

European Border Regimes: Necropolitics, Humanitarianism and the Democratic Order

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The Argument

The new refugees were persecuted not because of what they had done or thought, but because of what they unchangeable were – born into the wrong kind of race or the wrong kind of class or drafted by the wrong kind of government.

Hannah Arendt, *The Origins of Totalitarianism* (2017, 385)

The Mediterranean became the “world’s deadliest border”, a lethal site where the humanitarian system of aid and care intersects with “crimes of peace” (Albahari 2015a), camps, illegal push-backs and deliberately letting racialized people die. In 2020, migrant fatalities worldwide amounted to at least to 2.329 out of which 770 died in the Mediterranean.¹ The Search and Rescue missions (SAR) in the Mediterranean by NGOs are criminalized and obstructed, whereas the Coast Guard of Italy and Malta cooperate with the corrupt ‘coast guard’ of Libya in illegally pushing back migrant’s boats to its shores. The *European Border and Coast Guard Agency* (Frontex) is reported to push back migrants

1 IOM notes 339 fatalities in Sub-Saharan Africa, 308 in North Africa, 97 in the Middle East, 51 Horn of Africa, 280 at the US-Mexican Border, 81 in the Caribbean (IOM, Missing Migrants, total of deaths recorded from January 1 to November 1, 2020: <https://missingmigrants.iom.int>, 01.11.2020.

from Greece to Turkey, not least the appalling conditions and recurrent incidents in the Greek camp of Moria show that current European border policies fly in the face of law and Human Rights. Current European border-regimes are marked by paradoxes and tensions. These regard, firstly, the constitutive “democratic paradox” (Mouffe 2000), secondly, they entail the tensions between the Universal “Rights of Man” (Arendt 1949a, b) and the nation-state and connected to that, thirdly, the tensions of hospitality that situate mobile people between friend and foe.

Pointing to the genuine undemocratic moment that makes up the constitution of a *demos* entitled to self-rule and autonomous deliberation, transnational mobility challenges the democratic order. Democratic orders are based on inclusion and marked by exclusion, the division into those who are endowed with civic and political rights and those who are excluded; this demarcation is a key feature of sovereign power and the nation-state. Mobility and borders thus powerfully uncover the distinction between illegalized people, aliens, residents and citizens, a division that distributes unequal, asymmetric socio-cultural and political rights. At the same time, it challenges the naturalized order of nation-states, sovereignty and citizenship based on laws of origin, birth, autochthony and poses the urgent question who is the ‘We’ (‘we, the people who rule ourselves’) and the political actors of democratic practices.²

As Wendy Brown (2010) forcefully demonstrates, the walls and borders of our present times differ from those of the 20th century. No longer do they operate as fortresses against other sovereign states and military incursions, instead they are built against nonstate transnational actors – individuals, organizations, industries, movements, groups – and are not linked to the well-known Westphalian logics, the “Westphalian grammar” (Benhabib 2004).³ We certainly do not live in a post-state, post-sovereign era. However, in globalized times the nation-state is losing its exclusivity with regard to the question of sovereignty. As part of the paradoxes of democracy – and hardly by chance – borders are re-affirmed, performed and symbolically upheld, creating and

2 This crucial question is even more evident in times of populism and nationalist-ethnic slogans such as ‘We are the people’ seeking to affirm naturalized citizenship.

3 Critically assessing ‘classical’ political theory, she disagrees with Michael Hardt’s and Toni Negri’s argument that the sovereignty of the nation-state has transformed into a global empire as well as she rejects Giorgio Agamben’s view that sovereignty is to be coupled with bare life.

enacting the “tragic border-regime” (Friese 2017a, b, 2019a),⁴ given that the “ultimate expression of sovereignty resides, to a large degree, in the power and the capacity to dictate who may live and who must die” (Mbembe 2003, 11).⁵ The governance of current border-regimes – a configuration of different (non-)governmental actors and heterogenous, even contradictory practices, policies and representations – are tragic not only because it deliberately leaves mobile people to die in no-man’s lands, the margins, the border of the democratic order, but because they reveal the paradoxical – if not the aporetic – foundations of the inclusive-exclusive democratic order and thus mark the political. At the same time, current border-regimes are marked by tensions between universal human rights and the particular political community, the tensions between “proxi humanitarianism” (De Lauri 2016, 3–4) and surveillance, policing, confinement. In such a way, the refugee regimes, its international institutions, actors, issues and policies intersect with border regimes – in complementary and/or contradictory ways – and it has been argued (Betts 2010, 12) that we can no longer “speak of a compartmentalized refugee regime” but rather, there is now a “refugee regime complex” that overlaps with the border regime in which “States engage in forms of institutionalized cooperation that have a direct and an indirect impact upon refugee protection.”

