To Make Live: Representing and Protesting Refugee Agency

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Abstract

Dominant representations of refugees emphasize either refugees as victims or as threats. In the shifts since the outset of the refugee regime, the political agency of refugees has stopped being something to celebrate and is now read as threatening – particularly when that agency is expressed in the choice to move and to cross borders. This control of political agency represents a particular form of governmentality, which maintains a biopolitical order that is framed around the structures of citizenship. The resulting exclusion of refugees as non-citizens has created what is called here a necropolitical outside, where the power over death remains the crucial moment of decision and which can be seen most clearly in the Mediterranean. Nevertheless, in developing patterns of refugee protest and occupation throughout Europe this exclusion is being contested as refugees establish themselves as political subjects in their own right, challenging the order with new forms of conduct and 'making themselves live' by making themselves visible.

Keywords: Refugees, refugee representation, political agency, necropolitics, refugee protest

Introduction

The image of two-year old Aylan Kurdi, dead on a Turkish beach, has become iconic for the refugee crisis driven by the conflict in Syria. This crisis is reshaping European politics, undermining and revealing cracks in international norms and law, driving both new forms of interstate cooperation, and also state closure and a reassertion of sovereignty. It has forced European politics to come face to face with xenophobia, with the spectres of nationalist pasts and presents, and with the consequences of a decade's long securitization of migration. It is bringing into direct confrontation the demands and practices of border security, and the expectations of human rights and humanitarian responsibility. In other words, a consideration of the current refugee crisis demands of us a thorough-going reassessment of the foundational building blocks of contemporary politics. Understanding the practices, policies, and politics of contemporary asylum requires us to think seriously about subjectivity, citizenship, the nation-state, and the foundations of the international system. There is a new conversation taking place about how we can, or should, understand the figure of the refugee and her political agency - particularly in the choice to move. At the heart of this conversation, framing the debate and shaping public and political response, is the image of a dead child. A dead child whose name most do not remember, if they ever knew it.

This paper considers Foucault's characterisation of biopolitics as manifesting the power 'to make live and let die'. I argue that in the politics of asylum, the dominant political structures 'make refugees live' through representational politics that construct a particular figure of the refugee as either victim or threat, rather than enabling a powerful subjectivity, and 'let refugees die' by relegating them to a necropolitical space where death is the object of state policy. In doing so, I am contributing to an emerging critical literature which develops Foucault's

insights into power and resistance in the biopolitical sphere to consider practices of political agency.[1] This literature is directed towards a deeper understanding of the structures that shape our world, and the mobilities of people through it (as opposed to a directed policy focus). The contribution I hope to make reflects the current crisis and the unique dynamics that are emerging with respect to maritime migration and mass movement into the European space. In doing so, I attend to the development of the necropolitical space at borders as a consequence of state policy in a new way, and counter-pose this to new dimensions of subjectivity that can be traced in refugee resistance.

These mechanisms of representational politics operate on many levels; however, I focus here on visibility. The representation of the refugee is manifested through images, while the death of the refugee is made possible by policies and practices that render them invisible. Both operate to deny refugees an active subjectivity - understood here as the capacity for political agency - and to exclude the refugee from membership in society. These dominant narratives are contested, however, by the political protests of refugees themselves, which make migrants, refugees, and asylum seekers visible by asserting their presence; refugees and asylum seekers 'make themselves live' by demanding inclusion and self-actualizing a subjectivity that reimagines

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[1] See, for example: Jenny Edkins and Véronique Pin-Fat, "Introduction: Life, Power, Resistance" in Jenny Edkins, Véronique Pin-Fat, Michael J. Shapiro, eds., *Sovereign Lives: Power in Global Politics*. (New York: Routledge, 2004), 1-21; Anne McNevin, "Political Belonging in a Neoliberal Era: The Struggle of the Sans-Papiers." *Citizenship Studies* 10:2 (2006): 135–151; Suvendrini Perera, "'They Give Evidence': Bodies, Borders and the Disappeared." *Social Identities* 12:6 (2006): 637–656; Kim Rygiel, *Globalizing Citizenship*. (Vancouver: University of British Colombia Press, 2010); Vicki Squire, *The Exclusionary Politics of Asylum*. (Hampshire: Palgrave MacMillan, 2009); Vicki Squire, "The contested politics of mobility: Politicizing mobility, mobilizing politics" in Vicki Squire, ed., *The Contested Politics of Mobility: Borderzones and irregularity*. (New York: Routledge, 2011): 1–26; William Walters, "Acts of demonstration: mapping the territory of (non-)citizenship" in Engin Isin and Greg Nielsen, eds., *Acts of Citizenship*. (London: Zed Books, 2008): 182–206.

