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Emergency and Migration, Race and the Nation

John Reynolds

ABSTRACT

Europe's borders are racial borders. The European Union's external border regime underpins continuing forms of European imperialism and neocolonialism. It reinforces a particular imaginary of Europeaness as whiteness, euphemistically dressed up as a European Way of Life to be protected. It nonetheless sits comfortably within the permissible parameters of international law. This Article conceptualizes international law as a manifestation of liberal nationalist thought: "liberalism with borders," and the sovereign right to exclude. Sovereignty in this sense is a racial sovereignty. The Article traces the mutual construction of race and sovereignty in colonial history, and the specific role played by emergency legal doctrine and states of emergency in constituting and executing racial sovereignty. It argues that international law's framing of a state of emergency as a threat to the life of the nation strategically motivates exclusion based on race, laundered through the prism of nationality. In our early twenty-first century migration conjuncture, a perceived dilution of Europe's whiteness has been presented as posing just such a threat to the life of individual and collective European nations. The conception of a migration "emergency" provides tactical scope for European states to further harden their border regimes at opportune moments. International law produces and permits this emergency paradigm, and is currently ill-equipped to confront or challenge the phenomena of border regimes and their racial contours. The Article concludes by sketching out some of the ways we can think against this violent reality by thinking with alternative perspectives within and beyond international law.

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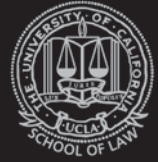


TABLE OF CONTENTS

INTRODUCTION: THE “EUROPEAN WAY OF LIFE”?	1770
I. INTERNATIONAL LAW: LIBERALISM WITH BORDERS	1774
II. EMERGENCY AS RACIAL SOVEREIGNTY	1777
III. THE LIFE OF THE NATION	1780
IV. MIGRATION AS REPLACEMENT	1785
V. MIGRATION AS “EMERGENCY”	1788
VI. BRUSHING HISTORY AGAINST THE GRAIN	1794

INTRODUCTION: THE “EUROPEAN WAY OF LIFE”?

In September 2019, the incoming President of the European Commission, Ursula von der Leyen, announced her new team of commissioners. The role previously known as the European Commissioner for Migration, Home Affairs and Citizenship was renamed the Commission Vice-President for *Protecting our European Way of Life*. The implications of the name change of this particular portfolio—coming at the end of a decade of persistent reference to a migration “crisis” and conceptions of “the *emergency* of great fluxes of migrants”¹—appeared stark. And they were indeed confirmed by von der Leyen’s own stated justification. There she invoked the racialized “legitimate fears” mantra which European ruling classes—conservatives and liberals alike—have systematically absorbed from the far right: “We must address and allay legitimate fears and concerns about the impact of irregular migration on our economy and society.”² Although von der Leyen was purporting to reclaim the political terrain of security and borders from the far right, the move served to only further normalize the language and framings of xenophobic nationalism. Despite accusations of having adopted fascist rhetoric,³ the Commission and the European Parliament majority stood firm: They retained the European Way of Life portfolio and approved Greek commissioner Margaritis Schinas for the role.

The “European Way of Life” effectively encodes two core elements: whiteness and wealth. In fact, the extent to which “European” remains a euphemism for whiteness was clear from von der Leyen’s boast that her team of commissioners is “as diverse as Europe is.”⁴ While the gender balance of her team is indeed almost 50:50, this is where the celebrated diversity ends. All twenty-seven commissioners are white, and all are from predominantly elite backgrounds—in no way reflecting Europe’s class composition. Protecting the European Way of

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1. Serena Baldin & Moreno Zago, *Introduction* to EUROPE OF MIGRATIONS: POLICIES, LEGAL ISSUES AND EXPERIENCES 7–8 (Serena Baldin & Moreno Zago eds., 2017) (emphasis added).
 2. Mission Letter from Ursula von der Leyen, President Elect, Eur. Comm’n, to Margaritis Schinas, Vice President Designate, Protecting Our Eur. Way of Life, Eur. Comm’n (Sept. 10, 2019) (on file at https://ec.europa.eu/commission/sites/beta-political/files/mission-letter-margaritis-schinas-2019_en.pdf) [<https://perma.cc/XBF3-8HP7>].
 3. See Jon Stone, *EU Accused of Adopting ‘Fascist Rhetoric’ With New Commissioner for Protecting Our European Way of Life to Oversee Immigration Policy*, INDEPENDENT (Sept. 10, 2019), <https://www.independent.co.uk/news/uk/politics/brexit-news-latest-commissioner-for-protecting-our-european-way-of-life-ursula-von-der-leyen-a9098991.html> [<https://perma.cc/W7MF-4W8N>].
 4. Samira Rafaela, *Von der Leyen’s Gender-Unbalanced Commission*, POLITICO (Nov. 28, 2019, 4 :30 AM), <https://www.politico.eu/article/ursula-von-der-leyen-gender-unbalanced-european-commission> [<https://perma.cc/RDN3-ARYR>].

Life serves as a euphemism for the aim of preserving the hegemony of European whiteness by heavily restricting migration from “the darker nations.”⁵ The irony, of course, is that Europe has built its wealth through the conquest and exploitation of these same darker nations, plundering them into underdevelopment and leaving them economically subjugated as “the poorer nations.”⁶ The maintenance of Europe’s accumulated wealth for its white majority populations depends on their protected access to economic privilege, labor rights and welfare systems, and the exclusion of non-Europeans—especially those from nonwhite-majority countries.

In an era where neocolonial economic and political configurations produce ever-deepening global inequality, we thus see the border regimes between the First World and Third World become increasingly militarized. We also see the reality of the passport as no mere administrative document, but as a heavily racialized marker of hierarchy, mobility, and (un)desirability for membership of a political community.⁷ In this context, the European Union’s (EU) borders today are nothing less than a reiteration of the global color line; they “must be understood as *racial* borders.”⁸

Indeed, Europe itself has, for centuries arguably, functioned as *Fortress Europe*. It has relied on violence and the strategic use of borders to ensure it remains this way. White violence and white mobility have been both the open and hidden foundations of the epochal European political projects of empire and union. Violence in both colony and metropole are essential to the maintenance of European whiteness, and restrictions on nonwhite violence and mobility are essential to Europe’s racial contract.⁹ Likewise, borders have been used both to keep European countries white and to keep “white” phenotypes intact. In this sense we can read the “life” in the European Commission’s “Way of Life” framing not just in terms of culture and tradition, but also in terms of biology. We can also read region and race as inexorably entwined.

In this Article, I address the relationship between race and regionalism within and beyond international law. I argue that international law’s framing of a

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5. VIJAY PRASHAD, *THE DARKER NATIONS: A PEOPLE’S HISTORY OF THE THIRD WORLD* (2007).
 6. VIJAY PRASHAD, *THE POORER NATIONS: A POSSIBLE HISTORY OF THE GLOBAL SOUTH* (2012); WALTER RODNEY, *HOW EUROPE UNDERDEVELOPED AFRICA* (1972).
 7. See Radhika Vyas Mongia, *Race, Nationality, Mobility: A History of the Passport*, 11 PUB. CULTURE 527, 527 (1999).
 8. See Nicholas De Genova, *Europe’s Racial Borders*, MONITOR RACISM (Jan. 2018), <http://monitoracism.eu/europes-racial-borders> [https://perma.cc/692B-HETH]. See also E. Tendayi Achiume, *Racial Borders* (forthcoming); presented at the Hertie School, Berlin (Dec. 3, 2020), <https://www.hertie-school.org/en/news/detail/content/racial-borders>.
 9. On the concept of racial contract, see generally CHARLES W. MILLS, *THE RACIAL CONTRACT* (1997).

state of emergency as a *threat to the life of the nation* strategically motivates exclusion based on race, laundered through the prism of nationality. But even more so than in the context of conventional nation state nationality, in the European (Union) context, this has taken on the form of a racialized regional nationality. Here, Europeanness connotes whiteness, and it is a whiteness with a peculiar power: it is a breed of white nationalism that can operate across certain borders as a regional sociopolitical project.¹⁰ The political conception of Europe, especially its overriding Western variant and its institutionalization in the EU, serves as the predominant vehicle for race here. Europe—and in a historical context, Christian Europe specifically—stands for whiteness. As a regionalized iteration and consolidation of whiteness, it has a racializing impact greater than an individual localized nation state can have.

Right-wing economic thinking, which opposes the substantive redistribution of wealth or resources, has long been presented as centrist European politics. And over time, far-right migration politics has also become mainstream in Europe. While liberals and even progressive human rights advocates outwardly balk at the overt racism of the far right—as well as that of more mainstream conservatives when their mask slips—they remain at peace with the prevailing system’s core premise of nationality-based migration rules, which are indirectly but predominantly race-based. The veneer of racial non-discrimination and the legality of nationality-based discrimination under international and domestic law produce a curious anomaly: they allow those with a purportedly centrist position on migration to remain righteous, but nevertheless effectively mimic and parrot the positions of the far right. Take, as an example, extreme centrist par excellence, the “postideological” French President Emmanuel Macron.¹¹ In October 2019, Macron gave a lengthy interview to *Valeurs Actuelles*, a far-right publication fined in 2015 for inciting hatred toward Roma communities, in which he acknowledged that he is “obsessed” with immigration: “My goal is to throw out everybody who has no reason to be here.”¹² Macron further sneered at

10. There is, of course, ongoing and multifaceted resistance to this project, ranging from continent-wide antiracist social movements to social conceptualizations of Black Europe and the “Afropean.” See, e.g., JOHNNY PITTS, *AFROPEAN: NOTES FROM BLACK EUROPE* (2019).

