

**INTERROGATING “REFUGEEENESS”: THE IMPERIAL
LEGACIES IN U.S. ASYLUM POLICY AND INTERNATIONAL
HUMANITARIAN FRAMEWORKS**

by

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Certificate of Approval

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

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SECTION I: INTRODUCTION

Orienting “Refugeeness” within International Humanitarian Frameworks

The extent of human suffering spurred from statelessness has inspired widespread concern and intervention since the inception of the modern international state system following the Peace of Westphalia in 1848.¹ In 1950, the UN established its Office of the High Commissioner of Refugees (UNHCR), which allowed for the construction of a global infrastructure and discourse for thinking and dealing with massive flows of displaced persons. In order to understand the development of US asylum policy it is first necessary to trace the terms asylum and refugee to its roots in international humanitarian theory. In her 1951 treatise on the “End of Rights of Man,” Political theorist Hannah Arendt commented on the unique predicament of the refugee and asylum-seeker in the modern political system:

In the long memory of history, forced migrations of individuals or whole groups for political or economic reasons look like everyday occurrences. What is unprecedented is not the loss of a home but the impossibility of finding a new one. Suddenly, there was no place on earth where migrants could go without the severest restrictions, no country where they would be assimilated, no territory where they could found a new community of their own...it was a problem not of space but of political organization.²

Indeed, the inability for the international state system to effectively deal with these abject populations—the stateless collateral of the new world order—has been cause for much immediate humanitarian concern and action. But what is important to take from Arendt’s observation is that flows of migration have existed for the entire course of

¹ Hannah Arendt, *Origins of Totalitarianism* (Cleveland: World Publishing Company, 1951).

² Arendt, *The Origins of Totalitarianism*, 294.

history. The 1951 Convention Relating to the Status of Refugees provides the foundation for the international community and state governments to define and deal effectively and ethically with refugees. Since the establishment of this international, humanitarian framework, several conventions including the 1967 UN Convention Protocol have maintained the definition of a refugee as someone seeking asylum in another country for “well-rounded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.”³ The UNHCR still serves as the highest international authority on how to ethically think about and logistically deal with refugees and asylum-seekers.⁴ Though individual states have responded to influxes of forced migration in complex and different ways, the UNHCR has maintained several humanitarian principles through which to guide their work: notions of humanity, impartiality, neutrality, and independence underpin their non-political, humanitarian character.

While the dominant political, journalistic, and academic discourses of asylum and refugee law frame refugeeness as a humanitarian crises to be solved, this allows for little critical reflection on the political and economic complexities that drive human displacement.⁵ This has in effect depoliticized refugee studies by distancing the causes of forced migration of people from legacies of Western colonialism and economic and political intervention throughout the “developing” world. Critiques of liberal democratic states and citizenship as *the* authentic forms of political organization and identity, then, serve as the starting point of my investigation. This thesis explores how prevailing frameworks both internationally and in the US define and regulate the “refugee,” with

³ Ibid.

⁴ Peter Nyers, *Rethinking Refugees: Beyond States of Emergency* (New York: Routledge, 2006).

⁵ Nyers, *Rethinking Refugees*.

particular attention to the extent that states share responsibility in producing forced displacement beyond their sovereign borders. I argue that both state and international humanitarian frameworks obscure the historical legacies of political, economic, and military intervention that contribute to the very “refugee” problem they seek to address.

While the first part of this thesis deconstructs the problematic framing of refugee policy in the US as a geo- and bio-political tool, the second part explains why an appeal to international humanitarian frameworks contributes to the same historical blindness to liberal imperialism. While many refugee historians in the US have explained why these frameworks are antagonistic, I argue that noticing the commonalities is far more productive as both frames insist upon the state as the natural arbiter of political organization and belonging—a view that maintains asymmetrical hierarchies rather than alleviating them. In this vein, Peter Nyers writes:

The principle of humanity—which provides both the justification and orientation of humanitarian action—must be reconceived as an inherently political concept. Far from relating to one another as distinct and segmented logics, humanitarianism and politics share an immanent connection. What connects them is precisely that principle that informs and orders modern claims to political identity and community—that is, the principle of sovereignty.⁶

In order to destabilize dominant refugee frameworks, we must interrogate the ways in which our understandings of political citizenship and national belonging allow the state—through regimes of sovereignty—to continue imperial and illiberal politics abroad. If we truly want to address “the refugee crisis,” an accurate understanding of why forced displacement happens worldwide in the first place is necessary for any ethical response. This paper focuses on refugee and asylum policy in the US, though similar debates about immigration and refugee politics are happening in many wealthy, Western

⁶ Peter Nyers, *Rethinking Refugees*, 33.

liberal democratic states.⁷ Ultimately, I argue that we need to change the way we see the US in the world—as an exceptional liberal empire, the telos of democracy⁸—and instead see how US policy towards migrants and refugees obscures illiberal policies of intervention, and reproduce asymmetrical global hierarchies, allowing for further exploitation. I thus aim to begin a more complex interrogation into the root causes of forced migration and the rhetoric of sovereignty, nationalism and citizenship used by states to legitimize exclusion of migrants and deny basic human rights based on legal status. In building towards this argument, I illustrate how refugee/asylum/immigration policy in the US functions as a major form of social control for the state. While this sort of biopolitical regulation of territory and populations has come to be seen as a ‘natural’ function of the sovereign state, I warn against the visions of many refugee advocates to align US policy with humanitarian frameworks. Indeed, the final section explores the limits of humanitarian frameworks that are in fact deeply political and share many of the same exploitative and hierarchical characteristics as US domestic frameworks.

A large part of this project then is to reconnect histories of colonization, imperialism, and neoliberal economic restructuring across the global south with the ways humanitarian and state actors have framed massive flows of migration from the global south to the global north. Immigration policy and border enforcement is a hot button in many “wealthy” countries in the global north; for example many of these states have mobilized discourses around securitization that privilege the state to make certain

⁷ “*Nauru Hikes Journalist Visa Costs amid Australia’s Divisive Asylum Policy.*” Aljazeera.com, January 9, 2014. <http://america.aljazeera.com/articles/2014/1/9/nauru-hikes-journalistvisacostsamidaustraliasdivisiveasylumpolic.html>

⁸ I will elaborate on this argument later in Chapter 2 using Morefield’s analysis of liberal empire, and in Chapter 3 using Butler’s understanding of a “schism” in US nationalism.

decisions about protecting their borders from outside threats.⁹ Xenophobic and Nativist groups additionally fuel the political palpability of restrictive immigration and refugee policies.¹⁰ Refugees, as opposed to the entire category of migrants, are in a particularly unique position for my critique of statist logics of liberal empire because of the ways in which humanitarian advocates have intentionally separated refugees from the political sphere, even when reasons for migration are increasingly complex.¹¹ In the US, on the other hand, refugees have held a particular position as political pawns in geopolitical Cold War strategies and later became deeply implicated in the politics of racial formation and social control. While I focus on refugees, I do not mean to reproduce some objective truth that maintains any special distinction between refugees and migrants. Rather I hope this paper destabilizes these distinctions that I argue are deeply political and tied to the interests of certain states in maintaining global hierarchies.

⁹ “National security is a top priority for ICE.” *Department of Homeland Security*, January 5, 2011. <http://www.ice.gov/news/releases/1101/110105washingtondc.htm>.

¹⁰ Daniel Kanstroom, *Deportation Nation: Outsiders in American History*, (Cambridge: Harvard University Press, 2007).

¹¹ Judith Kuman, ed. *The State of the World's Refugees: In Search of Solidarity*, 2012. The Office of the United Nations High Commissioner for Refugees.

SECTION II: INTERROGATING US ASYLUM POLICY

Geopolitical Frameworks and Expansion of Sovereign Power

In this section, I argue that US domestic asylum policy has consistently been used by the state to regulate the socio-political and ethno-racial construction of American national identity. Furthermore, asylum policy has developed under geopolitical and biopolitical frameworks in ways that not only obfuscate imperial legacies but also reproduce global hierarchies that privilege the exclusive and problematic notions of US nationhood and citizenship. The first policy framework to dictate the regulation of refugee movement in the US has been widely described as geopolitical; refugee status was granted *only* to those persons fleeing from communist dominated areas or from any area in the Middle East.¹² As the geopolitical fervor of the Cold War waned, certain discourses about national security increasingly solidified criminalized notions of migrants, which further blurred the lines between refugees and the greater immigrant population. Widespread fears about socio-ethnic change to the American population merged with these already confused policy frameworks, and ushered in a new policy trend of exclusion and deterrence. Therefore, I argue that not only has refugee policy always been political—characterized in the current moment by the politics of deterrence and social control—it also operates in ways that obfuscate the root causes of migration and “refugeeness,” in particular the imperial legacies of US liberalism.