Practices of doing the border reflect these tensions and enact the social imagination which produces the figures of mobile people as victim, enemy or hero (Friese 2017a, b, 2019a). Humanitarianism, humanitarian ‘realism’ foster (signifying) practices that fix mobile people in the deplorable, pitiful position of victims. The relation between (illegalized) mobility and victimhood negates political agency. Caught in the circularity – the victim cannot escape victimhood – mobile people cannot enter the sphere of the political. What is taking place is, as Rancière remarks, “the transformation of the democratic theatre

4 The notion takes up Cornelius Castoriadis’ insights regarding tragedy (see Friese 2019a, 47–48).

5 Mbembe is interested in “those trajectories by which the state of exception and the relation of enmity have become the normative basis of the right to kill. In such instances, power (and not necessarily state power) continuously refers and appeals to exception, emergency, and a fictionalized notion of the enemy. It also labors to produce that same exception, emergency, and fictionalized enemy” (2003, 16). Drawing on Foucault’s notion of biopower, he asks how its “mechanisms [...] are inscribed in the way all modern states function” given that “they can be seen as constitutive elements of state power in modernity” (2003, 17).

into the humanitarian theatre” (Rancière 2014, 135, transl. author), a transformation that leads to de-politization, the negation of the political and the exclusion of mobile people from the political realm. Whereas the humanitarian theatre re-produces the mythology of the victim and “humanitarian borders” (Walters 2011),⁶ the performative dimension of walls, the border “spectacle” (De Genova 2013), the theatre of surveillance and policing, the “necropolitics” (Mbembe 2003, 2019) reiterate the imagination of the racialized stranger, the foreigner as foe who is to be kept out of the political community, an enemy who does not belong to humanity and can be made die or to be kept in a timeless *limbus*, a no-where of camps and precarious dumping sites.

These tensions have been addressed by concepts of “humanitarian reason”, “humanitarian government” (Mavelli 2017; Walters 2011; Fassin 2007b, 2011, 2013) to “describe the simultaneous and conflicting deployment of humanitarianism and security in the government of ‘precarious lives’ such as refugees” (Mavelli 2017, 809).⁷ Both can be considered as forms of biopolitical power and government which reduce human beings to naked life (Arendt 1949a, b; 2017; Agamben 1995).

This is precisely Hannah Arendt’s objection against the “Rights of Man”. Starting out from a brief and certainly not exhaustive discussion of Hannah Arendt’s seminal analysis on the “Rights of Man” (Arendt 1949a, b; 2017), in a first step, the tension between universal human rights and its articulations in the nation-state will be addressed. As will be evidenced, current ‘humanitarian’ border regimes miss the political, namely the “right to have rights” (Arendt 2017, 390) and re-iterate the social imagination and the victim-foe distinction. Against this background, the European border-regimes, the multilocal borderwork in the Mediterranean and the tensions between humanitarianism on one side and surveillance, policing, the “necropolitics” (Mbembe 2003; 2019) on the other, will be sketched in order to demonstrate that these am-

6 Walters continues: “The emergence of the humanitarian border goes hand in hand with the move which has made state frontiers into privileged symbolic and regulatory instruments within strategies of migration control. It is part of a much wider trend that has been dubbed the “rebordering” of political and territorial space. The humanitarian border emerges once it becomes established that border crossing has become, for thousands of migrants seeking, for a variety of reasons, to access the territories of the global North, a matter of *life and death*. It crystallizes as a way of governing this novel and disturbing situation” (Walters 2011, 138, emphasis by Heidrun Friese).

7 For a comprehensive overview, see Benthall (2018); Redfield (2012).

bivalences and tensions not only mark undesired mobile people in particular but are inscribed into the liberal democratic order as well.

As will be argued, what is at stake is not only a *moral* question but a *political* one, what is at stake is a European political order that rejects the erasure of the rights of Others, its current necropolitics and the logic of mobility as emergency and exception.