11. ENZO TRAVERSO, *THE NEW FACES OF FASCISM: POPULISM AND THE FAR RIGHT* 38 (David Broder trans., Verso 2019) (2017).

12. Musab Younis, *Autumn in Paris*, 41 LONDON REV. BOOKS (Dec. 5, 2019), <https://www.lrb.co.uk/the-paper/v41/n23/musab-younis/autumn-in-paris> [<https://perma.cc/7ZEN-9T3E>] (translating comments that President Macron gave in an interview to far-right magazine, *Valeurs Actuelles*).

a large-scale popular demonstration against Islamophobia in France, dismissing it as “nonaligned Third Worldism with a whiff of Marxism.”¹³

But in fact, if Europe is to become a more just and humane political space in the aftermath of colonialism, it needs a lot more of such Third Worldism. Europe needs to reckon with its own racial borders and internal hierarchies, dismantle racist structures and institutions, and pursue genuine solidarity with racialized communities. To do so meaningfully would require much more than a whiff of Marxist thought and strategy.

International law remains firmly on Macron’s side, however. European imperialism and neocolonialism persist in the twenty-first century, buttressed by an external border regime with both imperial and racial characteristics that sits comfortably within the permissible parameters of international law. Part I of this Article elaborates on the conceptualization of international law as a manifestation of liberal nationalist thought: “liberalism with borders,” and the sovereign right to exclude. Sovereignty in this sense is a racial sovereignty. Part II addresses the mutual construction of race and sovereignty in colonial history and introduces the specific role played by emergency legal doctrine and states of emergency in constituting and executing racial sovereignty. In Part III, I unpack one of the central elements of international law’s definition of emergency—the *life of the nation*. In order for an emergency to be declared, the life of the nation must be felt to be under existential threat. And in the early twenty-first century migration conjuncture, a perceived dilution of Europe’s whiteness has been presented as posing just such a threat to the life of individual and collective European nations. Part IV thinks critically about this in the context of right-wing perceptions of migration—perceptions of how it functions as race replacement of Europe’s demographic majority and poses a deadly threat to the “European Way of Life.” In Part V, I analyze the work that emergency legal discourse does in this regard. The conception of a migration “emergency” provides tactical scope for European states to further harden their border regimes at opportune moments. The crux of my argument in this Article comes to the fore here: such emergency framings skew the empirical reality—that the scale of Global South migration to Europe is relatively small in global context—in order to produce emergency law and crisis response measures that consolidate Europe’s racial borders. International law produces and permits this emergency paradigm, and for this reason, among others, it is currently ill-equipped to confront or challenge the phenomena of border regimes and their racial contours. I conclude in Part VI by sketching out some of the ways we can think against this violent reality by thinking with alternative perspectives within

13. *Id.*

and beyond international law. These perspectives allow us to conceive of Third World migration to Europe as a form of redistributive justice.

I. INTERNATIONAL LAW: LIBERALISM WITH BORDERS

Liberal lawyer and former President of the Inter-American Commission on Human Rights, Tom Farer, has recently made the case that closed borders are indeed necessary for the preservation of European liberalism.¹⁴ His book is a good example of mainstream Western liberal-legal thinking on international migration. Daring to confront “all of the politically toxic questions associated with large-scale migration from the Global South to the Western liberal democracies,” Farer argues that “the moral case for open borders should be rejected,” and that while “different life styles” can be broadly tolerated, “the state should enforce core liberal values.”¹⁵ To do so, it must implement a “position on migration and integration to which moderate conservatives could adhere,” based on “a detailed strategy for addressing the issues of who should be allowed to enter, how migrant families should be integrated and cultural conflicts resolved.”¹⁶ Farer’s argument is in many ways a legal-philosophical elaboration of the notion of “muscular liberalism” proposed in 2011 by conservative British Prime Minister David Cameron.¹⁷ This was essentially a rebranded vision of assimilation that Cameron presented as necessary to stamp out the perceived illiberal values of migrant and minority communities, of which multiculturalism had been too tolerant. That vision has played well among right-wing European leaders in the context of security and anti-immigration discourse.

Farer’s book received ringing endorsements from liberal imperialists like Michael Ignatieff and human rights lawyers like Aryeh Neier. They champion the politics of his appeal, emphasizing that one can believe in liberal values and human rights, and—at the same time—oppose migration rights for those from communities racialized as illiberal. This argument from within the milieu of elite human rights professionals grounds itself in deference to state sovereignty, prizing the state’s right to exclude over a particular (predominantly racialized) category of migrants’ right to move. Essentially, as José Alvarez puts it, “Farer argues that rich states have a legal and moral right to bar migrants from the Global South and that

14. See TOM FARER, *MIGRATION AND INTEGRATION: THE CASE FOR LIBERALISM WITH BORDERS* 31 (2019).

15. *Id.* at iii.

16. *Id.*

17. See David Cameron, Prime Minister of the U.K., Speech at Munich Security Conference (Feb. 5, 2011).

tolerant national communities are worth defending—even if it takes biometric identity cards, off-shore sites for asylum claims, and litmus tests for determining entry.”¹⁸ For Ignatieff, it is essential that the “moderate center” in European and North American politics adopt such a “tough-minded” migration policy so as to stem any bleed of votes to both right and left nodes of the horseshoe of immoderation that so-called moderate centrists like to perceive.¹⁹ For Neier, “well-to-do, well-functioning countries in the north” must think twice about whether they can “absorb and integrate millions of Muslim migrants while maintaining the best attributes of their own societies.”²⁰

Farer identifies and focuses on Europe as the primary site of Western liberal values that must be most robustly insulated. In his analysis, migration from South America to North America is broadly acceptable insofar as most people on the move there are Christian, the cultural and linguistic differences are not huge, the United States economy is more accessible to new entrepreneurs and laborers, and American laissez-faire capitalism relies on a certain number of immigrants to do certain jobs. Migration is less tolerable in Europe, as Farer sees it, where the economy and welfare state are more closed. Additionally troubling in his view is the idea that most of the would-be migrants are Muslim. Farer finds this problematic because, in his telling, Muslim “women have relatively limited contact with the wider society,” “[c]ultural differences are simply more conspicuous,” and “the effort required of an Arab speaker to acquire German” is, apparently, a lot to expect.²¹ Farer’s reader is presented with the trope that the presence in European towns of “veiled women trailing children and closely attended by men of color in streets still familiar but no longer yours” inevitably portends the “loss of a way of life.”²²

The racial underpinnings of these types of culture clash narratives come across clearly throughout Farer’s book. The global mobility of people from white majority countries is taken as natural and given. Not so for those from countries in the tricontinental regions of the Global South. While Farer acknowledges the possibility of certain other transregional grounds for cross-border migration, this possibility stems from cultural similarities and connections rather than from political and economic entanglements, and does not apply as he sees it in the context of Europe’s particular interconnections with the African or Arab regions.

18. FARER, *supra* note 14, at i (including José E. Alvarez’s review).

19. *Id.* (including Michael Ignatieff’s review).

20. *Id.* at i–ii (including Aryeh Neier’s review).

21. *Id.* at 10.

22. *Id.* at 157.

Regrettably, if not unsurprisingly, Farer does not acknowledge or engage with the important work of scholars like Chantal Thomas, Tendayi Achiume, Jaya Ramji-Nogales, Peter Spiro, or others who have argued for ethical reconceptualizations of international law's approach to migration to better address social needs and realities in an interconnected world.²³ Instead, the crux of his position—racial underpinnings included—aligns fully with the existing norms of international law. What he presents as *The Case for Liberalism With Borders*²⁴ effectively doubles as the case for the status quo under international law. In the current international legal system, the sovereign right to exclude foreign migrants is “not only permissible but even righteous.”²⁵ It is a legal framework that privileges the territorial nation state and its borders. As Achiume and others have shown, “international law as a whole still most faithfully reflects the political theory of liberal nationalists, who defend the sovereign right to exclude as existential.”²⁶ The apparent contradiction between liberal political thought and illiberal or discriminatory border policy is of course indicative of a number of international law's dualities generally: neoliberal free trade obligations as the rule for all, but agricultural protectionism as permissible practice in the Global North; strong and enforceable legal rights for corporate investors, but not for unions and workers; free movement for capital and the privileged few, but closed borders and restrictive visa regimes for the many. International human rights law and humanitarian protection principles are framed as diluting or recalibrating certain aspects of state sovereignty,²⁷ on a terrain in which Third World sovereignty ends up as decidedly more permeable when an interventionist agenda emerges.

For now, however, border sovereignty over immigration remains almost absolute. The right to exclude has only limited exceptions for distinct categories of refugee-seekers, and even at that, the Global North states have gone to great lengths to shrink the practical and physical space in which those limited exceptions can function. Nowhere has this been more visible and visceral in the early twenty-first

23. See, e.g., E. Tendayi Achiume, *Migration as Decolonization*, 71 STAN. L. REV. 1509 (2019); Jaya Ramji-Nogales & Peter J. Spiro, *Introduction to Symposium on Framing Global Migration Law*, 111 AJIL UNBOUND 1 (2017); *Symposium on Framing Global Migration Law*, 111 AJIL UNBOUND 1, 1–28, 134–76, 479–518 (2017); Chantal Thomas, *What Does the Emerging International Law of Migration Mean for Sovereignty?*, 14 MELBOURNE J. INT'L L. 392 (2013); Chantal Thomas, *Mapping Global Migration Law, or the Two Batavias*, 111 AJIL UNBOUND 1 (2017) 504.

24. FARER, *supra* note 14.

25. Achiume, *supra* note 23, at 1515.

26. *Id.* at 1516.

