial state.

The Constitution of Statelessness and the 1980 Refugee Act

⁶ It is worth noting as Ong (2003, 86) suggests that upon their arrival to the United States, certain types of Asian others such as Laotians and Cambodians, because of their perceived economic status, tended to be linked more with blackness and criminality than Vietnamese refugees who were thought of as part of the “model minority.”

But as the wake of the 1980 Refugee Act showcases, the incorporation of certain racial bodies also operated in tandem with the excision of others who were posed as antithetical to the integrity of the American state. The Act redefined the legal term “refugee” in order to comport with the definition established by the UNHCR, removing the geographic and ideological constraints and defining refugees as unable to return to their country of origin because of a “well founded fear of persecution” (Refugee Act of 1980). In this moment, it would appear as though providing refuge to all those who deserved it was enshrined as a universal principle, and represented a positive obligation for the United States. It is this conception that the field of refugee studies tends to take as the starting point for any theorization of the refugee; that all people genuinely unable to return home should be actively granted refugee status by the state. And yet, this theorization overlooks the ongoing necessity for racialized exclusions to reproduce the state, even as the state moves away from outright discrimination. As Razack (2008) suggests, race becomes embedded in the law so the suspension of rights appears not as violence but as the law itself (9). In enshrining a race blind refugee admissions process, the United States attempted to bury its own racial skeleton beneath layers of bureaucratic skin and sinew. The suspension of the rights of the racialized other seems appropriate, rational even, when the process for being allowed to become refugee is “race neutral.”

The crackdown on Cuban refugees in the wake of the Mariel Boatlift operated as part of a broader logic that worked to exclude Latin American racial bodies positioned as illegal entrants threatening to overwhelm this fragile new refugee system. Loescher and Scanlan (1986) point to the fact that policy makers moved away from

arguments rooted in the idea that refugees coming to the United States were “voting with their feet” and tacitly indicating support of the United States’ quest for moral hegemony (193). Instead, they suggested that the creation of Marxist dictatorships in Latin America would lead to a tidal wave of refugees swarming to the United States to seek safe haven (194). This move coincided with a noticeable upturn in the numbers of stateless persons travelling from Central America to seek refugee status in the United States because of the violence of both Leftist and anti-Communist regimes. This created a climate in which stateless people racialized as Latin American were constructed as part of the ominous, dark tide that lurked on the southern border. This was also linked with the positioning of stateless persons from Nicaragua, El Salvador, and Guatemala, who could not return home for fear of violence, as illegal entrants looking for government handouts (Zucker and Zucker 1996, 82). Fear of a tidal wave of refugees coincided with the shift in Cuban racialization, where these freshly racialized bodies were equated with the types of poverty and criminality associated with other Latin American refugees. Thus, the United States was capable of relegating the newly racialized Cubans to the same category of threat as the majority of Latin America. The reconstruction of this imagined geography functioned to homogenize Cuban refugees and those from Latin America, fusing these two groups together and eliding the differences between them.

Latin American stateless persons were almost completely barred from the possibility of asylum and of obtaining refugee status whereas Eastern European, and “model minority” East Asian refugees were admitted in droves. Between 1982 and 1990 nearly 300,000 refugees were admitted from the Soviet Union and more than

450,000 from East Asia (Zucker and Zucker 1996, 85). On the other hand, Latin America as a whole saw less than 10,000 refugee allocations, the majority of which were Cuban. Only 1,103 Nicaraguans and 147 El Salvadorans were admitted to the United States as refugees during this time period. The stark difference between the admission of Europeans, Asians, and Latin Americans cannot be attributed to distance nor entirely to ideological underpinnings as both Nicaragua and Cuba remained Marxist governments. Instead, race explains that at this moment, Latin American people seeking refuge in the United States prompted actions that sought to control this influx in order to continue to police the borders of the nation. The systematic denial of the refugee claims of Latin Americans, despite clear evidence of the repression of their respective governments and ongoing civil wars, is indicative of the link between the apprehension of valid claims to personhood through the refugee system and race. Racial governance demands that the constructed “other” be categorized, and then refuted in order to perpetuate the state as it envisions itself. Where those recognized as assimilable can be made refugee, those who are not must be relegated to the status of statelessness and remain both outside and subject to the exercise of legal power. Some bodies, such as the Jews, and later the Vietnamese refugees, were more easily whitened and made refugee. But the black bodies of the Haitians, and the bodies of Latin Americans continued to be marked as threatening and were produced as the stateless other that needed to be guarded against to ensure the reproduction of the state.