the politics of asylum. This demands a novel understanding, which shifts the emphasis from state power to the actions and practices of the migrant herself.

Representing the Other: Constructing the Refugee as Victim

Images have power. They both reflect and shape public imaginations, which in turn shape support or resistance for policy agendas at the highest levels. In migration policy, the images that represent the asylum seeker, the refugee, the welcome migrant – and the unwelcoming, threatening Other – are key factors for how the politics of asylum take shape across international borders. The visual representation of refugees - the pictures that are present in media, and in the public campaigns of NGOs and advocacy groups, are powerful tools for shaping how the public understands who refugees are, why they are migrating, and how they will relate to the host society. When considering representations, however, it is important to recognise that they are just that: representations, or stand-ins. The images, and the imaginations they create and sustain, construct a figure of a refugee. This figure is an abstract idea of an ideal type, empty of individual or unique stories, and imbued with the expectations, hopes, and fears of the public.

The image of Aylan Kurdi is starkly that of a victim. A dead child, completely unthreatening, whose death was in no way a result of his own actions, has become emblematic of the tragedy of the current crisis. Buried beneath this image, however, are the reasons it works: there are assumptions about children, who are understood as innocent. This underpins the discourse of the 'deserving' refugee: innocent, in need of charity and protection, and subject to events outside of her control. The message is clear: the deserving refugee is a victim, and is a victim

without the capacity for any form of political agency. This narrative of the refugee as victim has depoliticised refugees and asylum seekers through controlling and denying their agency and subjectivity. It has developed over decades, as a way of managing and responding to difference.[2] It was important that the image that has changed the European conversation was that of a child. These dynamics are not new, nor are they accidental or natural.

The victimisation of the refugee developed over time and changed as the perceived identity of the refugee changed. The current regime, which is institutionalised through the *United Nations Convention Relating to the Status of Refugees* and the United Nations High Commissioner on Refugees (UNHCR), emerged at the beginning of the Cold War. It was thus shaped by the imperatives of ideological conflict as Western governments worked to give priority to individuals fleeing the Soviet Union. The refugee was imagined as a white, male individual who may or may not have been accompanied by his nuclear family; the refugee had a past, a story and a voice, all of which were used to validate the West in its ideological war.[3] In this flight the refugee was (ostensibly) motivated by pro-Western political values.[4] The figure of the refugee here is inescapably political and has a particular ideological value: refugees were seen to be "voting with their feet" by fleeing to the West. It was this that drove both the image of who a refugee was and the willingness of Western states to resettle asylum seekers and to accept them into society.

As the focus of the regime shifted, however, how the refugee was imagined also changed. Initially, displaced peoples in the Global South were not given a place within a refugee regime shaped by the European

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[2] Heather L. Johnson, "Click to Donate: Visual Images, Constructing Victims and Imagining the Female Refugee." *Third World Quarterly* 32:6 (2011).

[3] Johnson, "Click to Donate".