Universal Human Rights and the Nation-State

Against the background of a broader investigation of imperialism and the historical settings of the colonial racial order, the appalling cruelty to and plundering of Africa, the breakdown of the rule of law that characterizes the *Heart of Darkness*, Joseph Conrad's narration of the collapse of moral and civilizational standards, Hannah Arendt's famous analysis of the relations between nation-state, refugees and Human Rights focuses on the tensions between the "Rights of Man" (the "Declaration of the Rights of Man and the Citizen" in 1789 and the UN "Universal Declaration of Human Rights" in 1948) and its particular articulations in the sovereign nation-state:⁸

The same essential rights were at once claimed as the inalienable heritage of all human being *and* as the specific heritage of specific nations; the same nation was at once declared to be subject to laws, which supposedly would flow from the Rights of Man *and* sovereign, that is, bound by no universal laws and acknowledging nothing superior to itself. The practical outcome of this contradiction was that from then on human rights were protected and enforced only as national rights (Arendt 2017, 301).

Such an argument critically scrutinizes the logic of sovereignty that underlies citizenship and allows for the denial of rights to those who are excluded and do not belong to the nation-state via citizenship. Furthermore, "the perplexities of the rights of man" (Arendt 2017, 380), the German version reads "Aporien der Menschenrechte" (1998, 601), originate in the reduction of refugees to

8 First published in 1949 (1949a, b) and later on as part of chapter 9 ("The Decline of the Nation-State and the End of the Rights of Man") in *The Origins of Totalitarianism* (2017 [1951]). See as well "We Refugees" (Arendt 1994) and "Nation-State and Democracy" (2006). For central contributions to current debates on human rights, see Balfour and Cadovabal (2004); Rathore and Cistelean (2011).

the “abstract nakedness of being human” (2017, 392), the “abstract nakedness of being human was their greatest danger” (2017, 392) and, as Arendt insists, “the abstract nakedness of being human and nothing but human” (2017, 389). This indissoluble double-bind of the Rights of Man cuts through the political community. It establishes the divide, the inequality between the citizen who conducts a political, good life proper to man and those who are not entitled with civil and political rights and are nothing but naked life, mere life.⁹ “Equality” as Arendt argues against natural law and

in contrast to all that is involved in mere existence, is not given to us, but is the result of human organization insofar as it is guided by the principle of justice. We are not born equal; we become equal as members of a group on the strength of our decision to guarantee ourselves mutually equal rights (Arendt 2017, 394).

Equality is not simply given as natural, but is an outcome guided by justice, a decision, an enactment created in praxis, it is made in and through cooperation, negotiation, struggle, it becomes – in Rancière’s version (2010) – through the enactment, the acting as political subjects who demand the rights that they are denied. I shall come back to this point in a moment.

This new situation, in which ‘humanity’ has an effect assumed the role formerly ascribed to nature or history, would mean [...] that the right to have rights, or the right of every individual to belong to humanity, should be guaranteed by humanity itself (Arendt 2017, 390).

However, “it is by no means certain whether this is possible. For, contrary to best-intentioned humanitarian attempt [...] It should be understood that this idea transcends the present sphere of international law which still operates in terms of reciprocal agreements” (Arendt 2017, 390–91). Being enshrined in the order of the nation-state, human rights fail to be enforced (not even a cosmopolitan order that might ensure implementation and enforcement). The *aporia* resides in the rightlessness to belong to any political order:

The calamity of the rightless is not that they are deprived of life [...] but that no longer belong to any community whatsoever. Their plight is not

9 See Agamben on *zoe* and *bios politikos*, “private life and political existence” (Agamben 1998, 187/209–10). For a detailed account of the concepts “bios, zoe, life” in Aristotle, Arendt, Agamben and Esposito, see as well Dubreil and Eagle (2006).

that they are not equal before the law, but that no law exists for them; not that they are oppressed but that nobody wants to oppress them. Only in the last stage of a rather lengthy process is their right to live threatened; only if they remain perfectly 'superfluous', if nobody can be found to 'claim' them, may their lives be in danger (Arendt 2017, 387).