On the State of Exception

The aftermath of the attacks on September 11, 2001 marked a profound shift in the processes of racialization that forms the bedrock of the United States' relationship with statelessness. The United States Senate issued the PATRIOT Act on October 26, 2001. It represented a dramatic extension and entrenchment of the states ability to detain and police certain racialized bodies. The Act mandated that the attorney general detain any non-United States citizen that could be deemed a potential terrorist, part of a terrorist organization, or subsumed under the all-encompassing "threat to national security" (USA PATRIOT Act 2001). The PATRIOT Act also broadened the scope of non-citizens that were ineligible for admission or deportable due to links with terrorist activity. This included actions such as endorsing, planning, or even "showing support" for a terrorist organization. Legal scholar Regina Germain (2002) suggests that this rapid expansion and mandate to detain had serious immediate repercussions for the refugee system in that by expanding the category of ineligible to admission, it also raised the bar for some to make the claim to refugee. As such, many "bona fide" refugees would not be permitted to enter the United States. Under the logic of the PATRIOT Act, any refugee that could be construed as a threat to national security mandated detention.

Indeed, in the aftermath of 9/11 the refugee arm of the state apparatus escalated the criteria needed for stateless persons to become refugees and in the process dramatically lowered the number of yearly refugee admissions. The Bureau of Populations, Refugees, and Migration increased the process of security checks mandated that potential refugees of certain nationalities, namely those from

predominately Muslim countries, required an FBI investigation before their application to become a refugee could even be considered (Bon Tempo 2008, 205). The result of these changes in the admissions process has been a slow down in the number of refugees admitted to the United States. In 2001 only 27,000 refugees were admitted to the United States compared to approximately 70,000 in previous years and in subsequent years the number of admitted refugees remain about 30% lower than it had been prior to 9/11 (205).

Yet, the consequences of the PATRIOT Act reach far beyond the restriction of admissions and the expansion of the detention apparatus because they happen in conjunction with the racialization of all Muslim appearing bodies as the potential terrorist. As theorist Junaid Rana (2011) points out, Muslim can be considered a racial formation in that the primary characteristic of the Muslim is not necessarily their religion but rather if they appear to be Muslim based on phenotypical and cultural characteristics (51). Members of other faiths who are Muslim-presenting such as Sikhs, or Arab Christians, can be folded into Muslim racialization (51). In the wake of 9/11, Muslim seeming bodies had the meaning of potential terrorist grafted onto them, and the image of Muslims as the “new enemy” was increasingly disseminated. As Leti Volpp (2003) suggests, the terrorist is juxtaposed with the citizen in order to suggest not only that terrorists are not part of the state, but also that they both cannot and never have been part of the state (158). The new enemy, the terrorist population, is displaced within the political imaginary to permanently occupy the space outside of the United States. The legacies of the PATRIOT Act and the racialization of these bodies are perpetuated in the image of the Syrian refugee crisis. When the Muslim presenting

person from outside the state is intelligible as a potential terrorist, then any Muslim potential refugee can be evicted from the normative political order and rendered stateless in the name of national security.

In the figure of the Muslim stateless person as the potential terrorist, it is possible to analyze how the state of exception is constructed around certain stateless bodies in order both to manage them and define the limits of the racial state. As Agamben (2005) suggested, the PATRIOT Act and its major restructuring of state power constituted a radical erasure of the personhood of those intelligible as suspected terrorists (3). But the limit of Agamben's theorization is that he fails to recognize that race is the governing principle that structures the suspension of the juridical order. Without race as an ordering principle, the PATRIOT Act could be applied to anyone. However, when the terrorist becomes juxtaposed with the citizen, the suspension of the terrorist's right to have rights maintains the integrity of the law for the citizen. The Muslim presenting body allows the label of suspected terrorist to appear as natural, even rational, and so the two become mutually constitutive. The Muslim is always the potential terrorist, and the potential terrorist is always Muslim. In this case, race both soothes concerns about the exercise of power against the potential terrorist, but it also defines the limits of the state of exception. Those inside the state of exception, at once outside of the law and subject to its terrible power, occupy this space because they are racialized.