27. See, e.g., Manfred Nowak, *Responsibility to Protect: Is International Law Moving From Hobbes to Locke?*, in VÖLKERRECHT UND DIE DYNAMIK DER MENSCHENRECHTE (Franz Matscher, Gerhard Hafner, Kirsten Schmalenbach, Lando Kirchmair, eds. 2011).

century than on Europe's sea borders, where the convergence of questions of sovereignty and race has produced a particularly lethal border barbarism.²⁸ Perceptions of migration from the South as an existential crisis or emergency for the European Union have allowed its members and institutions to more ruthlessly enforce their border policies. It is in this space that "emergency" has assumed its prominent role, masquerading as necessary to the maintenance of sovereignty and embracing all of its pernicious racial dimensions.

II. EMERGENCY AS RACIAL SOVEREIGNTY

Sumi Cho and Gil Gott, in their insightful portrait of the "racial sovereign," suggest that the projection of liberal legal crisis management through emergency powers is inherently flawed. By "engaging national security 'concerns' at face value, irrespective of the long record of involuntary sacrifice fraudulently imposed upon racial minorities through declarations of emergency and threat,"²⁹ liberal legalism—and its insistence that law is apolitical—remains part of the problem. Cho and Gott trace the sociolegal dynamic of emergency in the North American context to a racially coded discourse of sovereignty, which emerged from and evolved with judicial determinations regarding native rights and sovereignty in the nineteenth century. As such, race and sovereignty were mutually constructed—albeit with purportedly neutral legal principles—and devised in such a way as to effectively lock racial hierarchies into the law.³⁰ In thinking through the interrelation of sovereignty, emergency, and legality:

[T]he fundamental question to ask ourselves is how our models of emergency constitutionalism relate to the ontology of order under empire. To perceive security interests as always already racialized and imperial moves us in another direction, one that problematizes the

28. According to the International Organization for Migration (IOM), there were 19,803 migrants recorded dead or missing in the Mediterranean Sea between 2014 and 2019, and it remains the deadliest migration route in the world. See *Missing Migrants*, INT'L ORG. FOR MIGRATION (Apr. 8, 2021), <https://missingmigrants.iom.int/region/mediterranean> [<https://perma.cc/6V9Q-4KNS>]. On the violence of borders in global context, see generally REECE JONES, *VIOLENT BORDERS: REFUGEES AND THE RIGHT TO MOVE* (2016).

29. Sumi Cho & Gil Gott, *The Racial Sovereign*, in *SOVEREIGNTY, EMERGENCY, LEGALITY* 183 (Austin Sarat ed., 2010).

30. U.S. Supreme Court decisions such as that in *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831), which rejected the claim of native sovereignty, served to convert "the legal equality assumed by hundreds of treaties entered into by the United States and native nations into a hierarchical and subjugationist relationship of ward/guardian." Cho & Gott, *supra* note 29, at 203.

fascistic trap door in the foundation of modern imperial state power with its violence-legitimizing discourses of security and exclusion.³¹

My own understanding of emergency law as a racializing component of sovereignty stems from global colonial contexts in which the effects of a state of emergency were inherently contingent on race. Here, the social history that paralleled and gave rise to the doctrine of emergency is important. State of emergency provisions and practices were not created in a void, and their effects have fallen unevenly and disproportionately on colonized and minority groups. They have indeed developed in a way that has led to the construction of racialized and suspect communities. Nasser Hussain's work, for example, deftly demonstrates that in nineteenth century India, general notions of emergency—not simply specific moments of exception—were imbricated in the legal reasoning and institutions of the colonial state and characterized by racialism of a particularly “Victorian sensibility.”³² This was so throughout much of the colonial world. Indeed, emergency laws and powers have represented an important disciplining cog in the machinery of the European expansionary project over time. Their usage originated with martial law as it was applied internally in England from the sixteenth century on. This was subsequently exported to the British colonies and adapted according to the particular needs of local colonial administrations over time. It was also incorporated in different ways by rival powers into their own imperial governance systems. The result was a broad proliferation of emergency politics and lawmaking across the European empires from the eighteenth to mid-twentieth century. Subsequently and consequently, similar legal logics and narratives of emergency and exception, adopted in the post-colonies or retained by the consolidated settler colonial states and global imperial powers, live on. The ubiquitous motif is that of otherness, created and invoked by pinpointing a racialized community as the object of the emergency measures in order to reinforce dominant state apparatuses or create new racial states. As such, European imperial constructions of race have profoundly shaped the legal-political concept of emergency in both international law and in many domestic legal systems.

In the larger story of colonialism and racial capitalism from the eighteenth century onwards, emergency law has facilitated the subordination and control of colonized and racialized communities through the appropriation of land and resources, as well as the suppression of labor movements. This culminated in the widespread deployment of emergency powers across the British empire during the

31. Cho & Gott, *supra* note 29, at 227.

32. NASSER HUSSAIN, *THE JURISPRUDENCE OF EMERGENCY* 48 (2003).

1940s and 1950s, and is evidenced in the evolution of French emergency law in Algeria and elsewhere—all demonstrable attempts to subdue and punish native populations. The influence of these colonial experiences and legal innovations on the normative content of international law can be seen in the direct insertion, primarily by British delegates, of emergency derogation provisions into foundational human rights treaties written at the outset of the United Nations era. Indeed, colonial emergency law and practices have directly informed and shaped international law's conceptions of emergency norms in international treaties and jurisprudence after the Second World War.³³

By transplanting emergency doctrine from colonial law and applying it to and within international law, white imperial states carved out a mechanism for the differentiated application of rights. The racial contingency of rights was indeed a formative underlying element of the postwar international institutional human rights project,³⁴ the legacies of which reverberate today at different registers. We see it in the extension and replication of colonial emergency law—often deployed most violently against racialized minorities—in the postcolonial state. We see it being used to foster continued colonization and control in settler colonial contexts. We see it in the deployment of emergency powers in imperial state security policy and economic governance. And, most visibly in recent times, we see it in the securitization and enforcement of border regimes. Here, the curious relationship between borders and legal-political framings of emergency suggests something

33. JOHN REYNOLDS, *EMPIRE, EMERGENCY AND INTERNATIONAL LAW* 111–92 (2017).

34. In some formulations, this appeared as a subtle and indirect contingency; in others, it was much more explicit. In Hersch Lauterpacht's 1945 text, *An International Bill of the Rights of Man*, for example, which is still celebrated by liberal lawyers as the primary inspiration for the Universal Declaration of Human Rights and the European Convention on Human Rights, Lauterpacht makes clear his position: It is not realistic to view equality rights as connoting racial equality in all contexts, nor should an international bill of rights require absolute equality of suffrage. For Lauterpacht, "the disfranchisement, partial or total, of large sections of the Negro population in the United States or in South Africa or of Indians in Kenya and South Africa" is a matter that should be left to the discretion of the governments concerned. Lauterpacht makes clear that this is because of the implications that equality would entail. In the case of apartheid South Africa, for example, it would be "a consummation which would signify the end of her Western civilization": "In the Union of South Africa the population of European descent numbers two millions; the native Bantu population numbers six and a half millions; that of coloured and Asiatic races one million. The implications, in this case, of an absolute equality of franchise need no elaboration." Apartheid, he suggests, along with segregation in parts of the United States or colonial administration in Kenya, "is sui generis, and it would be fatal to adapt fully the fundamental purpose of the Bill of Rights to exceptional situations of this nature." HERSCH LAUTERPACHT, *AN INTERNATIONAL BILL OF THE RIGHTS OF MAN* 140–41 (2nd ed. 2013) (1945). In his introduction to the 2013 reissue of Lauterpacht's book, Philippe Sands passes this racial worldview off as necessary "realpolitik." Philippe Sands, *Introduction to HERSCH LAUTERPACHT, AN INTERNATIONAL BILL OF THE RIGHTS OF MAN*, at xvi (2013).

more sinister about prevalent liberal-legal constructs. Whether these constructs present as First World migration “crises,” human mobility for “them” as tantamount to national emergency for “us,” or “protecting our European Way of Life” as a technocratic euphemism for Fortress Europe, they effectively function as coded incorporations of far-right notions of the “great replacement” or “white genocide.” This dynamic centers around racialized understandings of the nation and European nation states’ perceptions of themselves as white—as well as the broader regional imaginary of a coherent white European nation as such. In this configuration, the migration of too many people from non-white communities is seen as posing not just integration, security, or resource challenges, but an *existential* threat to the life of the European nation itself. And this notion of existential threat is already embedded within international law and can be mobilized as such.

III. THE LIFE OF THE NATION

The postwar movement for the international protection of human rights emerged ostensibly in response to totalitarianism—a liberal project designed to preclude the types of abuses perpetrated before and during the Second World War. International organizations went about institutionalizing legal mechanisms to serve such an end. Major human rights treaties formulated in response to (predominantly European) barbarism—itsself meted out under states of exception and emergency—would nonetheless end up granting states a pass to suspend or derogate from obligations in the event of a self-diagnosed emergency.³⁵

The initial working drafts of the European Convention on Human Rights and the International Covenant on Civil and Political Rights contained no mention or definition of emergencies. They made no reference to any need to allow for special measures in times of emergency or crisis. The preparatory records of the European Convention on Human Rights show that a general limitation or balancing clause modeled on Article 29(2) of the Universal Declaration of Human Rights was from the outset considered sufficient by the majority of states and the Committee on Legal and Administrative Questions to deal with any exceptional

35. See, e.g., International Covenant on Civil and Political Rights art. 14, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171; Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms art. 15, *opened for signature* Nov. 4, 1950, 213 U.N.T.S. 221 [hereinafter European Convention on Human Rights]; American Convention on Human Rights art. 27, Nov. 22, 1969, 1144 U.N.T.S. 123.

circumstances.³⁶ The drafting history reveals two subsequent significant developments between that earlier draft and the final text of the treaty, in which the emergency provision was included.