¹² Rebecca Hamlin, “Illegal Refugees: Competing Policy Ideas and the Rise of the Regime of Deterrence in American Asylum Politics,” *Refugee Survey Quarterly* 31 (2012), 35-53.

In order to consider asylum as a modality of biopower, it is first necessary to understand how asylum has been from the beginning a political tool for the state. Following the devastation of WWII, the US began accepting refugees and affording legal protective status and services to a select group of asylum-seekers. Throughout the 1950s, many hundreds of thousands of refugees were granted legal permission to enter into the United States via presidential parole; however not until the Immigration and Nationality Act of 1965 were the administrative and institutional procedures for administering asylum as a legal status articulated into law.¹³ While the impetus for the 1965 Act may have been rooted in humanitarian concerns that sought to distinguish refugees from other immigrants, Ngai argues that it instead solidified the precedent for using asylum as a kind of political tool for the state.¹⁴ Indeed, by establishing refugee legal status as a separate visa category within the immigration preference system, the 1965 Act significantly conceived of forced undocumented migration as a new policy problem.¹⁵ In other words, not only did this act assume government authority over the regulation of asylum and refugee status as a subcategory of greater immigration policy; it also had the effect of regularizing the term “illegal aliens” as a pseudonym for all migrants not yet given an official legal title under US law—including asylum seekers and refugees.¹⁶ Ngai notes that the though Immigration Act has been canonized with greater Civil Rights legislative movements, the Act rather “continued and, indeed, extended the reach of numerical restriction, a policy that would reproduce the problem of illegal immigration.”¹⁷ This convergence of asylum within greater immigration frameworks is significant; the built-in

¹³ Hamlin, “Illegal Refugees.”

¹⁴ Mai Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton: Princeton University Press 2004).

¹⁵ Ngai, *Impossible Subjects*, 22.

¹⁶ *Ibid.*

¹⁷ *Ibid.*, 227.

flexibility of refugee definitions/categories allowed the state to wield asylum policy as a geo- and bio-political tool.

In order to illustrate how Cold War geopolitical frameworks distanced US asylum policy from both its humanitarian roots and the root causes of migration, I outline the development of US policy towards Haitian and Cuban refugees. Indeed, comparing the treatment of similarly positioned migrants shows how US asylum policy has been unilaterally motivated towards state interests in promoting itself as a safe haven for refugees “fleeing” repressive communist regimes. This effectively obfuscates the responsibilities for the US’s imperial relationship with Haiti that exacerbated the flows of migrants and asylum-seekers in the first place. While the 1965 Act defined refugee status as *only* applying to those persons fleeing from communist dominated areas or from any area in the Middle East, the 1960s saw a huge influx of migrants and asylum-seekers from Central American and Caribbean countries driven by economic and political instability.¹⁸ Because the INS only recognized asylum as a status available to those fleeing communism, and had deep political and economic ties in many of these countries, this group of asylum-seekers were “officially classified as ‘no-status,’ denied asylum, and detained until deportation proceedings could be arranged.”¹⁹ That the US positioned itself geopolitically via its policy and benevolence to asylum-seekers from Communist countries speaks to the importance of refugee bodies to the bolstering of US nationalism and appropriate embodiments of citizenship throughout the Cold War.²⁰

¹⁸ Hamlin, “Illegal Refugees,” 42.

¹⁹ Felix Masud-Piloto, *From Welcomed Exiles to Illegal Immigrants: Cuban Migration in the U.S., 1959-1995*, (Lanham, MD: Rowman & Littlefield, 1996), 111-12.

²⁰ Hamlin, “Illegal Refugees,” 41.

The US's recognition of Cuban migrants as refugees (thanks to Castro's communist regime) and simultaneous refusal to acknowledge the legitimacy of claims by Haitian refugee asylum-seekers is a significant juxtaposition both geographically and ideologically. It normalized immigration control as an extension of sovereign power, which allowed later for the state to further manipulate categorizations of refugees and migrants in ways that converged with broader goals of social biopolitical control. Furthermore, the differential definitions of legal statuses for migrants and asylum seekers from Central America and the Caribbean illustrates the US's underlying policy motive to maintain its liberal empire, or rather its ideological, political, and economic domination throughout the Western Hemisphere.

Connecting US Asylum Policy and Imperial legacies: Lessons from Haiti

For Slaughter, 'engagement with the world' not only ought to define American leadership, it is 'built into the very core of who we are as a nation.'

In their world visions, the imperial state is compelled to act imperially to save the world from illiberalism, and yet is never responsible for having created the conditions that require it to save the world in the first place because it was always, even when it was not, just being who it was.²¹

This thesis seeks to destabilize the dominant frameworks of humanitarian and US asylum narratives that unproblematically define migration as a problem to be regulated and controlled by the state. This framework depoliticizes not only the existence of abject migrants, but it expands the opportunities for the state to pursue policies of post-entry social control.²² I first want to re-engage the Cold War geopolitical frameworks that

²¹ Jeanne Morefield, *Empires without Imperialism: American Imperialism and the Politics of Deflection*, (New York: Oxford University Press, 2014), 3.

²² Daniel Kanstroom (2007) describes how many deportation laws and associated immigration laws are modalities of post-entry social control. Deportation policies "are not often directly connected to visa

initially distanced the US's imperial involvement in Haiti from official state recognition of the root causes of Haitian-US migration. This, I argue, illustrates what I term “historical blindness” to the legacies of colonial and imperial violence, the consequences of which are still felt today. By focusing the asylum-seeker or refugee as an apolitical, abject object to which the US state can appropriate protection based on the various state-defined legal statuses, we can expose the ways asylum and immigration policies are inextricably tied to understandings of US national identity and citizenship. In other words, I am less interested in the merit of Haitian migrants claims for refugee status, but rather the ways in which the differential and contradictory asylum policies work to reify global hierarchies, and reproduce patterns of American imperialism.

The “imperial narrative” not only engenders an interventionist political vision, but it constructs the contemporary truth “by intervening in the past in ways that intentionally misrecognize the state.”²³ Indeed, Morefield describes how since American liberalism relies both on the reproduction of its own identity rooted in ideas of liberal equality, individual freedom, and sovereign autonomy, and a narrative about its own moral and political exceptionalism, in turn rationalize imperial practices of hierarchy, discipline, dispossession, extraction and exploitation around the world.²⁴ I conceive of immigration and asylum policy as a key facet in this imperial narrative; through the normalization of a geopolitical policy towards Haitian migrants, American liberals responded to questions about their status and power with strategies that obscured the illiberality of the US's present and past record in Haiti.

issuance, admission, or immigration processes at all...this model would suggest that the millions of noncitizens among us, including long-term lawful permanent residents, are harbored subject to the whim of the government and may be deported for any reason” 6.

²³ Morefield, *Empires without Imperialism*, 3.

²⁴ *Ibid.*

A closer look at the history of US foreign policy in Haiti evidences the illiberal nature of the US involvement in Haitian internal affairs, and illustrates what Morefield describes as a liberal imperialism. Indeed, the US has been directly involved in the political and economic state of Haiti since the beginning of its statehood: In 1915, the US invaded following racial tensions that had threatened the extensive property investments of US businesses, and maintained its military occupation until 1934, its fiscal control until 1947.²⁵ Beginning in 1957, Haitian government and economy had been dominated by an oppressive and corrupt dictatorship under Francois Duvalier (Papa Doc) and later his son Jean-Claude Duvalier (Baby Doc). Despite well-documented governmental corruption and human rights abuses, the U.S. government has continued to subsidize the regime with generous loans and grants.²⁶ For example, during Papa Doc's brutal dictatorship President Kennedy exchanged US aid for infrastructure development in exchange for support in voting Cuba out of the OAS.

When Baby Doc took over in 1971, US-Haitian relations improved further and USAID significantly increased throughout the decade; significant economic investment prompted many to consider Haiti as the "Taiwan" of the Caribbean.²⁷ This military and financial support continued and increased during the Reagan administration. Like administrations before him, Reagan too used Haiti as a signpost of non-communist democratic development in the Caribbean region. Following Reagan's lead, congressional members across party lines threw their support behind the military-dominated Haitian government throughout the decade; the House Foreign Affairs

²⁵ Noam Chomsky, introduction to *The Uses of Haiti*, by Paul Farmer (Monroe, ME: Common Courage Press, 1994).