Trapped in this vortex between states, no law is guaranteed to protect the stateless but all law is dedicated to their management for the preservation of the borders of the state. As the PATRIOT Act indicates, these people are still subject to the

terrible exercise of the sovereign right to kill, or the sovereign power to disallow to the point of death. By forcibly evicting the stateless from the political order the state strips these bodies of their right to have rights. This trend is not unique to the case of the PATRIOT Act, but as we have seen through the cases of Haitians, Latin American refugees, and from the beginning with settler colonialism and slavery, it has been a fundamental part of the way in which the United States responds to the stateless. The bodies that are eligible to become refugee become subject to the normative order, but the stateless body is an exception to the entire order of states. For them, no law exists and as such, their treatment by the state is not subject to the confines of the normative order. Thus, this threat must always be displaced and so the state of exception also marks the border of the racial state; its national body finds its limit where the state of exception is materialized.

Race works in tandem with the state of exception as the paradigmatic technique of the racial state. In the schematic geography of the racial state, it is the outside, or the “other” that is racialized. Consequently to be both stateless and outside is to be other and imbued with racial meaning. It is only when the stateless subject is appropriately racialized that the state of exception appears as other than a natural political formation. Those that are “deserving” of being included into the state denaturalize the necessity of the state of exception and become eligible for the possibility of inclusion, which takes the form of admission as a refugee. The apprehension of certain bodies as eligible to personhood is the site at which the state of exception breaks down, and the normative order is restored. Though the site at which the state of exception is constituted is mutable, and changes along with the shifting racialization of the stateless body, the

question of statelessness is intricately, inseparably intertwined with the suspension of the normative order. Thus in order for there to be a racial state, there must also be the racialized stateless.

Conclusion

As the war in Syria continues, the question of statelessness has remains foregrounded in the American political imaginary. The current president of the United States has now twice sought to ban Muslims, in particular focusing on the specter of the potential Muslim refugee in order to “prevent terrorism,” and perhaps more importantly, to enforce an imagined homogeneity of the American interior. The racial stateless body, in particular the Muslim body, has become symbolic of the threat of terror. This is part of a long history of statelessness in which certain racial bodies have been deemed threatening by the state and have been controlled, managed, and killed.

I have argued that statelessness has always been a racialized condition, and that the racialization of the stateless body has been paradoxically necessary to both exclude certain “othered” bodies and for the very reproduction of the state itself. When the stateless body is not intelligible as worthy of becoming political life, it then becomes both possible and necessary for the state to systematically excise these bodies through the racial state of exception. This form of the state of exception constitutes the both the boundary and the limit concept of the racial state. Yet the question becomes, what possibilities does this new formulation of the state afford the critical thinker, the activist, and the stateless person?

First and foremost, recognizing the racial logic of statelessness illustrates the limits of advocating for “improved” refugee policies because the fundamental nature of these policies is the incorporation of some bodies in order to mandate the excision of others. Since the state fundamentally relies on constituting the state of exception around certain types of stateless bodies, a state policy that includes all stateless bodies

would require nothing less than a complete reconstitution of the state itself. This is not to say that calling for a more compassionate refugee policy is inherently a fruitless project, but to call for a critical reflection on what the process of becoming refugee means and a recognition of the differential death dealing that accompanies the question of who is allowed to become refugee.

But equally importantly, in recognizing that racialization leads to the excision of certain stateless bodies from political life, it becomes possible to understand that the stateless body is not inherently rightless and that rights are not attached to the state. The actions of the state that deny certain racial formations the possibility of inclusion suspend the normative order to be able to rationalize the absolute reduction of this life. The state itself must deny the political existence of the stateless body in order to continue its own existence. In short, by evicting people from the normative political order to ensure that order's reproduction the state is actually seeking to remove the right to have rights from those who otherwise would be recognized as eligible to personhood. Thus, stateless life is in fact the original condition of life; political life is not predicated on the state. The stateless body is not the problem to be solved, and the very necessity of the state as it currently exists is called into question when the stateless body is foregrounded in the political imaginary.

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