The first critical factor was staunch British advocacy for states to reserve discretion to define, declare, and impose emergency law and powers. Britain's historical reliance on martial law and emergency legislation in its colonies, and the backdrop of the multiple states of emergency playing out at the time of the drafting of the Convention, illustrate the still prevailing colonial view of emergency: imperative in situations where authority is imposed by force rather than consent. For the British government, the purpose of enacting a human rights convention was not simply the protection of individuals. Rather, the Convention would also function to strengthen the legal armory of the state to maintain its authority and perpetuate its monopoly on legitimate violence. To support its position, the British representative stressed to the Assembly the importance of operationalizing the proposed Convention "as a means of strengthening the resistance in all our countries against insidious attempts to undermine our democratic way of life from within or without, and thus to give to Western Europe as a whole greater political stability."³⁷ This idea of harnessing an international convention to shore up domestic sovereignty is a testament to the interrelation between newly evolving international legal mechanisms and Britain's wartime and colonial emergency powers. It speaks to the idea of international law as "a discipline of crisis."³⁸ It also sheds further light on current European perceptions of an existential threat posed by migration from without, and the reverberations of the "way of life" trope across time and space are striking. Focused on bolstering its sovereign authority, Britain forcefully advocated for the inclusion of an emergency clause which would allow for derogation from the majority of the Convention during times of public emergency. Despite a report of the Secretariat-General finding that "the inclusion of this provision in the European system appears to be unnecessary,"³⁹ Britain remained insistent, and ultimately, got its way: state discretion for emergencies was incorporated into the Convention.⁴⁰

36. Council of Europe Doc. AS(1)77, 201; 'Report of the Consultative Assembly, sitting of 8 September 1949', in COUNCIL OF EUROPE, COLLECTED EDITION OF THE 'TRAVAUX PRÉPARATOIRES' OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS 32 (Vol. II).

37. Report of the Consultative Assembly, First Session, Part I, Fifth Sitting, 16 August 1949, 83–85, quoted in Council of Europe, COLLECTED EDITION OF THE 'TRAVAUX PRÉPARATOIRES' OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS, 30 (Vol. I).

38. See Hilary Charlesworth, *International Law: A Discipline of Crisis*, 65 MOD. L. REV. 377 (2002).

39. Council of Europe Doc. B22, 18.

40. 'Report of the Meetings of the Committee of Experts, sitting of 4 February 1950', Council of Europe Doc. A782.

The second significant factor involved the definition of emergency itself. By the closing stages, the draft emergency provision read as follows: “In time of war or other public emergency threatening the interests of the people, a State may take measures derogating from its obligations under this Convention”⁴¹ But the final text adopted as Article 15 of the Convention shows one substantive amendment: *the interests of the people* was replaced with *the life of the nation*.⁴² This telling substitution reveals the apparent preference for a norm rooted in a top down, fixed, and ethno-racial concept of nation, rather than a more diffuse and potentially fluid, expansive, or inclusive notion of “the people” and their interests.

I refer to this particular fragment of treaty-drafting not because a human rights convention in Europe with no emergency escape hatch would have allowed any greater right to move or migrate to those coming from outside of Europe. The sovereign right to exclude already trumped that from the outset. Rather, the framing of the emergency provision is important in terms of the political vision and imaginary it lays out. Even in a treaty enshrining individual civil and political rights, the idea of the nation—as a more or less stable, protected entity—was paramount, and the amended text results in a treaty that accords as much protection for emergency discretion as the civil rights themselves.

The subsequent application and interpretation of this specific provision in the extraterritorial context is also crucial and illuminating. In Kenya, the colonial governor declared a state of emergency in 1952, which remained in place until the country liberated itself from British rule almost a decade later. The British government lodged a formal declaration of emergency and derogation from the European Convention on Human Rights with the Council of Europe in 1954. It did the same for emergencies throughout the 1950s and 1960s in numerous other colonies. In colonial Kenya, the life of the nation said to be under threat was not that of the Kenyan nation—nor the Kikuyu, Emba, Kamba, or Meru nations for that matter—but the white settler community. As a British colony, the colonial administration in Kenya was predominantly upper- and middle-class Brits. The settler community encompassed a much wider pool of European nationalities, however, as well as settlers from South Africa, Australia, and New Zealand. What defined the settler nation as a nation was its broad white European heritage, not merely a specific Britishness. Citing the security concerns of white settlers, the colonial forces implemented mass internment and perpetrated mass brutality and forced labor. They did so under cover of the narrative and legal regime of emergency, in a collectively punitive and openly racist manner. Further, these

41. Council of Europe Doc. CM/WP 4(50)16, Appendix; A1445.

42. Council of Europe Doc. CM/WP 4(50)19 annexe; CM/WP4(50)16rev.; A1452.

colonial administrations deliberately renewed and extended the state of emergency to avoid Britain having to answer any international legal questions under international human rights law or international labor law.⁴³

Since then, this type of emergency paradigm has played out in a variety of ways and in different localized contexts under the European Convention on Human Rights system, including other early instances of British derogations in colonial contexts. In an interstate complaint, brought by Greece and challenging certain British colonial emergency measures in the 1950s, the European Commission of Human Rights came up with an understanding of the concept of the protected nation that ultimately privileged the colonizer over the colonized.⁴⁴ The Commission rooted its definition of the nation in international law's conception of sovereignty, and said that the term nation, in this context, means the colonial institutions and its society, "including the authorities responsible both under domestic and international law for the maintenance of law and order."⁴⁵ This corroborates the international legal order's embedded structural configuration, and reflects international law's conservatism and state centrism, including the right of existing states to dominate and exclude. The Commission found it "inconceivable" that the parties to the European Convention could have intended, or agreed, to apply legal obligations to colonial territories if the colonial state would be unable to declare and impose emergency measures on anti-colonial resistance against "the established Government of the territory."⁴⁶ The single dissenting opinion (from an eleven person panel) argued that adopting such a premise was "tantamount to conferring on the colonial authorities the means of inordinately consolidating their powers."⁴⁷ But of course this is precisely what the Convention was designed to do. Here, it was simply fulfilling its designated role in preserving the status quo.

Although the territorial decolonization of most of the European colonies was subsequently achieved, the dismantling of international law's colonial legacies and structures was not. Fifty years later, the British state continued to enjoy the consequences of the European Commission's initial decision. That the "threat to the life of the nation" was interpreted to privilege colonial rule provided the British state with broad cover under which it could conduct its ever-expanding counter-terrorism mandate. The wide emergency latitude accorded by the initial

43. For a more detailed account of all these dynamics of the state of emergency in Kenya, see REYNOLDS, *supra* note 33, at 138–69.

44. Greece v. United Kingdom (The Cyprus Case), App. No. 176/56 (1958).

45. *Id.* ¶ 133.

46. *Id.*

47. *Id.* ¶ 139.

interpretation is evident in the Commission's 2009 decision in *A v. UK*, a case concerning Muslims "preventatively" detained in Belmarsh prison under antiterrorism legal provisions specifically aimed at foreign nationals.⁴⁸ The Court adjudged that although certain measures implemented pursuant to Britain's so-called war against terrorism derogation were discriminatory and disproportionate to the threat posed to the life of the nation, the declaration of emergency and the derogation itself were justified on the basis that certain foreign Muslims did pose a threat to the life of the British nation.⁴⁹ And despite finding that some of the Belmarsh detention policies were not justified by the exigencies of the supposed existential threat faced by Britain, the Court's reasoning reveals a racializing tendency that international law's invocation of the nation precipitates. The discriminatory aspect of the British legislation at issue rendered the actions of the British authorities disproportionate—the Court essentially felt it unreasonable for the emergency measures to discriminate between "British Muslims" and "foreign Muslims."⁵⁰ And yet, at the same time, it appeared to have no issue with the unavoidable implication of that particular binary: a presumption that those subjected to the emergency measures would naturally be Muslims. The anti-discrimination position expounded by the Court explicitly denounced Britain's detention measures on the basis of its citizenship-based distinction, while implicitly condoning emergency derogation from the Convention on the basis of framing Muslim communities as suspect. The Court thus failed to draw the logical conclusion that the emergency itself was discriminatory—both in law, where the derogation was specifically linked to acts of perceived "Islamic" terrorism, and in practice, through the tendency of the British security services "to assume that any devout Muslim who believed that the way of life practiced by the Taliban in Afghanistan was the true way to follow must be suspect."⁵¹ The threat to the British nation here is a threat that comes from outside its predominantly white constituency. As Stuart Hall reminds us: "Britishness as a category has always been racialized through and through—when has it connoted anything but 'whiteness'?"⁵² Muslims are racialized as other than white and can pose a threat on that basis alone, regardless of where they may come from. Similar tendencies are reproduced across other European countries.⁵³

48. *A. and Others v. United Kingdom*, App. No. 3455/05, Eur. Ct. H.R. (2009).

49. *Id.*

50. *Id.* ¶ 188.

51. Special Immigration Appeals Commission, Judgment of 29 October 2003, *quoted in A. and Others v. United Kingdom*, App. No. 3455/05, Eur. Ct. H.R. at ¶ 31 (2009).

52. Stuart Hall, *Conclusion: The Multi-cultural Question to UN/SETTLED MULTICULTURALISMS: DIASPORAS, ENTANGLEMENTS, TRANSDUCTIONS* 222 (Barnor Hesse ed., 2000).