The rightless superfluous "human waste" (Bauman 2007, 28) does not have a place in the world, be it even the negative place of oppression. "The right to have rights", the right to act, to speak and to be judged, is the right "to have a place in the world" and to belong to a political community (Arendt 2017, 388).¹⁰ The right to have rights is a right to belong to the world, to the political community, that is: to bear political agency.¹¹ A political community that negates such a right to others, deprives itself, and ultimately it negates its being human (see Menke 2016), or, to put it another way, negating belonging to a political community and political participation, negates the human community present in the Other.¹²

if a human being loses his political status, he should, according to the implications of the inborn and inalienable rights of man, come under exactly the situation for which the declaration of such general rights provided. Actually, the opposite is the case. It seems that a man who is nothing but a

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- 10 See Seyla Benhabib's reading and her analysis of the discursive structures of Arendt's chapter and the "right to have rights" (2004, 56–61). See especially Franziska Martensen who argues that Human Rights should include rights of participation. As she notes, "the current exclusion of a huge number of human beings that are marked as 'refugees', 'stateless persons' or simply 'Others' is not just a moral but a political problem" (2019, 267, transl. mine).
- 11 In Balibar's reading, the right to have rights "refers to the continuous process in which a minimal recognition of the belonging of human beings to the 'common' sphere of existence". This "insurrectional element of democracy [...] predetermines every constitution of a democratic or republican state". It "requires the direct participation of the *demos*. [...] Arendt's argument clearly recognizes the importance of the egalitarian or insurrectional element constitutive of democratic citizenship, but there is more: what she displays is the dialectical relationship of this element and the politics of civility" (Balibar 2001, 18).
- 12 Balibar notes: "Humans simply are their rights. But – and here is the antinomic character – the same institutions that create rights, or better said, allow individuals to become human subjects by reciprocally granting rights to each other, also destroy these rights, and thus threaten the human" (Balibar 2007, 734).

man has lost the very qualities which *make it possible for other people to treat him as a fellow man* (Arendt 2017, 393, emphasis added).¹³

Jean-Francois Lyotard's reflection on *The Other's Rights* (1993) starts out with the question of the Other in Arendt's line, and he immediately notes: "to banish the stranger is to banish the community, and you banish yourself from the community thereby" (Lyotard 1993, 136).¹⁴ Taking up Arendt's central point, namely the refugee's deprivation of having a place in world and being judged for action and opinion, Lyotard addresses the deprivation of the right to speak and to address citizens (the deprivation of the interlocutory right), the "wrong", the "harm" to being excluded from the "speech community" (1993, 143).

The Latin *sacer* (sacred) expressed the ambivalence of the abject: human refuse excluded from the interests of the speech community, yet a sign, perhaps, in which the Other has left his mark and deserving respectful fear (Lyotard 1993, 145).

What comes into play is – as in Giorgio Agamben's account (1998) – the figure of the *homo sacer*, whose abject non-place resides in the refusal to welcome him, the Other as a legitimate interlocutor, the refusal of listening, its silence and incessant translation. What also comes into play is the determination to master the Other, to master irreducible otherness which, however, will always have been already present.

However, the invocation of the right to have rights establishes yet another *aporia*. How could those who have been excluded from a common world, who have no public voice, those who do not count and are objects of deprivation, "those excluded from politics possibly claim the right to have rights?" (Schaap 2011, 22). Discussing Arendt's understanding of the political, Jacques Rancière (2010) notes that the ontologization, the distinction between bare life (*zoe*) and *bios politicos* (2010, 64), i.e. the distinction between the private, the social and the life of the citizen, the political life proper to man, depoliticizes human rights. The crucial question is not who is the subject of human right, man or

13 As Arendt continues: "This is one of the reasons why it is far more difficult to destroy the legal personality of a criminal that is of a man who has taken upon himself the responsibility for an act whose consequences now determine his fate, than of a man who has been disallowed all common responsibilities" (Arendt 2017, 393).

14 See Benhabib's reading (2004) as well as Ingram's account (2008). For a reading of Marx and Arendt on human rights, see Hamacher (2014).

citizen because human rights are part of the political sphere and thus, part of dispute, litigation, negotiation, contestation and struggle:¹⁵

Man and citizen do not designate collections of individuals. Man and citizen are political subjects and as such as are not definite collectivities, but surplus names that set out a question or a dispute (*litige*) about who is included in their count. Correspondingly, freedom and equality are not predicates belonging to definite subjects. Political predicates are open predicates: they open up a dispute about what they entail, whom they concern and in which cases (Rancière 2010, 68).