[4] Jennifer Hyndman, *Managing Displacement: Refugees and the Politics of Humanitarianism*. (Minneapolis: The University of Minnesota Press, 2000), 9.

experience of the Cold War. Indeed, there were both geographical and temporal limits in the Convention that limited its.[5] However, mass movements of people resulting from events such as the Chinese Communist Revolution or the Algerian civil war demanded attention.[6] Displacement in the wake of the wars of independence and civil wars associated with decolonization throughout Africa and the experience of the so-called "boat people" in Indochina became impossible to ignore, and the focus of the international regime began to shift. In 1969 the Organization of African Unity (OAU) adopted a regional Convention that expanded the UN definition of refugees to include not only those fleeing from persecution, but also those fleeing from war and communal violence.[7] This marked a watershed in the construction of the refugee. The figure was no longer only a white European individual giving voice to an affirmative and heroic political agency, but also a displaced person from the Third World, poverty stricken and fleeing violence and war.[8]

Overwhelmingly influenced by the economic crisis of the 1980s, what B. S. Chimni has dubbed a "myth of difference" emerged around refugees fleeing from the Global South.[9] As advances in transportation and communications technologies made the West more readily accessible to those in flight, a moral panic concerning the stability of the domestic polis emerged in popular discourse and the media. Refugee movements were seen as able to "threaten inter-communal harmony and undermine major societal values by altering the ethnic, cultural, religious and

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[5] United Nations, *Convention and Protocol Relating to the Status of Refugees.* (Geneva: UNHCR, 2007).

[6] Klaus Neuman, *Refuge Australia: Australia's Humanitarian Record.* (Sydney: University of New South Wales Press, 2004).

[7] "*The State of the World's Refugees 2000.*" The United Nations High Commissioner for Refugees, accessed cited April 14 2005. www.unhcr.ch.

[8] Johnson, "Click to Donate."

[9] B.S. Chimni, "The Geopolitics of Refugee Studies: A View from the South" *Journal of Refugee Studies* 11:4 (1998), 350-374.

linguistic composition of the host populations."[10] The sentiment was that the West did not have the capacity to absorb the mass movements from the South and, regardless of empirical veracity (statistics show that refugees overwhelmingly remain in their region of origin),[11] increasingly restrictive legislation was put into place throughout the West.[12]

   With the discourse of threat, a crisis of authenticity emerged for the asylum seeker. Represented as fundamentally "different" from European refugees, refugees from the Global South were constructed in terms of mass movements, economic opportunism, and threats to security, all of which generated an increasing concern in the developed (Western) world about the sanctity of borders. Refugee movements from the South throughout the 1970s and 1980s evoked imaginations of massive, often uncontrolled population movements. Influenced by an overarching structure of racism and a fear of 'difference', the causes of these displacements were described as removed from a Western, developed context and thus as producing a difference in the refugees themselves. These dynamics remain perceptible in the current crisis; the 'difference' represented by Muslim refugees from Syria underpins the policy and public discussions as concerns about integration, and the preservation or protection of culture drive public debate.

   Accusations of difference lay not only in who refugees are, but also in their motivations for movement. "Genuine" refugees are defined as fleeing from persecution. Refugees from the Global South, however, are not seen as (only) fleeing persecution, but rather as making an informed and beneficial migration choice. The claims of racialised, 'Third World'

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[10] Nevzat Soguk, *States and Strangers: Refugees and Displacements of Statecraft.* (Minneapolis: University of Minnesota Press, 1999).

[11] *The State of the World's Refugees 2000.*

[12] Emma Haddad, *The Refugee in International Society: Between Sovereigns.* (Cambridge: Cambridge University Press, 2008); Heather L. Johnson, *Borders, Asylum and Global Noncitizenship: The Other Side of the Fence* (Cambridge: Cambridge University Press, 2014).

refugees are presented as spurious and inauthentic, and the suspicious figure of the economic migrant has emerged as an individual who was taking advantage of the asylum system not because of need, but out of preference (Johnson 2011). It is important that it is the *choices* of refugees that are the basis of their delegitimisation. In this discourse, refugees making active choices are illegitimate; enacting control over their own life-chances is understood as a reason not simply to be suspicious of refugees, but to actively deny them entry. Asylum claims made from a position of informed choice are portrayed as inauthentic. Political agency is a problem, not something to be celebrated.