²⁶ Masud, Piloto, *From Welcome Exiles to Illegal Immigrants*, 113.

²⁷ Dupuy, *Haiti in the New World Order*, (Boulder: Westview Press, 1997), 40.

Committee confirmed Reagan's commitment to "maintain friendly relations with Duvalier's non-communist government."²⁸ Even when Duvalier lost significant popular support and was ousted in 1986, the administration and congressional foreign affairs committees continued a benevolent policy towards Haiti in order to secure its economic investments as well as its political strategy against Cuba. In 1988, USAID loans mandated Haiti's implementation of neoliberal reforms that included restrictions on import taxes, subsidies, and privatization across all economic sectors.²⁹ These reforms dramatically changed economic goals of the Haitian economy and the opportunities for the now landless Haitian farmers. The new USAID directives called for maximizing industrial production markets using cheap labor paired with the development of agricultural exports; this policy exacerbated issues of land scarcity as national and foreign agribusiness increasingly consolidated ownership of farmland.³⁰ Consequently, the people forced off their land by these policies migrated to crowded cities to work in factories. These economic transformations illustrate the direct repercussions of US-implemented bilateral trade relations in Haiti. The political regimes that pursued these US-sanctioned policies, including the regimes of the Duvaliers, ultimately exposed the Haitian economy to US market fluctuations; the introduction of US imports greatly undermined domestic manufacturers.³¹ While this economic environment primarily benefited US business interests, the limited access to land depressed the economy, led to widespread displacement of farmers, weakened labor demands, and curbed democratic

²⁸ Chomsky, introduction, 19.

²⁹ Dupuy, *Haiti in the New World Order*, 41.

³⁰ Chomsky, 20.

³¹ *Ibid.*

processes.³² Ironically, then, US intervention in Haiti led to the very kinds of illiberal policies they rhetorically opposed.

By 1990, a Haitian populist grassroots movement– the Lavalas – elected Jean-Bertrand Aristide on a platform of reform and empowerment for the poor. This moment of reform was brief, however, and by the September 1991, a military coup had ousted Aristide. During the following years of military rule, the US sidestepped the UN trade embargos and allowed US companies to continue business in Haiti.³³ Years of displacement stemming from economic restructuring combined with political unrest fueled unprecedented flows of migration to the US, and with it a dramatic increase in claims for asylum and refugee status. Even after the 1991 coup, and the ensuing violence and instability that rocked Haiti, the US continued their interdiction policy and deported more than 34,000 Haitians back to their military persecutors.³⁴ Indeed Masoud-Piloto points out how according to the standards of refugee and asylum as pronounced by both US policy makers and international protocols, immigration officers “arbitrarily and falsely labeled [Haitians] as economic refugees [and] denied the opportunity to claim political asylum.”³⁵ This exodus of “illegal immigration” coincided with the end of the Cold War and the changes in the ideology motivating foreign diplomacy. As the US navigated the new post-Cold War environment, concerns over economic investments throughout the Caribbean and Central America perpetuated various forms of economic imperialism, while surges of xenophobia solidified an overtly anti-immigration policy.

³² Ibid.

³³ Ibid., 28.

³⁴ Ibid., 130.

³⁵ Ibid, 130.

Many historians and legal scholars have sought to address why the US refused to recognize Haitians and other Central American as refugees while Cubans were greeted with an open door. This question begs a critical inventory of US foreign business and political intervention in the region, and centers on the paradox of the US's imperial foreign policy and restrictive and selective refugee policy. By affording Cubans refugee status, the US promoted the idea that Communist regimes were oppressive and illiberal. To do the same for Haitian asylum-seekers, however, meant that the US would have had to acknowledge the realities of the brutal, oppressive dictatorships of the Duvaliers. Moreover, such recognition would have exposed the extensive financial, political and military involvement in Haiti's domestic affairs that produced massive waves of emigration to the US in the first place.³⁶ That the US refused to recognize the illiberality of the repressive dictatorial regimes, and rather continued to support them financially, militarily and politically, speaks to Morefield's analysis of the liberal empire's deflective narrative strategies.³⁷ By mobilizing asylum policies that deflect from interventions in Haiti, the US as a first and foremost liberal state was able to situate itself in ways that simultaneously insisted upon the consistency of the imperial state's foundational and enduring liberal character, while deflecting from the its actual record of violence and illiberalism abroad.³⁸ As Morefield writes, "the nature of liberal imperialist justification in times of pressure and decline requires its devotees to develop historical and contemporary narratives of their empire's liberal identity sufficiently heavy enough to serve as a constant, reiterated counterweight to the necessary pull of the empire's ongoing

³⁶ MJ McBride, "Migrants and asylum seekers: policy responses in the United States to immigrants and refugees from Central America and the Caribbean," *International Migration* 37, no. 1, (1999), 296.

³⁷ Morefield, 17.

³⁸ *Ibid.*, 3.

illiberalism.”³⁹ Because these initial frameworks laid the ideological groundwork, later asylum and immigration policies did not prioritize or even address root causes of migration. This I argue not only ignored the imperial practices of the US abroad, perpetuating patterns of historical blindness or US exceptionalism, but also pushed further migration into the US—as was the case with Haiti.

³⁹ Ibid., 17.

SECTION III: RETHINKING ASYLUM AND IMMIGRATION POLICY AS SOCIAL CONTROL

From geopolitics to biopolitics: Repositioning asylum and immigration policies as modalities of social control

The end of the Cold War ended the geopolitical appeal of open-door asylum for Cubans and other migrants from communist countries.⁴⁰ Instead, major legislative reforms in the 1990s sought to align refugee and asylum policy with trends in immigration policy as a whole. This moment of major ideological changes in international politics coincided with a dramatic spike in immigration in the early 1990s, particularly from the Caribbean and Central America; extreme political and economic instability in Haiti (and throughout Central America) drove millions to migrate and apply for asylum in the United States.⁴¹ However, the 1965 Immigration Act, (with its liberal, egalitarian division of immigration quotas based on national origin) had set the quotas for Haiti and other Central American migration too low to realistically account for this spike in claims. Furthermore, widespread fear among the conservative ranks of the American public spread about the impending “waves” of uncontrolled immigration; this fueled public reception of increasingly restrictionist policies towards immigrants and refugees. Legislative reforms like Operation Gatekeeper and California’s controversial Prop 187 answered this political demand for restricting avenues for both legal and undocumented immigration. Indeed, the 1990s saw a dramatic increase in securitization rhetoric and

⁴⁰ Hamlin, “Illegal Refugees.”

⁴¹ Ngai, *Impossible Subjects*, 227. (See also: Joseph Nevins, *Operation Gatekeeper*, (2010); Daniel Kanstroom, *Deportation Nation* (2007) for a more in-depth account of the changing geography and demographics of immigration and refugee flows to the United States.

militarization of the border, despite widespread doubt about the effectiveness of the policies and evidence that proved them fiscally and ethically questionable.⁴²

While the 1980 Refugee Act had sought to align refugee standards with international humanitarian norms, its only lasting effect was to separate the definition of refugee from its original connection with communist countries.⁴³ Though the 1980 Act mandated case-by-case hearings, the state made no institutional changes in order to address the dramatic increase in bureaucratic responsibility and casework. This greatly stressed the already overwhelmed INS and created a backlog in casework that increased the wait time for asylum applicants; the government did not address this backlog until the 1996 IIRIRA.⁴⁴ Still, the 1996 legislative reform merely solidified existing anti-immigration narratives that framed asylum as merely an alternative route for immigrants to gain entry into the US.⁴⁵ The 1996 legislation thus paved the way for expanding securitization policies of detention, interdiction and deportation. It also increased barriers to applicants: time limits and criminal history became grounds for exclusion and the standards for applicants to prove their “credible fear” or “undue hardship,” all severely limited existing avenues for asylum.⁴⁶ Unlike the Cold War policy that gave differential treatment for Cuban asylum-seekers, this policy of deterrence was universally applied to virtually all asylum-seekers in the 1990s.⁴⁷ Simply put, asylum was no longer needed as a geopolitical tool to embarrass or critique communist regimes, and so was abandoned as a policy framework altogether.

⁴² Joseph Nevins, *Operation Gatekeeper and Beyond: The War on 'Illegals' and the Remaking of the U.S.-Mexico Boundary*, (New York: Routledge, 2010).

⁴³ McBride, “Migrants and Asylum-Seekers,” 290.