The question is not that of abstract rights of man versus effective rights of the citizen as in Arendt, but *dissensus*: “A dissensus is not a conflict of interests, opinions or values; it is a division inserted in ‘common sense’: a dispute over what is given and about the frame within which we see something as given”. Dissensus therefore, is “the putting of two worlds in one and the same world. The question of the political subject is not caught between the void term of Man and the plenitude of the citizen with its actual rights. A political subject is a capacity for staging scenes of dissensus” (Rancière 2010, 69). Unwrapping Arendt’s version – “human rights obfuscate the fact that it is only by virtue of our membership in a political community that we have any rights at all” (Schaap 2011, 34) – Rancière opens up a space of political subjectivation:

The very difference between man and citizen is not a sign of disjunction, proving that rights are either void or tautological. It is the opening of an interval for political subjectivation. Political names are litigious names, whose extension and comprehension are uncertain, and which for that reason open up the space of a test or verification. Political subjects build such cases of verification (Rancière 2010, 69).

The right to have rights thus, is linked to the politics of rights and resides in the spaces opened up by action and subjectivity (see also Ingram 2008). Just as citizenship is not only formal, legal status but can be seen as a collective form of activity, an “active citizenship” (Isin 2009a), rights can be seen as an active space responding to their absence.

15 Rancière notes the traps, the vicious circle of Arendt’s argument: “the Rights of Man are the rights of those who have not the rights that they have and have the rights that they have not” (2010, 67).

Furthermore, as Engin F. Isin (2009b) has argued, the rigid split between the rights of man and civil rights is no longer tenable. The split and the paradoxes between rights that humans possess for the sheer fact that they are humans and civic rights which are connected to citizenship (the first being ‘human’ the latter being connected to nation-states and governments) no longer holds. Since the historical period to which Arendt refers, these “two regimes have now converged through international covenants and charters of ‘human’ rights to the extent that it has become impossible to distinguish between ‘human’ and ‘citizenship’ rights” (Isin 2009b, 1).¹⁶ Additionally, these rights are a “contested site of social and political struggle” which lead to complex and even contradictory interconnections between legal practices and institutions (Isin 2009b, 3). Paradoxically however, and as a consequence of such a convergence, these political sites are increasingly substituted by procedural, legal battles and specialized lawyers, the sovereignty of states is strengthened and thus, the “human rights regime makes it difficult to defend the rights of others” (Isin 2009b, 11).

Despite the historical developments of Human Rights, what is still at stake are the question of and the tensions inherent in current border regimes. The shift “from Man to Humanity and from Humanity to the Humanitarian” (Rancière 2010, 63) contains the tensions between humanitarianism and necropolitics, the distribution of “abject spaces” (Isin and Rygiel 2007) where ‘emergencies’ are created and proclaimed, rights are suspended and the state of exception is the rule on one hand and humanitarian governance is enacted on the other. The urgent question remains how these ambivalences and aporias affect not ‘only’ those who are marked as victims or enemies in particular, but how the democratic order is marked by these tensions in general.

16 The “convergence” of human and civil rights (which comprise the right to security) has developed through various Committees and international conventions such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of all Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention against Torture and other Cruel, Inhuman, or degrading Treatment or Punishment (CAT), the Convention on the Rights of the Child (CRC), the European Court of Human Rights (ECHR), as Isin remarks (2009b, 7).

The European Border Regime: “Necropolitics” and Humanitarianism

The current border regime in the Mediterranean, its techniques of governmentality combine logics of security, control, surveillance, military interventions and policing and, to take up Michel Foucault’s formulation, enact “the power to let die” (2001, 291, trans. author).¹⁷ The strategic fervor of gaining total control and mastery enacts a “necropolitics” (Mbembe 2003, 2019) and unfolds an every-day, routinized “topography of cruelty” (Balibar 2001), a geography of destruction, violence, suffering, death and camps.¹⁸ Such biopolitical necropolitics which name sovereign decision on death – “the power and the capacity to dictate who may live and who must die” (Mbembe 2019, 66) – is racialized. Race is the dividing line. At the borders, the racialized ‘superfluous’, those who Zygmunt Bauman provocatively called the “human waste” (2007, 28) of the globalized, capitalist order, are left to die and the normalization of dissuasion, its inherent violence of measuring the utility or uselessness of humans to be discarded, is customized.¹⁹ Push-backs to camps where torture is the rule and forced “re-patriation” to an alleged “homeland” which – for good reasons and with the will to risk their lives – mobile people had fled, become an asset of the political agenda and European public opinion, eager to get rid of the unwanted.²⁰

Mobility is seen through the prism of security, deterrence, confinement, camps, expulsion and lethal border practices – the triage of the fittest – have

17 These are of course, linked to current border policies and globalization, which “harbors fundamental tensions between opening and barricading, fusion and partition, erasure and re-inscription. These tensions materialize as increasingly liberalized borders, on the one hand, and the devotion of unprecedented funds, energies, and technologies to border fortification, on the other.” Tensions are worked out between “global networks and local nationalisms, virtual power and physical power, private appropriation and open sourcing, secrecy and transparency, territorialization and deterritorialization”, the state and the nation (Brown 2010, 19).