The victimisation of the refugee was driven quite clearly by these practical realities. The discourse served to combat donor fatigue in the face of protracted crises. It also served to bolster public support for protection and settlement, combatting the suspicion and crisis in authenticity causes by the 'economic migrant'. [13] There are further implications, however: victimisation makes the refugee less threatening, certainly, but it also has the cyclical effect of rendering any agency enacted by the migrant as threatening. As a victim of Soviet persecution, the refugee was fundamentally political; as a victim of violence, however, the refugee is objectified and loses this agency. It is no longer her individual opinions or actions that have created the need for displacement, but rather it is circumstances beyond her control. As a helpless victim of violence, the refugee becomes a figure that is merely caught up in events without any power to effect or affect them. This denial of agency could not be clearer in the discourse of the UNHCR, which defines the refugee's life as:

> Desperately simple, and empty. No home, no work, no decisions to
> take today. And none to take tomorrow. Or the next day. Refugees

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[13] Johnson, "Click to Donate".

are the victims of persecution and violence. Most hope that, one day, they may be able to rebuild their lives in a sympathetic environment. To exist again in more than name.[14]

Refugees do have agency, however; their very mobility is testament to this. But, within the politics of citizenship and states, the question is one of legitimacy. Some conduct is allowed and allowable, some is not. The threats posed by the migrants are generated by a tension that exists in the interpretation of their political agency. Rather than waiting, passively, for aid and protection, they have exercised a capacity to take decisions and, importantly, to move. This movement disrupts the passive and abject image cultivated in the victim narrative. Foucault argues that racism is the creation of division between people in order to maintain certain fragile, historically contingent political structures.[15] As Foucault argues, the 'Other' is not simply a political enemy, but a biological threat that could damage the population.[16] The Other is not the refugee, who has been incorporated into the political order through depoliticisation, denied agency but nevertheless 'made to live' within a defined and constrained category. The 'Other' against which society must be guarded is the illegal migrant. Any action or choice – any agency – on the part of the migrant is thus coded as threatening, and is subject to state killing.[17] The creation of the refugee-as-victim has meant that it is agency, or its lack, more specifically, that indicates whether an individual is deserving of protection. Moreover, the enactment of agency has come to indicate that asylum claims are false; agency is how we have come to distinguish between 'genuine' refugees and 'illegal migrants'. Any expression of

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[14] Soguk, *States and Strangers*, 9.

[15] Alan Milchman and Alan Rosenberg, 'Review Essay: Michel Foucault: Crises and Problemizations' *The Review of Politics* 67:2 (2005), 342.

[16] Katia Genel, 'The Question of Biopower: Foucault and Agamben' *Rethinking Marxism* 18:1(2006), 43-62.

[17] Milchman and Rosenberg, "Review Essay".

agency by a refugee becomes a justification for an active, and ultimately violent, protection of sovereign power in the securitization of migration.

In the contemporary asylum regime, however, the separation between the asylum seeker and the illegal migrant is no longer effective in the face of developing border regimes. As Andrijasevic argues, border controls and visa regimes do not prevent people from leaving their countries of origin, nor from reaching the EU. Rather, they only increase undocumented modes of travel, and drive the involvement of trafficking networks.[18] In images of border crossings, the plight and dangers (to them, and to us) of undocumented migration are found in the racialized, ravaged and desperate groups of migrants on sinking boats. The agency demonstrated by their migration is made ambiguous; they are presented as both threatened and as threatening. Moreover, our reaction to them is made ambiguous. Should the migrants be taken in, protected – given asylum? That would mean they remain, succeeding in their subversion of the border and bringing with them potential threats, dangers – pollutants, in Haddad's terms. The images simultaneously seem to sympathize with the plight of undocumented migrants and to condemn their migration.

The representation of refugees as lacking subjectivity is problematic politically, as it enforced exclusion, enables xenophobia, and reinforced deeply exclusionary politics of racism and colonialism. What these tropes are effective in achieving, however, is the clear categorisation of refugees versus illegal migrants. The logics behind the victimisation produces an understanding whereby the refugee is stripped of political agency, and any agency, even if it is simply mobility, results in the coding of that individual as an undocumented migrant. This enables and justifies the violent exclusion of migrants from the political order. As we

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[18] Rutvica Andrijasevic, 'beautiful dead bodies: gender, migration and representation in anti-trafficking campaigns' *Feminist Review* 86 (2007), 25-26.

shall see, the exclusion and dehumanizing effect of 'Othering' makes a further politics possible, a necropolitical where refugees can be allowed to die; where the power of death is exercised in the biopolitical system.[19] Moreover, in the current crisis, this exclusion is applied to all those who are on the move.