53. See, e.g., LIZ FEKETE, *EUROPE'S FAULT LINES* (2018).

Here we start to see the international legal understanding of the nation as increasingly useful to the political project of white nationalism. The supposed threats to the life of European nations since the Second World War have come, in turn, from anti-colonialism, communism, and terrorism. In the more recent contexts of so-called migration emergency and crisis, the life of the European nation is seen to be threatened by a dilution of its whiteness. The concept of the “life” of the nation is stretched and takes on identitarian, demographic, and cultural meaning, as well as biological meaning. A “way of life” is at stake, and the racial makeup of the nation must be broadly preserved.

IV. MIGRATION AS REPLACEMENT

The 2008 Italy–Libya Treaty on Friendship, Partnership and Cooperation led to a hardening of automatic “pushback” policies in the Mediterranean and a significant reduction in the number of migrants able to make it across the European Union’s southern border in 2009.⁵⁴ Seeing this as a success, the EU in 2010 identified “great scope to develop cooperation with Libya on migration”⁵⁵ and was keen to reach a wider agreement with Colonel Gaddafi for his regime to further block access to the sea migration routes. Gaddafi said Libya would need €5 billion from the EU to implement such a deal.⁵⁶ At an event in Rome with Silvio Berlusconi, and subsequently at an EU–Africa summit in Tripoli, Gaddafi played very directly on European fears of race replacement and cultural diversification, telling EU leaders that they needed to fund Libya to “stop this illegal immigration. If we don’t, *Europe will become black*, it will be overcome by people with different religions, it will change.”⁵⁷

This baiting by Gaddafi goes to the core of EU policy concerns on migration. The racial mythmaking of migration as a “great replacement” is not new. The

54. See, e.g., HUMAN RIGHTS WATCH, PUSHED BACK, PUSHED AROUND: ITALY’S FORCED RETURN OF BOAT MIGRANTS AND ASYLUM SEEKERS, LIBYA’S MISTREATMENT OF MIGRANTS AND ASYLUM SEEKERS (2009).

55. Ian Traynor, *EU Keen to Strike Deal With Muammar Gaddafi on Immigration*, GUARDIAN (Sept. 1, 2010), <https://www.theguardian.com/world/2010/sep/01/eu-muammar-gaddafi-immigration> [<https://perma.cc/LV8N-S6ZW>] (quoting Matthew Newman).

56. *Id.*

57. Bruno Waterfield, *Gaddafi Demands £4 Billion From EU or Europe Will Turn ‘Black’*, TELEGRAPH (Nov. 30, 2010), <https://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/8170956/Gaddafi-demands-4-billion-from-EU-or-Europe-will-turn-black.html> [<https://perma.cc/JZ8B-PDPA>] (emphasis added). During two different speeches delivered in Rome, Gaddafi appealed to young Europeans to adopt Islam as their faith. Gaddafi, *quoted in* Traynor, *supra* note 55. Further, he goaded European leaders and institutions by asking “what will be the reaction of the white and Christian Europeans faced with this influx of starving and ignorant Africans.” *Id.*

notion of *le grand remplacement* indeed first emerged as an anti-immigration and antisemitic tendency in the French white nationalist oeuvre in the late nineteenth century,⁵⁸ and has travelled and evolved in different shapes and forms since then. It has escalated over the last ten years, absorbed into liberal political projects and institutions under the euphemistic cover of addressing “legitimate fears” and protecting Europe’s “common values” and “way of life.”⁵⁹ Replacement rhetoric and messaging has been proliferated in concert with the far right’s relative electoral revival and its moves toward a more consciously international white nationalist movement.⁶⁰ In the context of this cross-border white nationalism, it finds expression across a range of registers—from the coming together of pan-European far-right and post-fascist party alliances, to the ways that mass shooters like Anders Breivik, Dylann Roof, Patrick Crusius, and Brenton Tarrant all invoke some version of great replacement theory in their manifestos, and envision themselves as part of a broader global milieu defending white nations from existential risk. Roof, for example, declared that he witnessed the consequences of migration in Europe from his home in the United States, and he saw the homeland of white people as formative to his racial awakening: “I saw that the same things were happening in England and France, and in all the other Western European countries.”⁶¹

Far-right discourse in the Western world in recent years has engaged extensively with questions of the international—the past of slavery and colonialism, the present of migration and multiculturalism. The striking recurring theme here has been the attention devoted to preserving a kind of chastity of the nation, lest the European nations go the way of white rule in Rhodesia or South Africa. Within this milieu, the realities of longstanding patterns of oppression are distorted: white groups are cast as victims; “European” heritage and culture are presented as endangered.

58. See, e.g., GREGOIRE KAUFFMANN, *LE NOUVEAU FN: LES VIEUX HABITS DU POPULISME* (2016).

59. See, e.g., von der Leyen, *supra* note 2.

60. Angela Giuffrida, *Europe’s Far Right Leaders Unite With a Vow to ‘Change History’*, *GUARDIAN* (May 18, 2019), <https://www.theguardian.com/politics/2019/may/18/europe-far-right-leaders-unite-milan-vow-to-change-history> [<https://perma.cc/4EFZ-ZQD>]. To the fore in this project is Matteo Salvini, leader of Italy’s *Lega* party and former Deputy Prime Minister and Minister of the Interior, who has described the movement of migrant labor into Italy as “ethnic substitution” and “an attempt at genocide.” *Migranti, Salvini a Sky TG24: “È in Corso Una Sostituzione Etnica,”* *SKY TG24* (May 29, 2016), <https://tg24.sky.it/cronaca/2016/05/29/matteo-salvini-migranti-sbarchi-austria.html> [<https://perma.cc/3VYN-SWQB>].

61. Kathy Gilsinan, *Why Is Dylann Roof So Worried About Europe?*, *ATLANTIC* (June 24, 2015), <https://www.theatlantic.com/international/archive/2015/06/dylann-roof-world-white-supremacist/396557> [<https://perma.cc/YAH9-S456>].

In these narratives, we see particular racial tropes being tethered to legal concepts and then tactically deployed. Whereas scholars on the left have conceptualized Global South to North migration as a form of decolonization or reparations, migration in the far-right distortion *is colonization*. Migration, in this telling, is even a form of genocide. The narrative—and in some instances, international legal argument⁶²—of white genocide has proliferated across the Western world. It has fueled resentment around perceived victimhood and dispossession and mobilized those who perceive themselves as under threat. Like the great replacement conspiracy, white genocide is a byword among white supremacists for immigration and demographic trends that will lead not just to the loss of white majority status, but to the elimination of the white “race” as such. This is a figment of the racist imagination that taps into anxieties around ethnic diversity or race mixing as forms of genocide by integration,⁶³ and around the very idea of post-racial or non-racial society. It also lingers—unsaid but unavoidable—beneath the framing of scholarly debates and roundtables that ask such questions as: “Is Rising Ethnic Diversity a Threat to the West?”⁶⁴

A reactionary brand of political science couches this narrative in more oblique framings such as “whiteshift”⁶⁵—implying a subversion of white European culture and nation by racial infiltration—and defends those who oppose non-white immigration as expressing “racial self-interest” but “not racism.”⁶⁶ Such contentions are of course premised on a conception of racism as an individual trait

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62. The “White Genocide Project,” for example, has argued that a “combination of mass immigration (of different groups of people) plus forced assimilation would qualify as genocide” under Article 2(c) of the 1948 Genocide Convention (as well as the definition and writings of Raphael Lemkin). *About White Genocide: What Is White Genocide?*, WHITE GENOCIDE PROJECT, <http://web.archive.org/web/20170919001729/http://whitegenocideproject.com/about-white-genocide> [https://perma.cc/97K4-X6ND]. In contrast to some other instances of genocide, they state, “White Genocide is taking place across many countries, and it is being done to the majority, rather than a minority.” *Id.*
 63. Jane Coaston, *The Scary Ideology Behind Trump’s immigration Instincts*, VOX (Nov. 6, 2018, 7:09 PM), <https://www.vox.com/2018/11/18/16897358/racism-donald-trump-immigration> [https://perma.cc/FH23-5XP2].
 64. *Framing Ethnic Diversity as a “Threat” Will Normalise Far-Right Hate, Say Academics*, OPEN DEMOCRACY (Oct. 23, 2018), <https://www.opendemocracy.net/en/opendemocracyuk/framing-ethnic-diversity-debate-as-about-threat-legitimises-hat-0> [https://perma.cc/7K3U-PY4R].
 65. ERIC KAUFMANN, *WHITESHIFT: POPULISM, IMMIGRATION, AND THE FUTURE OF WHITE MAJORITIES* (2019).
 66. ERIC KAUFMANN, *RACIAL SELF-INTEREST IS NOT RACISM: ETHNO-DEMOGRAPHIC INTERESTS AND THE IMMIGRATION DEBATE*, POLICY EXCHANGE (2017). There has indeed been a steady stream of books along these lines from the right-leaning pundit class in recent years. See, e.g., ROGER EATWELL & MATTHEW GOODWIN, *NATIONAL POPULISM: THE REVOLT AGAINST LIBERAL DEMOCRACY* (2018); DOUGLAS MURRAY, *THE STRANGE DEATH OF EUROPE: IMMIGRATION, IDENTITY, ISLAM* (2017).

rather than as an overarching structure. Whereas in fact if a majority population dominates institutional structures—if it assumes the mantle of the nation—and most of that population is consciously or unconsciously motivated by racial self-interest and ethno-demographic interests, over time this entrenches the structures of institutional racism. Borders are clearly one such structure. It is telling that a notion of “white Zionism,” and the particular type of border regime it implies, has been advanced as a template for the model of the exclusionary racial state required to protect against supposed white dispossession. For its protagonists, this project is not just about saving the imaginary of white nationhood. The white nations are constructed, in the language of international law no less, as the civilized nations, so the vision is about saving civilization itself. As such, the very existence of civilized society is under threat; this is the emergency that must be faced down.