⁴⁴ Hamlin, “Illegal Refugees.”

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Ibid, 294.

At the same time, Nativist and pro-nationalist groups preyed on public fears about immigrants from non-European countries disrupting dominant racial and social frameworks.⁴⁸ Daniel Kanstroom argues that this kind of racialized nativism, though long harbored in American public discourse, resurfaced amid new security concerns in the 1990s. Scholars across disciplines have explored the far-reaching implications of post-9/11 security concerns on the positioning of immigration as a biopolitical tool for social control.⁴⁹ In 2003, the US transferred authority over immigration and asylum policy from the INS to the Department of Homeland Security, symbolizing the growing national perception of asylum and immigration as a state security concern and galvanizing border militarization as a fiscal prioritization in Congress. This momentous transition institutionalized immigration policies of deterrence: detention, deportation, and border militarization, marked by expanding presence of border patrol and surveillance technologies, have since become *the* dominant framework for dealing with the immigration “problem.”⁵⁰

In 2005, the conservative congress passed the REAL ID Act, designed to “crack down on illegal immigration,” which significantly expanded restrictions on seeking asylum by increasing requirements for identification and burden of proof of “reasonable fear” on asylum-seekers.⁵¹ As these legislative and administrative changes become cemented into unquestioned daily routines of surveillance and militarization, state and national law enforcement continues to introduce stricter policies to delineate who can seek access to membership and citizenship and who cannot, in addition to harsher

⁴⁸ Kanstroom, *Deportation Nation*.

⁴⁹ Kanstroom, 8.

⁵⁰ Hamlin, “Illegal Refugees,” 51; See also Nevins, *Operation Gatekeeper (2010)*.

⁵¹ Hamlin, 52.

punishments for those that violate these laws. I want to focus on the implications these policy directives had on bolstering immigration as a biopolitical tool, and on conceptions of US nationalism and citizenship. In other words, I am less interested in the deservingness of asylum-seekers or the legitimacy of their claims, but rather the ways the paradoxical construction of US liberal nationhood, patterns of foreign intervention, and restrictive immigration and immigration policy share ideological roots and influence one another. The rest of this section draws from the recent literature for new theorizations of how current immigration and asylum policy are forms of post-entry social—and biopolitical—control.

What I want to focus on is how the public and political discourse on immigration (and by default, asylum) dramatically shifted from a foreign policy priority, to one of securitization, defense, and state sovereignty.⁵² William Walters describes this evolving relationship between citizenship, state and territory as “domopolitics.”⁵³ Domopolitics as a policy framework relies on a conception of international order as “a space of homes;” ideas about identity and belonging, community and conceptions of “us,” then, are inevitably juxtaposed with the need to protect this home from outside “others.”⁵⁴ Walters argues that outsiders (migrants and asylum-seekers) seeking entry, then, are not only uninvited but perceived as a threat to “our” property and territory. This domestic discourse on immigration, one that insists upon the vulnerability of American borders to

⁵² Ngai, 2004; Kanstroom, 2007; Nevins, 2010; and Walia, 2013.

⁵³ William Walters, “Secure borders, safe haven, domopolitics,” *Citizenship Studies* 8 (2004): 237-260.

⁵⁴ Walters, “Secure borders,” 241.

“illegal” and therefore imagined criminal and dangerous migrants, mobilizes logics of sovereignty as a way for states to justify exclusionary practices.⁵⁵

Wendy Brown identifies certain anxieties about state sovereignty that motivate the increasing proliferation of walls and the exclusionary immigration and asylum laws that accompany them. Brown also views America’s response to the different kinds of perceived violence as one of securitization, as increasingly globalized flows of capital, ideas and people threaten the imagined territorial and social boundaries.⁵⁶ In this way, Brown extends Walters’ conception of domopolitics by incorporating how ideologies of state sovereignty motivate not only state actors but also how individual national subjects construct their own identities. In other words, the state’s interest in closing and securing national borders is in fact “fueled by populations anxious about everything from their physical security and economic well-being to their psychic sense of ‘I’ and ‘we.’”⁵⁷

Additionally, geopolitical policy frames that dominated the Cold-War era set the precedence for more invasive post-entry social control. Ngai argues that this kind of liberal nationalism in which immigration policy developed, “conjoined a pluralist view of American domestic group relations and a nationalist privileging of the U.S. nation-state’s geopolitical and economic position in the world.”⁵⁸ The frameworks that made unauthorized or illegal immigration a policy problem and instigated numerical limits on immigration are echoed in current biopolitical practices of the state. It is important to draw this connection because this same line of liberal thought continues to fuel post-racial multiculturalism that limits the liberal democratic political debates from

⁵⁵ Kanstroom, 2007; Ngai, 2004; Nevins, 2010; and Walia, 2013.

⁵⁶ Brown, *Walled States, Waning Sovereignty*, (New York: Zone Books, 2010), 39.

⁵⁷ Brown, *Walled States*, 69.

⁵⁸ *Ibid.*, 233.

substantively dealing with issues of racial inequality.⁵⁹ This line of thought, I argue, resonates also with the liberal state's inability to substantively address root causes of migration within its current policy frameworks. Many of the critiques of current frameworks, which explore how racism is imbued in immigration policy, focus on daily practices on the US-Mexico border. For example, Wendy Brown describes the US-Mexico border has become a kind of theater of enforcement crisis, rendering Mexican and Central American migrants as distinctive national origin and racialized name for migrant illegality.⁶⁰ Others look at the controversial militarization build-ups or practices of police profiling, or immigrations alignment with a racist criminal justice system.⁶¹ I argue for an extension of these critiques to complicate humanitarian notions of refugees, in order to see the ways in which refugee identities are imbued in the same racialized notions of citizenship and national belonging.

I turn to Daniel Kanstroom to deepen this analysis through a close examination of the deportation policy as a form of post-entry control, masked by the logic of state sovereignty. Deportation and associated post-entry social control and racist laws are deeply tied to racial/ethnic formation in the US; indeed, current policies resonate with earlier colonial “warning out” systems of the early late 1800s and 20th century.⁶² These explicitly racist and exclusionary laws (like the Chinese Exclusion act or the limited quota systems of 1965) “all involved the application of majoritarian power—through legal structures and with the use of force—against a particular group of people, largely

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ See Joseph Nevins, 2010; Daniel Kanstroom, 2007; Juliet Stumpf 2006; Cunningham-Parameter 2011; McLeod 2012; and Walia, 2013.

⁶² Kanstroom, *Deportation Nation*.

identifiable by race or nationality, to compel their removal from one place to another.”⁶³ Indeed, the newest articulation of “domopolitics” can be traced to policies of systemic exclusion and institutional racism. Certainly, then, US immigration policy has always been about racial formation of the US nation. It is this blurring of state securitization and broader visions to control social deviants and the socio-ethnic make up of the population that distinctly mark asylum and immigration policies as biopolitical.⁶⁴

Asylum and immigration policies have always begun from certain legal and political classifications of migrants that go beyond geographic origin, and are instead highly circumstantial and racialized depending on the state’s various foreign interests and investments—as I have shown through the example with Haiti/Cuba. At each stage in the process of defining who is deserving of refugee or asylum status and who is not, the state engages in mobilizing certain regimes of truth in order to justify these classifications. Foucault’s theorization of biopolitics lays the groundwork to see how the monopoly states’ have over the definition of refugee/asylum-seeker/migrant categories affords the state disproportionate concentration of power.⁶⁵ In the context of migrants seeking asylum in the US, the state defines the bounds of membership and requirements for political recognizability.

Under current agency guidelines, decades after so-called liberal asylum legislation that called for protection of vulnerable populations, when crossing the US-Mexico border, refugees and asylum-seekers are often unrightfully placed in detention and deportation proceedings because of the inconsistency and poor regulation of BIA

⁶³ Ibid., 7.

⁶⁴ Ibid.