The Death of the Refugee: biopolitics, necropolitics, and the 'Other'

The shift in representation of the refugee from a powerful political figure to either a victim or a threat has taken place over decades,[20] but it has been consolidated in present-day political practices. What it is reflective of is the need to control non-citizen subjectivity, to disallow it. Even when refugees were - or are – recognised as political, and are validated, it is because they have been incorporated into the order. One of the insights of a biopolitical analysis is that life is managed through governmentality – the conduct of conduct. Citizenship is a fundamental mechanism for achieving this; the frameworks of citizenship give definition to allowable conduct, and to what constitutes legitimate political agency. They determine who 'counts', and who can be a participant, giving shape and content to political life.

In considering the politics of representation in asylum, it is clear that what underpins the victimisation of the refugee, and the related understanding of the refugee as a threat, is the question of difference. Both discourses function to maintain specific categories of person, and to control who can enact political agency. There are clear mechanisms of race and gender that work within these constructions. What is also at

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[19] Milchman and Rosenberg, "Review Essay", 341.
[20] Johnson, "Click to Donate"; Johnson, *The Other Side of the Fence*.

play is a specific form of governmentality, an operation of power relations that enable certain forms of agency while disallowing others. For Soguk, agency is defined by the capacity to effect changes in sites of governance. [21] It is the capacity to participate in the systems of management and control that govern the sovereign structures of the nation-state and its borders. Agency, defined in this way, is deeply connected to the biopolitical. Governance becomes about managing agency, and shaping the subjectivities of different categories of people. The agency that is allowed and validated is that of the citizen in a construction that reflects the fundamental structures of the nation-state system. By maintaining agency as the preserve of the citizen, certain state practices are allowed that function to create a biopolitical inside, and a necropolitical outside. A questioning of political subjectivity is, at its core, a struggle to define who an agent is, and how agency itself might be recognised. Citizenship, as a status, is well established as the identity that embodies legitimate (and allowable) political agency and power.[22] The citizen is the archetypical political agent who is endowed with the capacity to act and to engage in politics. Defined citizenship is in many ways the ultimate achievement of the nation-state, expressing at once both the sovereignty of the individual and the sovereignty of the people. Citizenship is emblematic of both individual autonomy and membership in a group. It is a relationship, not only between a government and a citizen, but amongst citizens themselves. This relationship defines the boundaries of rights and obligations endowed by and owed to the state, but also owed to other members of the community. In locating the capacity for political action in the citizen, an assumption of equivalency between 'Citizen' and 'Agent' is produced. The result is that political action or agency from outside of citizenship, by non-citizens, is seen as

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[21] Soguk, *States and Strangers*, 28.

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

illegitimate, and troubling, where it is acknowledged at all.[23]

The denial of legitimate political agency for refugees is therefore grounded in our fundamental political concepts, which place the capacity for participation, agency, power, and politics in citizenship. Citizenship becomes a technology of management and control, therefore, and a core structure that maintains the biopolitical structures of liberal governance. Refugees, as a result, are emptied of political subjectivity and are reduced to either victims, or threats – an ambiguous identity that is only too visible in the crisis in the Mediterranean. I argue that what being excluded from the biopolitical order has enabled is a series of state practices that do not simply refuse migrants and asylum seekers, but that let them die. The power of death returns in the space outside of the biopolitical system, rendering it a space of necropolitics. As Chouliaraki notes regarding interceptions that occur in the Mediterranean Sea, "African refugees have already demonstrated a great deal of initiative. They have taken the risk to cross the Mediterranean. On screen, we meet them at the point where their audacity turns into despair."[24] We see the migrants of the Mediterranean at the moment where death is an immanent reality; indeed, at a moment that it is life that is in question, rather than death.