Of course, no one will say as much or use quite these terms—certainly not the European Commission, self-styled “respectable” centrist politicians, or other technocratic institutions in Europe. But the underlying sentiment is no less clear: implicitly, efficiently, and effectively communicated and reproduced through their border policies. From the perspective of Tom Farer and the “muscular liberal” politics supported by his analysis, migration to Europe from the Global South—from African and Arab Muslim communities especially—is a threat to any given European nation’s so-called liberal values, its very way of life, and, ultimately, its racial sovereignty. Consequently, migration from the South is a “crisis” and requires emergency rhetoric, emergency summits, and emergency measures.

V. MIGRATION AS “EMERGENCY”

European measures and mechanisms to block and deter migration from the South are not a new phenomenon. Much has rightly been made in recent times of the impacts of the 2017 Memorandum of Understanding signed between the social democratic government in Italy and the Libyan government of national accord on “cooperation in the fight against illegal immigration” and “reinforcing the security of borders between the State of Libya and the Italian Republic.”⁶⁷ That agreement bled into the more openly extreme anti-immigration and externalization measures implemented in 2018–19 by the subsequent

67. Memorandum of Understanding on Cooperation in the Fields of Development, the Fight Against Illegal Immigration, Human Trafficking and Fuel Smuggling and on Reinforcing the Security of Borders Between the State of Libya and the Italian Republic (Feb. 2, 2017), https://eumigrationlawblog.eu/wp-content/uploads/2017/10/MEMORANDUM_translation_finalversion.doc.pdf [<https://perma.cc/D3FQ-8LPJ>].

“polyvalent-populist”⁶⁸ and far-right coalition in Italy.⁶⁹ These dynamics did not, however, materialize solely in response to the increased visibility of people on the move in 2015. In fact, agreements and joint initiatives—for naval patrols, automatic forced return to Libya, and more—have been a regular feature of relations between the two countries going well back to the 1990s.⁷⁰ And, of course, the European Union’s external border regime long predates its internal free movement and common visa policies. The fortification and extra-territorialization of the border have been part of a managed and normalized process. The EU invoked the situations in North Africa and the Middle East after the beginning of the Arab uprisings in 2011—and above all the record number of migrants it decided to allow to drown in the Mediterranean in 2015⁷¹—to frame a new existential emergency. The far right seized the opportunity to escalate its rhetoric of a threat to the sustainability of European whiteness. The European establishment, meanwhile, pointed to the situation as a migration “crisis” that demanded exceptional measures. While the far right’s position may be more vulgar than that of the European establishment, with less direct access to the levers of power, it would be a mistake to view these two framings as entirely separate or distinct. Instead, we can see their intersection and alignment in institutional policy. Take, for example, the “hotspot” system created by the European Commission emergency summit in September 2015 as a way to more rapidly designate and deport those perceived to be economic migrants.⁷² Under this

68. Andrea L. P. Pirro, *The Polyvalent Populism of the 5 Star Movement*, 26 J. CONTEMP. EUR. STUD. 443–58 (2018).

69. See ANNA LIGUORI, *MIGRATION LAW AND THE EXTERNALIZATION OF BORDER CONTROLS: EUROPEAN STATE RESPONSIBILITY* (2019).

70. Earlier agreements and joint initiatives between Italy and Libya include the 1998 Joint Communiqué on Migration Controls; the 2000 Agreement for Cooperation on Clandestine Immigration and its 2007 Protocols and 2009 & 2010 Additional Acts; the 2007 Agreement on Joint Patrols; the 2008 Treaty on Friendship, Partnership and Cooperation; the 2011 Memorandum of Understanding on Shared Management of Migration; and the Tripoli Declaration of January 21st 2012.

71. From 2014, EU governments refused to fund the Italian-led rescue operation, Operation Mare Nostrum. See *Missing Migrants*, INT’L ORG. MIGRATION, <https://missingmigrants.iom.int/region/mediterranean> [<https://perma.cc/W8EQ-4JNN>]. It was replaced in November 2014 by a Frontex security operation—Operation Triton. *Id.* According to figures from the International Organization for Migration, the abolition of Operation Mare Nostrum led to a ninefold increase in migrant deaths in the first four months of 2015. *Id.*

72. For a genealogy of the hotspot policy and analysis of its function as a mechanism of containment, identification, partitioning, and forced transfer of migrants in Italy and Greece, see, for example, Martina Tazzioli & Glenda Garelli, *Containment Beyond Detention: The Hotspot System and Disrupted Migration Movements Across Europe*, ENV’T. & PLAN. D. SOC. & SPACE (Feb. 19, 2018), <https://doi.org/10.1177/0263775818759335> [<https://perma.cc/B8ZU-hmt9>].

system, people identified as such are hastily and automatically excluded from any opportunity to stake a claim to stay. And this centralized action by the European Union has been further complemented by actions taken by its member states. Several members have issued declarations of states of emergency on the peripheries and perimeters of the EU so as to facilitate the deployment of armored police and military troops to reinforce their borders.⁷³ Reports of the “blood on the ground” along the land borders continue as young migrants are shot or beaten by police, left with “[b]roken teeth, truncheon wounds on their shoulders, shins slashed by the teeth of police dogs.”⁷⁴

Ultimately, international law is very much part of the story—and the problem—of how the “emergency” is created in the first instance, and then how it may be wielded with maximum racializing effect. And as it stands, international law is also not equipped to counter this process and its own defects. Ramji-Nogales has described some of the ways by which the architecture of international migration law in particular—such as limited non-refoulement protections combined with the more generally weak, outdated, and morally bankrupt sphere of refugee law norms and state obligations on migration—contributes to the legal construction of migration emergencies.⁷⁵ There has been some important analysis in the United States’s legal context of the racializing impacts of the border itself⁷⁶ and of the “immigration state of emergency” presented by contemporary citizenship and deportation regimes—showing “how rhetorics of protecting the security of a vulnerable national citizenry justify the disparate legal treatment of

73. See Fatos Bytyci, *Macedonia Cracks Down on Flow of Migrants Under Emergency Decree*, REUTERS (Aug. 20, 2015), <https://www.reuters.com/article/us-europe-migrants-macedonia/macedonia-cracks-down-on-flow-of-migrants-under-emergency-decree-idUSKCN0QP0UC20150821> [<https://perma.cc/5DRD-8SQY>]; Lydia Gall, *Dispatches: Hungary’s New, Bigger, Migrant Lockout*, HUM. RTS. WATCH (Mar. 9, 2016, 3:21 PM), <https://www.hrw.org/news/2016/03/09/dispatches-hungarys-new-bigger-migrant-lockout> [<https://perma.cc/S9UJ-8UND>]; *Macedonia: Stop Police Violence Against Migrants*, HUM. RTS. WATCH (Aug. 22, 2015, 5:44 AM), <https://www.hrw.org/news/2015/08/22/macedonia-stop-police-violence-against-migrants> [<https://perma.cc/L78E-V8BT>]; David Kearns, *Hungary Takes Refugee Children Away From Parents as it Declares State of Emergency*, IRISH INDEP. (Sept. 15, 2015), <https://www.independent.ie/world-news/europe/hungary-takes-refugee-children-away-from-parents-as-it-declares-state-of-emergency-31528860.html> [<https://perma.cc/XRY7-7PMR>].

74. Lorenzo Tondo, ‘Blood on the Ground’ at Croatia’s Borders as Brutal Policing Persists, GUARDIAN (Dec. 22, 2019), <https://www.theguardian.com/global-development/2019/dec/22/blood-on-the-ground-at-croatia-borders-as-brutal-policing-persists> [<https://perma.cc/9QK6-8RJZ>]. See also Agnes Callamard (Special Rapporteur of the Human Rights Council), *Unlawful Death of Refugees and Migrants*, U.N. Doc. A/72/335 (Aug. 15, 2017).

75. Jaya Ramji-Nogales, *Migration Emergencies*, 68 HASTINGS L.J. 609 (2017).

76. Vanessa Gonlin, Nicole E. Jones & Mary E. Campbell, *On the (Racial) Border: Expressed Race, Reflected Race, and the U.S.–Mexico Border Context*, 6 SOC. RACE & ETHNICITY 161 (2020).

undocumented migrants.”⁷⁷ This is less so the case in the European context, and more critical engagement is needed. Daria Davitti and Nick Vaughan-Williams have done important work theorizing Europe’s migration crisis through the lens of biopolitics.⁷⁸ My contention is that the emergency as a perceived existential threat to the nation is mobilized to reinforce the foundations of exclusion, essentially based on race, laundered through the prism of nationality. Nationality-based discrimination is both generally legal under international law and unequivocally more palatable to liberals. Given the racial history underpinning the development of international law’s conceptualization of the nation, and the fact that its protection remains a priority in emergency settings, the resulting exclusionary policy is necessarily racially inflected. And as I have suggested earlier, in the European context this is not limited to conventional nation state nationality; rather, it has evolved into a form of regional race-based nationalism: the white nation is now defined by Europeanness more broadly, giving rise to a transnational white nationalism.