⁶⁵ Foucault, Michel. First lecture, *The Birth of Biopolitics, Lectures at the Colleges de France, 1978-1979*, 1-22.

procedures.⁶⁶ Furthermore, immigration lawyers discourage many migrants to apply for asylum if they are from Central America or Mexico. This is because the BIA rarely accepts asylum applicants from these countries.⁶⁷ The BIA is first and foremost a political agency, and the fear among many policy-makers is that granting asylum to a certain nationality group will induce a massive surge from applicants with similar backgrounds. If asylum-seekers chose to fight for their status, they could be placed in mandatory detention by the US government until their case is heard, a process that can take years to complete. For those who are willing to fight for legal asylum status, they must meet strict standards to prove their fear is ‘credible,’ and their persecution is because of their membership in a specific, US-recognized social group. Furthermore, the state does not provide asylum-seekers pursuing their case with public defenders, yet are under current policy to appear before a judge while a US federal prosecutor fights the case against their case. These undue burdens placed disproportionately on asylum seekers—including those that might not necessarily be categorized by UNHCR as refugees—have raised the attention of the UNHCR and its US-affiliate, the Women’s Refugee Commission.⁶⁸ Indeed in the last decade the Women’s Refugee Commission expanded its mission to work on issues on the US-Mexico border. On their website, the WRC writes:

Our Detention and Asylum Program is collaborating with the UN agency for refugees and other organizations to assess current practices, highlight best practices and make recommendations for policy changes and training. We are one of the few organizations working to address the conditions of confinement or

⁶⁶ Butera, Emily and Katharina Obser, “Migrant Women and Children at Risk: In Custody in Arizona,” *Women’s Refugee Commission*, October, 2010.

⁶⁷ U.S. Department of Justice, Executive Office for Immigration Review, “Asylum Statistics FY 2009-2013,” Office of Planning, Analysis and Technology, Immigration Courts. <http://www.justice.gov/eoir/eoia/FY2009-FY2013AsylumStatisticsbyNationality.pdf>.

⁶⁸ Women’s Refugee Commission, “Border Patrol Under Fire,” *Women’s Refugee Commission*, accessed April 19, 2014, <http://womensrefugeecommission.org/border-patrol-under-fire>.

detention in short term facilities run by U.S. Customs and Border Protection. Civil society does not have access to these facilities and governmental self-monitoring is inconsistent.⁶⁹

That the UNHCR, of which the US is a major ideological supporter through its liberal politics, is concerned about the well-being of the asylum-seekers from Central American, Mexican and Caribbean in particular, testifies to the severity of the US immigration policies. And, that the largest migrant groups are predominantly from Central America, Mexico and the Caribbean, signals an examination at the ways the influx of migrants—regardless of their legal status—are increasingly racialized as a monolithic group of “illegals,” distinctly other. Refugees, in this sense, in US policy towards racialized groups of Central American/Mexican national subjects, are always tied to legacies of racial formation in immigration policies as well as the current waves of Nativist and xenophobic sentiments. I next link this process of racialized exclusion to the imperial and colonial logics imbued in popular and traditional conceptions of US nationalism.

Border Imperialism and Reflections on US Nationalism

In the context of immigration policy, the state positions itself as the natural, sovereign and legitimate arbiter of the power to regulate who is worthy of the appropriate legal status and who is not. I argue that current immigration and asylum policies privilege the state through certain discourses about American nationhood and citizenship that reproduced logics of colonialism, imperialism and racism. Additionally, these discourses ultimately position the state as exceptional, and therefore render the US’s blatant violation of humanitarian principles (like neutrality and impartiality) irrelevant. After all, colonial logic relies on “the production of boundaries and hierarchies, zones and

⁶⁹ Ibid.

enclaves,” including “the classification of people according to different categories,” and “the manufacturing of a large reservoir of cultural imaginaries.”⁷⁰

Immigrant activist and scholar, Harsha Walia contests this colonial logic and theorizes “border imperialism” as a better way to describe contemporary immigration policy and its complex power dynamics. Rather than conceiving of immigration as a normative domestic policy issue, the lens of border imperialism “focuses the conversation on the systemic structuring of global displacement and migration through and in collusion with capitalism, colonial empire, state building, and hierarchies of oppression.”⁷¹ In this context, the violence associated with border and immigration policies (including asylum and refugee policy) “is a direct result of the violence of colonial displacements, capital circulations, labor stratifications in the global economy, and structural hierarchies of race, class, gender, ability, and citizenship status.”⁷² Border imperialism thus accounts for “the role of Western imperialism in dispossessing communities in order to secure land and resources for state and capitalist interests, as well as the deliberately limited inclusion of bodies into Western states through processes of criminalization and racialization that justify the commoditization of their labor.”⁷³ In a similar way, Andrea Smith explains that immigration and asylum policy is connected to legacies of settler colonialism that “ultimately depends on an exclusivist concept of nation based on control and ownership of land and territory that is demarcated by borders.”⁷⁴ Both Smith and Walia’s conception of immigration/asylum/border politics acknowledges the responsibility of the liberal

⁷⁰ Mbembe, “Necropower,” 26.

⁷¹ Harsha Walia, *Undoing Border Imperialism*, (Washington D.C.: AK Press, 2013), 8.

⁷² Walia, *Undoing Border Imperialism*, 16.

⁷³ Walia, 39.

⁷⁴ Andrea Smith, preface to *Undoing Border Imperialism*, by Harsha Walia (Washington, D.C.: AK Press, 2013), x-xii.

state—and its objectives to maintain political-economic hierarchies it seeks to maintain—in the phenomenon of forced displacement around the world.

Border imperialism is partially grounded in Andrea Smith’s critique of white supremacy as a major political framework guiding US policy. Her essay “Three Pillars of White Supremacy” accounts for the ways in which liberal notions of citizenship, nationhood, and cultural imaginaries are inextricably connected to legacies of imperialism, colonialism, and capitalist exploitation. She argues that slaveability and anti-black racism applies a racial hierarchy to the system of capitalist commodification that positions Blackness as property; today that slaveability has been translated into criminalization.⁷⁵ The logic of genocide and its assumption that indigenous peoples *must always* be disappearing serves as a second pillar of white supremacy, and is an anchor for colonialism. The last pillar, the logic of Orientalism, follows that Western states mark “certain peoples or nations as inferior and as posing a constant threat to the well-being of empire.”⁷⁶ Smith posits that Orientalism indeed is evidenced in the anti-immigration movements: such logic justifies state to claim a constant state of war in order to protect against enemies.⁷⁷ The production of a criminalized and outlawed “other,” then, is fundamental to the construction of appropriate forms of US citizenship. When these norms are invoked, they further degrade those populations excluded from the normative bounds of American social membership. In this way, border imperialism helps to contextualize Morefield’s thesis about liberal imperialism within the specific context of asylum policy. This perspective is particularly helpful for conceiving of the links between

⁷⁵ Andrea Smith, “Heteropatriarchy and the Three Pillars of White Supremacy,” in *Color of Violence: the incite! anthology*, ed. INCITE! Women of Color Against Violence, (Caimbridge: South End Press, 2006): 66-73.

⁷⁶ Smith, “Heteropatriarchy and the Three Pillars,” 68.

⁷⁷ Ibid.

contemporary economic exploitation, colonial dispossession of land, and criminalization as a form of social control.

In the same vein, Juliet Stumpf argues that the state's interest in restricting avenues for immigration and asylum are inevitably tied to the state's motive to regulate social membership.⁷⁸ Using legal classifications to mark desirable national subjects via the application of asylum or legal immigration status, then, the state is able to enact a direct control over character and make up of the social and political body.⁷⁹ This process of exclusion is ultimately as much about the quality of membership for the national community as it is about the unworthiness of rejected migrants.⁸⁰ Stumpf argues further that the notion of migrants necessarily reproduces an exclusive understanding of national identity, even pro-immigration camps may be problematic for the ways they mobilize narratives about "good" immigrants and appeal to the same normative values of citizenship, while simultaneously demonizing deviant or "bad" migrants, in order to increase their own political legitimacy in the US.⁸¹

Furthermore, discourses of US nationalism often follow a narrative that situates itself as the telos of modernity and civilization, and thus immune to backwards ideas like colonialism or imperialism. This self-image, according to Butler, induces a kind of immunity to, and regulates public affect and responsiveness to state-sponsored and inflected violence abroad.⁸² In this way, while US national subjects may feel horror or outrage to certain forms of violence, that affective response is ultimately and "implicitly

⁷⁸ Juliet P. Stumpf, "The Crimigration Crisis: Immigrants, Crime, and Sovereign Power," *American University Law Review* 56 no. 2 (2006): 367-419.

⁷⁹ Stumpf, "Crimigration Crisis."

⁸⁰ Ibid.

⁸¹ Cristina Beltran, *The Trouble with Unity: Latino Politics and the Creation of Identity*, (New York: Oxford University Press, 2010).