18 The various aspects of border death have been addressed by contributions in Cuttita and Last (2020). The relation between biopower as power to promote life or preclude it to the point of death in the “defense of society” (Foucault 2003) has been widely discussed.

19 For a phenomenology of “violence and civility”, see Balibar (2009).

20 The term “re-patriation” is of course part of the trinity of birth/nativity, the State/nation and territory (Agamben 1996, 40) that characterizes the nation-state, fixes citizenship, belonging and is to be a founding category of *Heimat*. Kim Rygiel (2016) explores “the issue of ‘dying to live’” and relates it to questions of biopolitics, citizenship and activism.

become (politically) acceptable, even if they are a blunt violation of human rights, international conventions, and the international law of the seas. These practices question the rule of law and contribute to the normalization of its non-application, the normalization of its suspension. In line with Arendt's and Agamben's analysis, they enact the ultimate sovereignty of the nation state and establish a border between those who are let die and those who ought not to let die and, again show the paradoxes of human rights and of liberal democracy. Current policies contribute to the expulsion of the rightless and – again in line with Arendt – to the destruction of the political ties by a political community. At the same time and iterating the tensions of hospitality, current border regimes couple the logics of hostility with those of reception, accommodation and welcome, it chains the figure of the (public) enemy (*hostes*) to that of the victim and 'humanitarian' reason and charity (Friese 2014, 47–64, 2017a).²¹

Current efforts to 'manage' undesired mobility merges aid and care with policing, control, technocratic-technological logics, managerial 'best-practice' fiction with 'humanitarian' impetus and legitimation. The border regime includes aid and relief organizations, public and private investment, the military industries into one framework. Humanitarian discourse, knowledge and practices of care have been integrated into the lethal regime, the framing and legitimization of border control and enforcement. At the borders a variety of non-governmental actors operating, following an explicit humanitarian agenda (such as SAR-missions)²² creating an ambivalent space. The overlapping of humanitarian interventions and border management makes up what William Walters calls the "humanitarian border" (2011).²³ Such a complex configuration make "care functions" to become "a technology of border enforcement" and are "increasing the reach of the state to govern more bodies and more spaces" (Williams 2015, 11). At the same time, a hierarchy of victims with regard to their visibility is established. Due to dramatic, medialized (and

21 Jacques Derrida (2000a) addressed the tension in his remarks on hospitality. The term addresses the tensions between welcoming, reception, acceptance, offering and their negation, hostility, a tension which is inherent in the Latin words *hospes/hostis* which relate friend and foe to hospitality.

22 For a detailed account of the "humanitarian fleet" in the Mediterranean, see Stierl (2018).

23 Walters scrutinizes "the materialization of the humanitarian border within particular forms of knowledge, and the constitutive role which politics plays in making and changing humanitarian borders" (Walters 2011, 139).

aestheticized) images of rescue, there are those who are highly visible and those who are left to a nameless, unseen death beyond Europe's borders in the Mediterranean."

The nascent border business, a sort of "Humanitarianism Limited" (De Lauri 2016,2) provides care, services and security infrastructure reaching from technology to personal and combines public affairs with private enterprise (Frieze 2012). Combining what has been seen as "disaster capitalism" (Naomi Klein), the "humanitarian industrial complex" (Dadusc and Mudu 2020), "the humanitarian" is not "a set of ideas and ideologies, nor simply as the activity of certain nongovernmental actors and organizations" rather, it is "a complex domain possessing specific forms of governmental reason" (Walters 2011, 143).