Europe’s “migration crisis” is not about border security or resource allocation in and of themselves. It is about the perpetuation of white demographic domination in Europe and the exclusionary maintenance of the accumulated wealth which sustains it. International law’s general sovereign right to exclude non-citizens, and its broad construction of emergency as any existential threat to the nation-as-racial-majority, legitimizes this project. The colonial continuities and parallel colonial effects of emergency law and migration law are central to this. In reality, Europe does not have a migration crisis. It has a crisis of migrant solidarity. As Obiora Okafor puts it, the world, and Europe in particular, “does not face a crisis of numbers but rather a ‘crisis of solidarity’”—the European Union is indeed at the vanguard of “de-solidarity.”⁷⁹ By de-solidarity, Okafor means not just a failure to express or act in solidarity, but also “the increasing tendency to fundamentally question or problematize solidarity itself as a

77. Katie E. Oliviero, *The Immigration State of Emergency: Racializing and Gendering National Vulnerability in Twenty-First-Century Citizenship and Deportation Regimes*, 25 FEMINIST FORMATIONS 1, 1 (2013).

78. Daria Davitti, *Biopolitical Borders and the State of Exception in the European Migration “Crisis,”* 29 EUR. J. INT’L L. 1173 (2018); NICK VAUGHAN-WILLIAMS, *EUROPE’S BORDER CRISIS: BIOPOLITICAL SECURITY AND BEYOND* (2015).

79. Obiora Chinedu Okafor, *Cascading Toward “De-Solidarity”?: The Unfolding of Global Refugee Protection*, TWAIL: REFLECTIONS (Aug. 30, 2019), <https://twailr.com/cascading-toward-de-solidarity-the-unfolding-of-global-refugee-protection> [https://perma.cc/VM2M-JCF9]. See also Shoshana Fine, *All at Sea: Europe’s Crisis of Solidarity on Migration*, EUR. COUNCIL ON FOREIGN REL. (Oct. 14, 2019), https://www.ecfr.eu/publications/summary/all_at_sea_europes_crisis_of_solidarity_on_migration [https://perma.cc/H8PE-5M48].

conception, praxis, or obligation, and to work to dismantle the infrastructure of solidarity.”⁸⁰ In the European context this has a fundamentally racial contour. The idea of emergency—the influx of *them* as an emergency for *us*—fuels active anti-solidarity, to protect the viability of our own nation and way of life. Okafor cites the Hungarian mayor László Toroczkai, who in 2015 claimed that any European solidarity with Global South migrants should not be seen as an expression of freedom but rather as “more like suicide”—in this worldview, “European solidarity with such people is illogical and self-destructive, so it is solidarity itself that needs to be rooted out.”⁸¹ This is the function of the emergency framing: to deflect from the empirical realities—that only 3.4 percent of the world’s population are migrants, that a mere 0.3 percent are refugees, that since 2000 the proportional number of refugees has increased only marginally from 9 percent to 10 percent of all migrants,⁸² and that eight Global South states now host 90 percent of all refugees⁸³—so as to construct the impression of migrant and refugee crises that amount to an existential crisis for Europe. The sheer Eurocentrism of such a perspective is clear. Thinking, instead, of how to reimagine the world in a global context and not merely through the eyes of the European Union or the Global North can allow us to appreciate human mobility on a global scale “as a relatively stable phenomenon requiring sustained management, rather than as a series of crises requiring emergency measures.”⁸⁴ Both right-wing and liberal variants of the diagnoses of migration as a driver of socioeconomic inequality must be refuted and resisted. Here I am reminded of Walter Benjamin’s timeless insight that it is the tradition of the oppressed which teaches us that the state of emergency in which we live is not the exception but the rule.⁸⁵ The tradition of the oppressed includes a long tradition of emigration—because of violence, eviction, environmental change, or economic opportunity—and so for Third World migrants, there is nothing exceptional in the latest emergency.

80. Okafor, *supra* note 79.

81. *Id.* (citing ITAMAR MANN, *HUMANITY AT SEA: MARITIME MIGRATION AND THE FOUNDATIONS OF INTERNATIONAL LAW* 3 (2016)). For the original reporting of Toroczkai’s comments, see Dan McLaughlin, ‘Borderless’ Europe in Peril as Hungary’s Fence Brings Calm and Chaos, *AL JAZEERA* (Sept. 19, 2015) <https://america.aljazeera.com/articles/2015/9/19/borderless-europe-in-peril-as-hungarys-fence-brings-calm-and-chaos.html> [https://perma.cc/6G5B-RMF9].

82. Ibrahim Awad & Usha Natarajan, *Migration Myths and the Global South*, 30 *CAIRO REV. GLOB. AFF.* 46, 52 (2018).

83. Okafor, *supra* note 79.

84. *Id.*

85. WALTER BENJAMIN, *On the Concept of History*, in *SELECTED WRITINGS*, VOL. 4: 1938–1940, at 392 (Howard Eiland & Michael W. Jennings eds., Harry Zohn trans., 2006) (1940).

People do need and want to move, and will continue to do so, especially as the catastrophic impacts of industrial capitalism on the earth's climate and ecosystems become ever more severe. In this context, some parts of the Global South have been engaged in regional rethinking around borders on the basis that following age-old routes across recently traced borders is not illegitimate and should not necessarily be criminalized.⁸⁶ The EU, meanwhile, has attached a very different meaning to the notion of irregular migration. But, to reiterate, Europe does not have a migrant crisis. Third World migrants have a Europe crisis. The EU approach is based very much on tightening the borders for the wrong type of migrant, rendering migration from nonwhite communities as irregular, unauthorised, and illegal. Where the sense of emergency is normalized and entrenched to such an extent, the political task at hand is, in Benjamin's terms, to "brush history against the grain" so as to bring about a real state of emergency for the status quo and to overcome the prevailing conformism.⁸⁷ An important contribution of scholarship in this direction has come in recent years in work conceptualizing migration as distributive justice in some shape or form. Harsha Walia offers a social movement perspective characterizing migration as "journeys toward decolonization" in the process of "undoing border imperialism."⁸⁸ Political geography scholars such as Reece Jones and Joseph Nevins have studied the case for open borders and characterized migration as reparations.⁸⁹ Sociologist Alana Lentin has written of "de-racing the border."⁹⁰ And most relevant here, from an international law and postcolonial perspective, Tendayi Achiume's work on migration as decolonization argues that because of "neocolonial interconnection," First and Third World peoples are bound up in a relationship of co-sovereignty which collapses any legal justification for political and racial inequality.⁹¹ This means that "First World nation-states have no right to exclude Third World peoples,"⁹² and that existing border systems and institutions must be completely reimaged.

86. Awad & Natarajan, *supra* note 82, at 51.

87. BENJAMIN, *supra* note 85, at 392.

88. HARSHA WALIA, *UNDOING BORDER IMPERIALISM* (2013).

89. Joseph Nevins, *Migration as Reparations*, in *OPEN BORDERS: IN DEFENSE OF FREE MOVEMENT* (Reece Jones ed., 2019); Reece Jones, *Europe's Migration Crisis, or Open Borders as Reparations*, VERSO (Oct. 26, 2016), <https://www.versobooks.com/blogs/2900-europe-s-migration-crisis-or-open-borders-as-reparations> [<https://perma.cc/M5BM-UVZ9>].

90. Alana Lentin, *De-racing the Border*, ALANALENTIN.NET (May 11, 2017), <http://www.alanalentin.net/2017/05/11/de-racing-the-border> [<https://perma.cc/P4K9-QAJK>].

91. Achiume, *supra* note 23, at 1521; see generally E. Tendayi Achiume, *The Postcolonial Case for Rethinking Borders*, *DISSENT*, 2019, at 27.

92. Achiume, *supra* note 23, at 1574.

VI. BRUSHING HISTORY AGAINST THE GRAIN

In early March 2020, just six months after the European Commission's renaming of the migration mandate, the visceral meaning of promoting and protecting the European Way of Life was laid bare. After the Turkish government announced that it would no longer stop migrants from moving toward the European Union across the Turkish-Greek land and sea borders, the Greek military and the EU's Frontex agency mobilized their forces to block people from entering. Greek coastguards attacked migrants in the Aegean crossing, batting and stabbing with spears at defenseless people on board a dinghy, and firing ammunition.⁹³ A four-year-old Syrian boy died when the dinghy he was on capsized in waters off the island of Lesbos.⁹⁴ The following day, European Commission President von der Leyen was in Greece to pledge €700 million in EU funds bolster this type of border policing.⁹⁵ Speaking in a land border town where Greek police had been using teargas against migrants, von der Leyen assures us that: "This border is not only a Greek border, it is also a European border . . . I thank Greece for being our European ασπίδα [shield] in these times."⁹⁶

In this worldview, Europe needs to be "shielded" from an existential threat posed by migration. And reference to "economic" migrants in the current conjecture in Europe really means *non-white* economic migrants. Historically, by contrast, "European colonial economic migrants benefitted from an international legal and imperial regime that facilitated, encouraged, and celebrated white economic migration"; similar entitlements continue today under the guise of a

93. Maheen Sadiq, *Greek Coastguards in Altercation With Migrant Dinghy as Turkey Opens Border—Video Report*, GUARDIAN (Mar. 2, 2020), <https://www.theguardian.com/world/video/2020/mar/02/greek-coastguards-altercation-migrant-dinghy-turkey-opens-border-video-report> [https://perma.cc/BS7E-SATA].

94. Helena Smith, *Child Dies Off Lesbos in First Fatality Since Turkey Opened Border*, GUARDIAN (Mar. 2, 2020), <https://www.theguardian.com/world/2020/mar/02/child-dies-as-boat-carrying-migrants-capsizes-off-lesbos> [https://perma.cc/D8SH-BVCK].

95. Jennifer Rankin, *Migration: EU Praises Greece as 'Shield' After Turkey Opens Border*, GUARDIAN (Mar. 3, 2020), <https://www.theguardian.com/world/2020/mar/03/migration-eu-praises-greece-as-shield-after-turkey-opens-border> [https://perma.cc/94BM-P2Y7].