⁸² Judith Butler, *Frames of War*, (London: Verso, 2009), 50.

divided between those for whom we feel urgent and unreasoned concern and those for whose lives and deaths simply do not touch us, or do not appear as lives at all.”⁸³ Butler describes this phenomenon as a “schism” inherent to the identity of the US national; the schism thus allows the national subject to assume modes of defense and displacement in the name of sovereignty “to defend a border in one instance and violate it in another with impunity.”⁸⁴ In other words, the schism helps to explain how on the one hand, the US can pursue highly interventionist and imperialist foreign policies, while on the other hand simultaneously reacting with policies of deterrence and exceptionalism towards increasing migration flows. This schismatic conception of US nationalism echoes Morefield’s discussion of the US as a liberal empire. Both analyses foreground a kind of exceptionalism that excludes US asylum policy from liberal standards of equality and impartiality and grant the state sweeping power to set the standards for membership and citizenship in ways that appear natural or within the bounds of sovereign rule.

This schismatic conception of American nationalism, according to Butler, functions through state mechanisms that regulate affective and moral responsiveness through prevailing socially-constructed norms of recognizability.⁸⁵ When states mobilize nationalism as a framework through which to interpret and respond to forced migration, then, they sanction the differential distribution of grievability among “us” (and those who are like us) and others marked by their location outside of imagined social and national boundaries.⁸⁶ To a certain extent, then, US foreign policy makers justify intervention through similar discourses of US exceptionalism. Other populations deemed outside of

⁸³ Butler, *Frames of War*, 50.

⁸⁴ Butler, 48.

⁸⁵ *Ibid.*, 50.

⁸⁶ *Ibid.*

the national community are merely either for or against us; and, those deemed too distant from “us” and our identity and values are ultimately targeted as enemies of states, not worthy of grievability.⁸⁷ Violent intervention or economic exploitation do not register among the population of insiders because the violence against the outsiders, others, or enemies is morally justified through dominant state-centric conceptions of humanitarian ethics.⁸⁸ In other words, dominant frameworks of nationalism and exceptionalism rooted in this schism, justify the enduring historical blindness to the US’s contribution to “insecurity” abroad via imperial foreign policies. It also allows the state to continue its illiberal and restrictive asylum and immigration policies. While Butler hopes to deconstruct this binary of “us v. them” and replace it with a new conception of global responsibility rooted in a social ontology of interdependence, I am mainly interested in using her analysis to understand how nationalism can rationalize state violence and exclusion by mobilizing “us v. them” binaries. The state’s ability to dictate immigration policy, and control the movement and differential treatment of non-national forced migrants (others), exposes the ways the state uses biopolitical tools like systems of knowledge production via its authority over legal classifications of political/economic conditions and meanings of asylum.⁸⁹

It is this ability to distinguish national subjects as grievable, and categorize racialized outsiders as illegal and criminal, that allows the US to pursue both an

⁸⁷ Ibid, 34.

⁸⁸ Ibid, 162.

⁸⁹ Stemming from a new rationalization of governmentality based in new understandings of natural and scientific logic found in societies and the market, Foucault (1978) describes how states developed *dispositifs*, or institutional and intellectual instruments, and government technologies as ways to institutionalize scientific regimes of truth that reproduce the concentration of biopolitical power for the state. This new governmental reason emphasized the regulation and control of land (territory) and populations, and had implications for new conceptions of subjects’ freedom, agency, ideas of justice, and the limitations of what government actions can/will be.

aggressive foreign policy objectives *and* refuse entry or asylum to those fleeing from US-exacerbated economic and political instability. By situating current trends of border militarization and increasingly restricted access to avenues of asylum within broader political-geographical trends, immigration policies are inextricably “involved [with] the construction of the United States as a nation-state and the production of the illegal immigrant as a threat to the country’s socio-cultural and political fabric.”⁹⁰ In other words, through immigration, asylum, and border enforcement policies, “the state helped to create new ‘ways of seeing’ among the populations affected by these developments, involving perceptions of territory and social identities, as well as their associated practices. These new ways of seeing were and still are inextricably tied to evolving and hierarchical notions and practices regarding race, class, gender, and geographic origins—especially as they relate to dominant understandings of U.S. nationhood.”⁹¹ Thus immigration and asylum policies are not only deeply political, but intrinsic to the ways the state regulates citizenship and membership along lines of race, class, gender, and geographic origins. And, discrimination or differential treatment along geographic lines is therefore deeply biased, and arguably antithetical to the liberal ideologies masqueraded in public understandings of American nationalism as founding truths of the democratic US state. Indeed, the contemporary liberal discourse is imbued in the domopolitical framework that envisions illegal or undocumented migrants and asylum-seekers as a code word for ethno-racial hatred towards unwanted immigrants.⁹² In this way, asylum and immigration policies are as much connected with geopolitical anxieties, as they are with Nativist and xenophobic attitudes.

⁹⁰ Nevins, *Operation Gatekeeper*, 11.

⁹¹ Nevins, 11.

⁹² *Ibid.*, 15.

By positioning immigrants and asylum-seekers as inherently subversive, the state's securitization and defense rhetoric becomes justified in order to enact the laws that distinguish or filter among the good and bad immigrants. Because these definitions necessarily implicate processes of racial formation and other forms of social hierarchy, as well as reproducing colonial logic, the geopolitical and biopolitical immigration/asylum/refugee frameworks continue to guide policy that promotes both international imperialism and strict sovereign regulation of territory and population. Next, I seek to explore the connections between the assumptions and implications of US policy frameworks and those made by the international humanitarian order.

SECTION IV: DISABLING THE LIBERAL EMPIRE: THE LIMITS OF HUMANITARIANISM

*Power has managed to subvert the language of violence and war to serve its own claims.*⁹³

The scope of state power to regulate and maintain political-economic hierarchies goes beyond discriminatory domestic immigration frameworks in the US. Rather, it is a *global* phenomenon; one that Nevins argues is “embedded in the globe’s very political-economic fabric.”⁹⁴ In conceiving of alternatives to these domopolitical frameworks, many refugee advocates seek to expand humanitarian ethics into US policy.⁹⁵ However, a growing body of scholarship denouncing humanitarianism for the ways in which it reifies “the ideological power of nation-statism” via the power of the receiving state to define the parameters for refugee and immigrant identity.⁹⁶ Contributing to the limits of humanitarianism further is the inability for state-actors and refugee benefactors to recognize the legacies and consequences of liberal imperialism. Indeed Nevins writes, “the injurious implications of limited mobility and residence across and within national boundaries for Third World-origin peoples across and within the boundaries of the globe’s prosperous territories are rarely noted.”⁹⁷

International humanitarian frameworks then rely on a conception of international order based on nation-states, which allows states to decide on who can and cannot cross their borders. In other words, sovereign rights of the nation state continue to underpin the

⁹³ Mahmood Mamdani, “The New Humanitarian Order,” *The Nation*, Sept. 29, 2008, 20.

⁹⁴ Nevins, *Operation Gatekeeper*.

⁹⁵ For its US policy recommendations, the WRC refers to the following report: Refugee Council USA, “U.S. Humanitarian, Refugee, and Asylum Policy: Recommendations and Actions for the Obama Administration and the 111th Congress,” December 2008.

<http://www.rcusa.org/uploads/pdfs/RCUSA%20Briefing%20Book%2012-1-2008.pdf>

⁹⁶ Nevins, 208.

⁹⁷ *Ibid.*

state's unquestioned power to differentially distribute and restrict undocumented migrants and refugees' access to resources, freedom of mobility, and political recognition. This kind of differential allotment of mobility and resources strengthens existing global hierarchies that situate Third-World and previously colonized states at the bottom, and wealthy liberal empires securely at the top. Joseph Nevins argues that border militarization and the larger immigration infrastructure demonstrates not only US exceptionalism and imperialism, but describes it as a cog in a system of global apartheid. He writes:

Just as in South Africa of old, where the state dictated where the majority of its inhabitants (black South Africans) could live and work, contemporary regulation of international mobility and residence is inextricably tied to these inequalities. Thus they draw upon and reproduce systematic violence and dehumanization.⁹⁸

Indeed, the state-sanctioned punishments for violations of state rules on mobility and residence based on geographic origins are themselves linked with racial distinctions.⁹⁹ For Nevins, if movement is power and the states that control the ability of migrants and refugees to cross freely are simultaneously afforded the privilege of allowing unequal access to an influence over the economic and political resources by limiting access to work, services, and legal status. In this way, by privileging the citizen, the state is reproducing the invisibility (denial of legal status), silence (no rights or due process in securitization policies), and outright violence (policies of repatriation and deportation of asylum-seekers). Recognition of the extensive discrimination and abuses occurring at the site of the US-Mexico border are contributing to a growing critique of domopolitical policies. This thesis seeks to stage an intervention into this literature by asking how asylum and refugee discourses are aiding state in its pursuit of domopolitics.