"Humanitarian government" has most prominently been defined by Didier Fassin "as the administration of human collectivities in the name of a higher moral principle which sees the preservation of life and the alleviation of suffering as the highest value of action" (Fassin 2007b, 151).²⁴ The central question is, of course, how moral principles and orders, and the ethical are to be 'translated' into juridical orders and into democratic deliberation in nation states. Again, we are faced with the paradox of democracy. Ethical demands and the moral order might allow, if not recommend, that any person who wishes to be admitted as a fellow-citizen in any nation-state should be, whereas democratic deliberation of the particular political community might decide not to admit anyone as citizen and to insist on holding control of transnational mobility and admission to citizenship.²⁵

The critique of humanitarianism and humanitarian government engages the victimization of subjects, the stabilization of current border regimes and the de-politicization of mobility.

[The] focus of humanitarian action remains tied to a victim-centered approach as the core of a complex infrastructure of professionalized and institutionalized practices of aid. We know that humanitarian actions cannot be reduced to the relationship between giver and receiver, but we also know that there is a structural and inevitable correspondence between the

24 For an analysis of the biopolitical aspects of "politics of life" in humanitarianism and humanitarian intervention, see Fassin (2007a).

25 This paradox and the claim for open borders has been extensively discussed. See most prominently the contributions of Carens (1987), Cassee (2016), Bauböck (1994), Fine (2013).

figures of helpless victims and their humanitarian counterparts (De Lauri 2019, 149).²⁶

Humanitarianism fixes the figure of the victim in time and space, it fixes the single event of a disaster, of a crisis in a timeless, ahistorical and permanent state of humanitarian ‘emergencies’ that need to be governed. In such a way, the humanitarian border produces its own crises which, however, are but the consequences of specific political decisions and policies that cause the humanitarian crisis in the first place. The governance of mobility, restrictive policies of mobility and regulations such as the Dublin regulation and their consequences produce the permanent state of emergency and humanitarian crisis:

Humanitarianism creates new geographies with their specific limits, and through its ‘humanitarization’ of borders—that is, the process through which borders are redefined as spaces of humanitarian crisis and emergency—it has the consequence of obscuring crucial issues of ordinary politics and political action (De Lauri 2019, 150).

The humanitarization of border practices contributes

to the discursive legitimation and spatial delocalization of exclusionary policies and practices. The conflation of human trafficking (the exploitation of human beings) and ‘smuggling’, i.e. the services to transport people who are deprived of rights of movement, who just don’t have ‘legal’ access to mobility, is just one example of the ‘humanitarization’ of borders which is to legitimize policing and the ‘war’ against so-called traffickers (Friese 2014, 121–126; Webber 2017).

Moreover, humanitarianism contributes to a symbolically and legally subordinate inclusion of migrants in the European space” (Cuttita 2018, 783). In such an asymmetric situation, the victim is at best the passive receiver of aid and care – and in turn is requested to be grateful for the poisoned gift (Moulin 2012) – but is certainly not a political subject, an active fellow citizen allowed to participate and to take a “place in the world which makes opinions significant and actions effective” (Arendt 2017, 387–388). By negating such agency, by reducing the victimized to bare, naked life, humanitarianism enforces (even

26 See as well the contributions in De Lauri (2016). For a concise overview, see De Lauri (2020).

with the best intentions), the expulsion of the victims from belonging to a political order – that is, in the sense of Arendt, the right to have rights. In the same vein, the focus on pitiful, innocent victims to be taken care of or to be rescued by white heroes and saviors, obfuscates the historical and political circumstances and postcolonial structures that created the victims of current border regimes in the first place (Friese 2017a, 56–58; Danewid 2017).

As a consequence, “political change is anesthetized in favor of humanitarian goals” (De Lauri 2019, 150). The reduction of the political question of mobility to a ‘humanitarian issue’ or a permanent ‘humanitarian crisis’ certainly does not contribute to set a right of free movement on the political agenda and to strengthen the case for open borders, both of which are basically political and not humanitarian claims.

Once a crisis is qualified in specific terms (that is, as a humanitarian crisis), it directly calls for a specific power to manage and administer it. In opposition to a historical narration that is ‘disrupted and episodic’ (Gramsci [...]), the humanitarization of borders in crisis is a universal salvific narrative that creates a constant nexus between human suffering and the need for humanitarian exceptionalism. This exceptionalism in managing borders translates into exaggerated security practices and consolidates the hierarchization of borders as something ‘natural’—thus normalizing the political and social scrutiny of those who can and those who cannot cross a border (De Lauri 2019, 157).