96. Ursula von der Leyen, President, European Commission, Remarks at the Joint Press Conference with Kyriakos Mitsotakis, Prime Minister of Greece, Andrej Plenković, Prime Minister of Croatia, President Sassoli and President Michel (March 3, 2020), https://ec.europa.eu/commission/presscorner/detail/en/statement_20_380 [https://perma.cc/FG5C-5TYX]; Jon Stone, *EU Chief Praises Greece as 'Shield' of Europe After Police Attack Refugees at Border*, INDEPENDENT (Mar. 3, 2020), <https://www.independent.co.uk/news/world/europe/greece-refugees-border-eu-police-ursula-von-der-leyen-a9373281.html> [https://perma.cc/ZZU4-LU4H].

“robust web of multilateral and bilateral visa agreements that privilege First World passport holders and preauthorize their movement across the globe.”⁹⁷

In the “postcolonial” context, the legal subjectivity of the migrant is constructed through a range of legal rules rooted in normative criteria that continue to echo the colonial encounter.⁹⁸ The empirical evidence confirms that “mobility rights are distributed highly unequally, favouring citizens from rich democracies.”⁹⁹ Dripping with racial inflections, the predominant border regimes and their legal-administrative infrastructures help further consolidate and entrench hierarchies carried over from the formal colonial period. A striking example of this surfaced in 2018 discussions in Australia over granting fast-track visas to white South Africans. Historian Jon Piccini observed that this proposal evoked a particular, and particularly racial, series of historical connections.¹⁰⁰ Australia’s mid-nineteenth century colonial immigration restriction regimes provided the template for policies subsequently implemented in Natal in South Africa. When Australia introduced the federal Immigration Restriction Act 1901 and sought to forbid migrants of non-European ethnic origins under the “White Australia” policy, its infamous “dictation test” was in turn imported from Natal. Potential immigrants were given a test in a European language which their background indicated they would not know: “to install a racial bar without mentioning race”.¹⁰¹ This idea of imposing a racial bar without explicitly mentioning race is essentially the function that nationality-based immigration regimes in Europe continue to channel.

It is to correct such colonial injustices and neocolonial trajectories that conceptualizations of migration as decolonization and reparations have been advanced. This crucial theoretical work is far from esoteric. Recent ethnographic accounts of economic migrants and refugees who have migrated from the Global South to Europe show that migrants themselves typically do

97. Achiume, *supra* note 23, at 1517–18, 1530. See also Frédéric Mégret, *The Contingency of International Migration Law: ‘Freedom of Movement’, Race, and Imperial Legacies*, in *CONTINGENCY IN INTERNATIONAL LAW: ON THE POSSIBILITY OF DIFFERENT LEGAL HISTORIES* (Ingo Venzke & Kevin Jon Heller eds., 2021).

98. See generally Ratna Kapur, *The Citizen and the Migrant: Postcolonial Anxieties, Law, and the Politics of Exclusion/Inclusion*, 8 *THEORETICAL INQUIRIES* L. 537 (2007).

99. Steffen Mau, *Mobility Citizenship, Inequality, and the Liberal State: The Case of Visa Policies*, 4 *INT’L POL. SOC.* 339, 339 (2010). See also Eric Neumayer, *Unequal Access to Foreign Spaces: How States Use Visa Restrictions to Regulate Mobility in a Globalised World* 31 *TRANSACTIONS BRIT. INST. GEOGRAPHERS* 72 (2006).

100. Jon Piccini, *Australia’s Call to Rescue White South Africans From “Persecution” Has a Long, Racist History*, *QUARTZ AFR.* (Mar. 20, 2018), <https://qz.com/africa/1233248/australias-visas-for-white-south-african-farmers-have-a-long-racist-history> [<https://perma.cc/S6X4-ZQMN>].

101. Kel Robertson, Jessie Hohmann & Iain Stewart, *Dictating to One of ‘Us’: The Migration of Mrs. Freer*, 5 *MACQUARIE L.J.* 241, 243 (2005).

think of their own predicament and their own agency in such terms.¹⁰² They embody a conceptualization of migration “that treats economic migrants as political agents exercising equality rights when they engage in ‘decolonial’ migration.”¹⁰³ They provide current material embodiment of Sivanandan’s classic aphorism that *we are here because you were there*: “Colonialism and immigration are part of the same continuum—we are here because you were there.”¹⁰⁴ A woman from Iraq granted refugee status in Britain says: “I’m always surprised when people ask, ‘Why are refugees coming to the UK?’ I would like to answer back, ‘Hasn’t Iraq been occupied by Britain and America? . . . I really wish for people to see the connection.’”¹⁰⁵ West African migrants stuck in temporary accommodation, but seemingly perpetual limbo, in Italy “talk about what an injustice it was for Europe to treat them—people from the former colonies—in this way. ‘We remember the past, we remember slavery; they started the world wars and we fought for them,’ . . .”¹⁰⁶ A young man from Mali who survived the desert and sea route is “angry at what he saw as Europe’s role in his misfortune” and complains about “the spread of European-made weapons in Mali, about France’s role as the former colonial power.”¹⁰⁷ He says that the European countries “sowed chaos in African countries and if it wasn’t for that we wouldn’t have had to flee for our lives.”¹⁰⁸ He challenges the arbitrariness of the legal categorizations on which one’s fate depends: “It’s not like one person has ‘economic migrant’ written on their forehead and another has ‘refugee.’”¹⁰⁹ He further emphasizes the racializing tendencies of the system: “They say Europe is the place of liberty . . . , but when you arrive you feel like a foreigner—they make you feel the colour of your skin.”¹¹⁰ And yet, in spite of that, he says: “I want to contribute to the evolution of Europe, do my bit, even if it’s as small as a grain of sand, bring at least my share of contribution.”¹¹¹ By his very presence, he embodies the most basic aspect of the idea of migration

102. See DANIEL TRILLING, *LIGHTS IN THE DISTANCE: EXILE AND REFUGE AT THE BORDERS OF EUROPE* (2018). For further analysis of migrant resistance and the autonomy of migration, see the contributions in *THE BORDERS OF “EUROPE”: AUTONOMY OF MIGRATION, TACTICS OF BORDERING* (Nicholas De Genova ed., 2017).

103. Achiume, *supra* note 23, at 1510.

104. A. Sivanandan, Director, Institute of Race Relations, *Catching History on the Wing at IRR’s Fiftieth Celebration Conference* (Nov. 1, 2008), in *Instit.* <http://www.irr.org.uk/news/catching-history-on-the-wing> [https://perma.cc/69MS-4B3W].

105. TRILLING, *supra* note 102, at 77.

106. *Id.* at 132.

107. *Id.* at 157.

108. *Id.* at 100.

109. *Id.* at 144.

110. *Id.* at 107.

111. *Id.* at 156.

as decolonization; by his contribution and his commitment to changing the polity, he embodies the possibilities of migration as redistribution.

This is the possibility of thinking beyond international law, and thinking about its transformation. Achille Mbembe insists that we must not be bound to “the brute fact of the law, or the dose of arbitrariness always already built into any manifestation of the law,” but instead should aspire to “something beyond the prosaics of the law . . . , something foundational which refers to our common right to inhabit this Earth, that is, to share it as equitably as possible.”¹¹² Frantz Fanon famously implored us never to forget that:

[T]he European nations wallow in the most ostentatious opulence. This European opulence is literally a scandal for it was built on the backs of slaves, it fed on the blood of slaves, and owes its very existence to the soil and subsoil of the underdeveloped world. Europe’s wellbeing and progress were built with the sweat and corpses of blacks, Arabs, Indians, and Asians.¹¹³

The international legal order that Europeans constructed, and the external legal border that Europe’s so-called cosmopolitans have cemented, are designed to ensure that the history of exploitation and inequality which underpinned Europe’s development remains largely out of sight and mind, and that the relative wealth and wellbeing which it produced can remain intact. But if the European Way of Life necessitates legal structures that channel racial supremacy and exclusion, it is a way of life that is also a herald of death for a certain category of people at the border, and those structures must be collapsed. “Haunted,” as Nicholas De Genova puts it, “as Europe’s borders are by this appalling proliferation of (almost exclusively non-European/non-white) migrant and refugee deaths and other forms of structural violence,” anyone who is concerned with the politics of race and class in the world today cannot avoid the question of Europe’s borders and the reality that “the question of Europe itself has become inextricable from the question of migration.”¹¹⁴ If we think of borders as a form of social relations, we can understand the deliberate hardening of Europe’s borders as a reactionary response to the prior fact of human mobility as it exists – both in the form of autonomous migrant labor and as the product of recurrent economic and military interventions into the Third World. Emergency discourse and emergency legal

112. Achille Mbembe, *Blacks From Elsewhere and the Right of Abode*, Ruth First Memorial Lecture 2019 at the Wits Theatre (Oct. 3, 2019), in *NEW FRAME* (Oct. 4, 2019), <https://www.newframe.com/ruth-first-memorial-lecture-2019-achille-mbembe> [https://perma.cc/9YW6-BHE5].

113. FRANTZ FANON, *THE WRETCHED OF THE EARTH* 53 (Richard Philcox trans., 1st ed. 2004) (1961).

114. Nicholas De Genova, *The “Crisis” of the European Border Regime: Towards a Marxist Theory of Borders*, 150 *INT’L SOCIALISM* 33, 48 (2016).

measures function as effective techniques in the broader anti-migration securitization toolkit. As such, they reinforce a regime which must be understood and resisted for what it is: reactionary, racial, and legal.