⁹⁸ Ibid., 207.

⁹⁹ Ibid., 206.

While I have shown in this paper the ways in which US asylum policy has always been influenced by political and socio-economic motives of the state, international humanitarian frameworks that allow states to define and regulate movement of refugee bodies are equally problematic. This is important because refugee advocates in the US and internationally still promote humanitarian principles as ideological motivation for their work. Indeed, since the 1990s, the humanitarian sector of international organizations has grown immensely; this kind of investment in principles of humanity and impartiality, neutrality and active distancing of humanitarian action away from the realm of nation-state politics, in effect obscures the ways in which states help to produce political and economic climates that drive massive displacement in the first place.

Mamdani describes how the period of postwar decolonization solidified state sovereignty as a global principle of relations between states, while the end of the cold war ushered in a new international humanitarian order that “promises to hold state sovereignty accountable to an international human rights standard.”¹⁰⁰ Mamdani argues this shift from international law to international rights is significant for the ways it allowed states to frame humanitarian intervention as apolitical. While “state sovereignty is still the effective currency of international relations,” and citizenship remains the limiting factor in political visibility, Mamdani argues that international humanitarian’s focus on humanity ignores the political privilege afforded with citizenship. In this sense, the new language of human rights does not construct refugees or asylum-seekers as rights-bearers, but rather beneficiaries that the state has a moral obligation to protect. This refusal to consider the implications of lacking citizenship or political recognizability for

¹⁰⁰ Mamdani, “The New Humanitarian Order,” 18.

those on the lower rungs of international racial, political, and economic hierarchies, is severely limiting policy reform that accounts for the complex roots of forced migration.

International refugee organizations and institutions for refugee protection align with humanitarian principles of impartiality, neutrality, humanity and independence from the political; uncovering the legacies of state imperialism, however, quickly reveal the paradox of how deeply political humanitarian work is. Michael Barnett traces the emergence of humanitarianism in the West and the ways geopolitics, capitalism, and ideologies of ethics shaped the global environment in which humanitarianism operated. He identifies three stages of humanitarianism defined by three overarching forces: forces of destruction/violence, forces of production/economy, and forces of protection/compassion animate the development of humanitarianism. They are (1) imperial humanitarianism classified by forces of colonialism, commerce and civilizing missions, (2) neo-humanitarianism classified by nationalism, development, and sovereignty, and finally (3) liberal humanitarianism, classified by forces of liberal peace, globalization and human rights.¹⁰¹

Various forms of Western paternalism and patterns of imperialism emerge as ideological foundation for contemporary liberal frameworks of global peace and security, globalization, and human rights. Humanitarian organizations and their international institutions are now important components in most state -and peace-building missions, and are often closely aligned with military objectives.¹⁰² Nyers attributes this convergence to the overall ambiguity of humanitarian values and objectives, which

¹⁰¹ Barnett, *Empire of Humanity: a History of Humanitarianism*, (Ithaca: Cornell University Press, 2011).

¹⁰² Barnett, *Empire of Humanity*.

ultimately justifies a wide range of contradictory activities.¹⁰³ For instance, “international voluntary agencies providing emergency food and medical aid are designated as being humanitarian actors; yet state military action—often of a most grizzly nature—also has been justified as being of a humanitarian character, as we had seen in the 1999 NATO bombing of Kosovo and Serbia.”¹⁰⁴ Or, think of the relationship between the US and Haiti and the ways in which the US pursued intervention policies that increased forced displacement, while at the same time enforced militarization and criminalization against those very migrants that sought refuge in the US. Indeed, military objectives and humanitarian frameworks share a vision of world order or peace that depends on the formation of strict boundaries and sovereign nation states. The problem, however, is that this view of world order perpetuates the liberal empires atop the global hierarchy that they in fact constructed through the discrimination and exploitation of others based on racial and geographic distinctions. Indeed, Nyers explains that the ideological base of humanitarianism is inherently contradictory from the start because of the range of “ethical possibilities inextricably connected to ongoing violent performances that serve as an important condition of possibility for sovereign political spaces and identities.”¹⁰⁵ Therefore, all humanitarian claims of neutrality and impartiality must be situated in relation to the political discourses about state sovereignty.¹⁰⁶

For example, although the WRC is now paying attention to the US-Mexico border as a site of humanitarian concern, it still entirely ignores the repercussions of US imperialism as contributing to the problem of refugees. While the WRC has made strides

¹⁰³ Nyers, *Rethinking Refugees*, 28.

¹⁰⁴ Nyers, 28.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

by expanding the scope of their research and advocacy to include human rights abuses faced by migrants crossing the US-Mexico border—regardless of refugee status—the discursive frameworks still obscure the role of the nation-state in producing insecurity abroad. In addressing the causes of migration, WRC maintains the distinct separation between economically motivated migrants and asylum-seekers fleeing violence perpetrated by gangs, illegal non-state actors, and domestic abuse.¹⁰⁷ By privileging a humanitarian framework that reproduces the binary between migrant and refugee or asylum-seeker, these international organizations deny the economic and political violence and resulting instability perpetrated by the liberal empires like the US. In other words, though the WRC might speak against the policies of detention or deportation of family members, or the risks Central Americans face when crossing the US-Mexico border, their overall position continues to deny the US’s role in producing that insecurity in the first place. Furthermore, the disconnected legacies of US imperialism and exceptionalism allow the US to promote itself as a world leader of liberal democracy.

In the same vein, the UNHCR explains the driving forces of refugees and other forced migration from Central and South America is a result of “violence by illegal non-State actors,” in particular citing criminal entities that emerged after demobilization.¹⁰⁸ The UNHCR lists other possible causes of increasing displacement, including territorial control struggles in Colombia, criminal entities, and the growing incidence of gang violence in Central America.¹⁰⁹ However, academics studying displacement and

¹⁰⁷ “Migrant Rights and Justice: On the Border.” Women’s Refugee Commission, <http://womensrefugeecommission.org/programs/migrant-rights/on-the-border>.

¹⁰⁸ “2014 UNHCR country operations profile – Americas.” *Migrant Rights and Justice*, UNHCR, <http://www.unhcr.org/pages/4a02da6e6.html>.

¹⁰⁹ “2014 UNHCR country operations profile – Americas.” *Where We Work*, UNHCR, <http://www.unhcr.org/pages/4a02da6e6.html>.

migration have shown how neoliberal structural adjustment programs promoted by international financial institutions and Western democracies, drastically changed the economic opportunities for Central Americans in their home country leading to the increase in violence and instability.¹¹⁰ Emerging theorizations of border imperialism are thus exposing the limits of humanitarian divisions between refugees and migrants. Walia argues that the state in fact “creates the political and legal framework that protects private property,” therefore revealing a critical connection between “the Western state and capitalism, with the state serving as a key instrument to accumulate capital.”¹¹¹ This suggests a close alliance between international political and economic hierarchies. Hence, through processes of border imperialism, the state “is *evolving* to continue to meet the needs of expansion through more flexible means of governance and accumulation.” Capitalism, and more specifically neoliberalism, requires precarious and exploitable work force to facilitate capital accumulation; border imperialism, then, and its imbued violence against noncitizens ensures such labor flexibility and exploitability.¹¹² Revisiting border imperialism, then, helps to contextualize the role of global capitalism in the production of migrants and refugees and asylum seekers. Walia argues that global capitalism necessitates border imperialism: “the entrenchment and reentrenchment of controls against migrants, who are displaced as a result of the violences of capitalism and empire,

¹¹⁰ David Harvey, *A Brief History of Neoliberalism*, (New York: Oxford University Press, 2007); Douglas S. Massey and Patricia Fernandez-Kelly, “Borders for Whom? The Role of NAFTA in Mexico-U.S. Migration. *Annals of the American Academy of Political and Social Science* 610 (2007), 96-118; and Allegra M. McLeod, “The U.S. Criminal-Immigration Convergence and its Possible Undoing,” *American Criminal Law Review* 105 (2012).

¹¹¹ Walia, *Undoing Border Imperialism*, 47.