Mobility challenges the democratic order and the nation state, caught in the paradoxes of democracy it certainly creates spaces of struggle. Whereas on one hand such spaces are generated by the figure of the victim, some strands of activism craft the figure of the hero and imagine mobile people as the autonomous avant-garde of resistance against the global neoliberal capitalist order.²⁷

However, current borderlands are sites of activism and active citizenship from the “borders and margins” (Stierl 2016) that allow for shared spaces of civility and the belonging to a political community of citizens, a hospitable welcome of an Other and a political space advocating for less exclusionary politics of mobility and the right to have rights.²⁸ Therefore, we need to re-

27 See Papadopoulos and Tsianos, 2008 and Papadopoulos, Stephenson and Tsianos, 2008. For a critique, see Friese 2017a, 65–72.

28 For an account of negotiating the “right to have rights”, see Coddington et al. (2012).

think “the relationship between mobility, rights and status that are so fundamental to concepts of modern citizenship”, mobility and mobility rights to rearticulate new forms of citizen subjectivities” (Nyers and Rygiel 2012, 12).

The Rights of Man become humanitarian rights, that is, the rights of those who cannot enact them, of victims whose rights are totally denied. Nevertheless these rights are not empty; political names and political places never become merely void. The void is always filled by somebody or something else; by becoming the rights of those who cannot enact the Rights of Man do not become null and void. If these rights are not ‘truly’ those of the victims, they can become the rights of others (Rancière 2010, 72).

What is at stake, is the opening of a political space that moves beyond the asymmetric categorizations of mobile people as victims, enemies or heroes in order to promote politics of hospitality and a “political project of equality” (De Lauri 2019, 160) that allows to enact a political space and multivocal subjectivities. Mobile people demand dignity, the right to mobility, equal treatment, a ‘normal’ good life with security. They “embody a quest for liberty, rather than for help. They demand rights, rather than permissions” (Albahari 2015b, 2) and ultimately: the right to have rights.²⁹ What is at stake, therefore, is a European space to come that rejects current necropolitics, the logic of emergency and crisis and the erasure of the rights of others. What is at stake is the objection against the a-political and alleged ‘humanitarian’ border regimes that enforce and re-iterate the social imagination and the victim-foe distinction.

In July 2020, the Italian public was faced with the photo of a drowned man from Eritrea whose body had been left in the waves of the Mediterranean for weeks (Ziniti 2020).³⁰ No one had cared to salvage his corpse. Once upon a time, to mourn and to bury the dead was considered to be a distinct human worth, virtue and excellence which separate humankind from the reign of nature and bare life. The notion of ‘humanity’ derives from ‘*humare*’, the Latin

29 This holds true especially for asylum-seekers. As Albahari notes “deterrence, intelligence, surveillance, anti-smuggling activities, border enforcement, and policing and readmission collaboration with Turkey, Libya, and Libya’s African neighbors [...], the right to seek asylum is being de facto transformed into a state-granted permission to seek asylum” (2018, 121).

30 The economy of attention needs even more shocking images. Such images which expose racialized bodies to public view and the consume of the horrendous border spectacle are part of current humanitarianism (Friese 2017a, 49–52).

verb for burying someone.³¹ Posting ethics, right and justice against power and the order of the polis, Antigone's protest had been considered as a founding text of European self-understanding and the tensions between ethics, the Law and the laws of the polis.³² The same tension holds for the absolute Law of hospitality – the Law to unconditionally host an Other and the laws of the political community which pervert the former, as Jacques Derrida (2000b) insistently remarks.³³

Given the ongoing distinction between humans and superfluous, racialized 'human waste' to be left to die – and to be exposed as corpses – or to be amassed in the nowhere of camps, ethics and justice have become denigrating concepts, the target of hate or at best the naïve 'hyper-moral'. 'Moral terror' is set against political 'realism' and the alleged welfare of the 'We' of the nation. In such a vein, right and justice are expelled from the political, as well as ethics is separated from the political, however: the former engages the latter. In this sense, the drowned man is not a victim but a subject whose demand to hospitality, whose right to have rights have been negated. Again: "to banish the stranger is to banish the community, and you banish yourself from the community thereby" (Lyotard 1993:136). We live in dark times.

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31 I would like to thank Sabine Bauer-Amin for drawing my attention to this relation.

32 For a reading of Hegel's reading of Antigone, see Derrida (1990, 166–90).

33 The difference, the gap, the abyss between the absolute, unconditional Law of hospitality and the laws of the political community is marked by the capital/lower case.

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