¹¹² Walia, 46.

and subsequently forced into precarious labor as a result of state illegalization and systemic social hierarchies.”¹¹³

In these ways and more, these humanitarian frameworks actually allow for states to perpetuate social-political-economic instability abroad, while simultaneously mobilizing humanitarian principles that distance their work from the realm of politics. This allows them to work *with* states to implement policies and fund humanitarian assistance. Not only do they then ignore their own responsibility for the way illiberal and imperial legacies abroad shaped the global hierarchies atop which they sit, but they strengthen them as well. This paradoxical relationship echoes the kind of schism that Butler categorizes as symptomatic of US nationalism. It is also a similar position to the paradoxes of liberal imperialism presented by Morefield. Nyers explores this kind of “schism” or contradictory nature of humanitarianism in the positions taken by the International Committee of the Red Cross. For example while the organization claims to hold a high standard of impartiality and political neutrality, it has always subscribed to a “conception of humanitarianism that cannot help but be implicated in a field of political relations.”¹¹⁴ The ICRC is particularly implicated in projects of military intervention, often entering a post-conflict region with the cooperation of Western military powers to offer protection for aid workers.”¹¹⁵ Nyers notes that this kind of humanitarian ethics ignores the ways that its statist assumptions and “spatial and identational practices that serves as

¹¹³ Ibid, 38.

¹¹⁴ Nyers, *Rethinking refugees*, 29.

¹¹⁵ Nyers, 29.

its condition of possibility” run the risk of “reproducing violent political relations that it claims to be resisting, not perpetuating.”¹¹⁶

Furthermore, humanitarian discourses frame discussions of refugees in terms of “crises” that states must ban together to solve. Nyers identifies that humanitarian organizations reinforce this normative framework by defining refugeeness as an episodic, temporary problem that ultimately can be solved by bringing the stateless *back* into order.¹¹⁷ Order in this way is defined by an international system of states in which citizenship (with the assumption of national belonging) is the only authentic political identity. For example, while acknowledging that migrants risk their lives “every day in desperate attempts to find safety or a better life,” the UNHCR still maintains its mission is to protect those refugees and asylum-seekers tangled within these greater migration flows.¹¹⁸ These crisis frameworks rely on certain systems of classification that positions the refugee as a marker of instability, chaos, and induces a sense of risk to the otherwise ordered system of nation-states. Indeed Nyers writes that humanitarian organizations actually privilege solutions that “focus on returning to refugees statist identities so as to restore the conditions under which they may once again enjoy a properly “human” life as citizens.”¹¹⁹ In this way, humanitarianism’s claims to neutrality and impartiality through an invocation of a universal common global civil society “tends to undermine the way the theory of state sovereignty produces this option in the first place.”¹²⁰ The idea that humanitarianism is autonomous, that it is and has always been “separated from the

¹¹⁶ Ibid., 34.

¹¹⁷ Ibid.

¹¹⁸ “Asylum and Migration,” *What We Do*, UNHCR. <http://www.unhcr.org/pages/4a1d406060.html>

¹¹⁹ Nyers, 42.

¹²⁰ Ibid.

vicissitudes of political life” is ultimately an impossibility.¹²¹ Instead “humanitarianism is an inherently political concept, and one that is always already implicated in a relation of violence.”¹²²

Refugee identities, then, play an important role in the state’s monopoly over how we think of and deal with displaced people because of the way the language of humanitarianism attempts to neutralize or depoliticize their plight. In other words, humanitarian frameworks actually aid in preserving this highly asymmetrical political relationship between refugee/migrant receiving states and the refugee/migrant populations and the states they left. Mamdani argues that this kind of depoliticization of humanitarian responses or refugee assistance can be traced to past discourses of paternalism used to describe colonial-colonized relationships.¹²³ Consequently, “humanitarianism does not claim to reinforce agency, only to sustain bare life. If anything, its tendency is to promote dependence.”¹²⁴

In sum, the biopolitical intentions of social regulation endemic in US refugee and immigration policies extend to the humanitarian frameworks that govern international organizations advocating for the protection of refugees. In reality, by perpetuating the power of these liberal empires—privileging nation-statism as the only legitimate political organization—these frameworks actually embody state violence. In the context of immigration and refugee policies, the ideological roots of humanitarianism, and associated ethical motivations, are inextricably connected to the ways states define the bounds of political spaces and identities. International humanitarian aid and advocacy

¹²¹ Ibid.

¹²² Ibid.

¹²³ Mahmood Mamdani, “The New Humanitarian Order,” *The Nation*, (September 10, 2008), 19.

¹²⁴ Mamdani, “The New Humanitarian Order.”

organizations then, are deeply problematic for the ways they reify these statist ideologies, and particularly the ways in which they converge with military objectives. If the ideologies that underpin asylum and refugee humanitarian frameworks truly seek to be impartial, and appeal to conceptions of humanity beyond the state-subject relationship, they must begin to account for the destructive imperial legacy of the liberal empire; and, acknowledge the extreme power wealthy receiving states have in defining who can have refugee status and who cannot.

SECTION V: CONCLUSION

Conceiving of Migration and Forced Displacement Beyond Humanitarian Frameworks

*Global social and economic trends indicate that displacement will continue to grow in the next decade, taking on new and different forms.*¹²⁵

In almost every publication produced by the UNHCR regarding forced displacement in the Western Hemisphere, the humanitarian organization expresses its concerns of “an upsurge in violence by illegal non-State actors, including criminal entities” and “territorial control struggles,” and “gang violence.” In declaring action and comprehensive strategies to combat forced displacement, their solution rests primarily in in-country policy reform:

UNHCR will focus on the prevention and reduction of statelessness and the resolution of nationality issues, mainly by advocating with relevant authorities for the adoption of appropriate laws on nationality, civil registry forms, birth registration and documentation.¹²⁶

Though the UNHCR acknowledges that forces of migration are “complex,” they describe the violence and political or economic instability that drives displacement as primarily a result of illegal non-state actors and gangs.¹²⁷ This perspective, however, refuses to engage with any of the imperial practices of the US in the economic or political disarray of these countries, despite its long history of influence and intervention. In this way, the UNHCR envisions refugees as a problem of Caribbean/Central American refugees caused by Caribbean/Central American actors. I argue that the dominant frameworks for considering refugees, and migrants that do not fit into existing refugee definitions,

¹²⁵ UNHCR, *The State of the World's Refugees: In Search of Solidarity*, ed. Judith Kuman 2012.

¹²⁶ “2014 UNHCR country operations profile – Americas.” *Migrant Rights and Justice*, UNHCR, <http://www.unhcr.org/pages/4a02da6e6.html>.

¹²⁷ *Ibid.*

ultimately fail to recognize the ways in which legacies of colonialism, imperialism, and notions of US exceptionalism and domestic visions of social control, contribute to the instability that produces forced displacement in the first place.

This thesis intervenes in the current discussions of how to think about and deal with refugees and migrants both on an international humanitarian scale and within US domestic policy. I argue that both frameworks do not actually address the complexities of the root causes of migration, and that the factors that designate refugees from migrants are deeply geopolitical and biopolitical. Ultimately, what is missing from these normative frameworks is the account of state responsibility for the legacies of colonial violence and imperial relationships in which liberal empires, like the US, have and continue to exploit states throughout the “global South” for resources and political influence. As seen throughout US history, the US has manipulated its definitions and policies to not only perpetuate its imperial legacy abroad, but to police the social and racial make up of the national body as well. As Walia writes, “the logic of racism and inferiority that drives Western imperial wars is inextricably connected to the logic of racism and exclusion within the West.”¹²⁸ Therefore, “the racialization that anchors national identity and state building therefore comes full circle through an analysis of global racialized empire and border imperialism.”¹²⁹ In this way, the politics of refugee identity formation must also address how racial/ethnic hierarchies influence the state’s recognition of who is and who is not a “refugee,” and thus deserving of humanitarian exception. Ultimately, the first step then to a more just and historically accountable framework for thinking about and dealing with the massive displacement of people across the globe, is to re-think the power

¹²⁸ Walia, *Border Imperialism*, 66.

¹²⁹ *Ibid.*

afforded to the state—under logics of sovereignty—to decide the terms of entry and mobility of noncitizen bodies. As David Kennedy contends, “by defining justice as a relationship to the state rather than simply a condition in society, human rights can distract our attention from background norms and economic conditions that often do far more damage.”¹³⁰ Thus, unless humanitarian frameworks recognize the partial responsibility of liberal empires for the production of political and economic instability throughout the world, I argue that current refugee frameworks will continue to strengthen global hierarchies and sanction state violence against, and exploitation of, unwanted migrants.

¹³⁰ David Kennedy, “Reassessing international humanitarianism: the dark side,” in *International Law and its Others*, ed. Anne Orford. (Cambridge: Cambridge University Press, 2009), 134.

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