The categorisation of people into citizen and non-citizen, genuine refugee and illegal migrant, is, as I argued above, central to the exclusion of the refugee. Biopolitics is about the management of life – the conduct of conduct – through exactly these mechanisms of categorisation that manage and define the kind of political agency different identities can enact. The undermining of refugee claims, and the security policies that this has enabled, serve to remove asylum seekers from the biopolitical order entirely by refusing them entry. This is, in Foucault's terms,

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[23] Nyers, *Rethinking Refugees*.
[24] Lilie Chouliaraki, *The Spectatorship of Suffering*. (London: SAGE Publications, 2006), 130.

nothing less than state racism where the 'other' is seen as a biological threat that must be excluded and removed. Policies of push-back and interdiction refuse and deny entry, and prohibit even the making of a claim to belonging. The order this creates is, I argue, necropolitical as migrants are left to die a death that is not given meaning. They are, I argue, removed from the biopolitical order entirely. Instead, they are subject to a necropolitical order where they are not made to live, but are rather left to die.

An undeniable feature of the current crisis in the Mediterranean is the tragedy of migrant drownings that are occurring at a mass scale. In recent years, in the face of this significant a death toll (and suspected even higher numbers), the representation of the Mediterranean as a cemetery has become common.[25] The statistics, however, fail to adequately account for the total numbers; they are missing those who are lost at sea, on boats that are never detected. From January 2011 to July 2012, an estimated 386 migrants drowned in the Mediterranean. Only 95 bodies were recovered. The 20 year total to that point was approximately 17,856.[26] By way of comparison, in the year of 2015 alone, approximately 3390 were drowned according to IOM figures. The imagination of rickety, overcrowded boats sinking in the Mediterranean, and the human cost of such sinking, is one of the dominant narratives of the current migration crisis. The loss of life at sea undergirds much of the humanitarian impulse towards protection and aid; the death of Aylan Kurdi was a turning point for European policy and spurred announcements of significant resettlement programs for Syrian refugees. Even in the face of increased security fears, driven on by the Paris attacks in November 2015 and sexual assaults in Cologne in January 2016, the deaths of thousands of migrants at sea continues to be a clarion

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[25] Paul Kassar and Hassen Dourgnon, "Refugees in and out North Africa: a study of the Choucha refugee camp in Tunisia" *The European Journal of Public Health* 24 (2014), 11.

[26] Kassar and Dourgnon, "Refugees in and out", 13.

call for public support to aid asylum seekers.

The increase in the number of deaths at sea is driven by several factors.[27] The crisis in Syria has its obvious impacts, but as several scholars have noted, the changing security framework of the Mediterranean region and of the Southern European borders is also significant. The development of 'Fortress Europe' and continued closure of European borders is widely acknowledged as driving the conflation of asylum migration with other forms of migration. Irregular migration has become the only way to reach Europe in order to claim asylum and, in the face of ever-effective border control and surveillance, smuggling networks have become endemic. The character of smuggling has changed, however. Initially, studies have shown that enterprises tended to be small and, particularly when engaged with asylum seekers, were often driven by diaspora and personal contacts. In the Mediterranean region, migrants were smuggled on commercial vessels transporting livestock sailing in particular to Marseille, and fishing boats were used to reach Sicily. However, as those routes have been shut down through security efforts, the vast majority now sail from Tunisia or Libya and are reaching the outer islands such as Lampedusa in purpose-built boats that attempt to evade surveillance.[28] For Carling and Herandez-Carretero (2011), two factors highlight the difference between the 'old' routes and the new, more dangerous routes traversed by overcrowded and precarious vessels:

> First, the dangers of boat migration have made it a pressing humanitarian issue, a protracted crisis with large-scale loss of life; Second, the persistence of boat migration from Africa – after almost two decades of various interventions – lies at the heart of anxiety

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[27] Hein de Haas, "Mediterranean Migration Futures: Patterns, drivers and scenarios," *Global Environmental Change*, 21S (2011), S59–S69.

[28] Kassar and Dourgnon, "Refugees in and out", 14.

about states' perceived inability to control migration.[29]

The use of smugglers, and the conflation of these networks with traffickers, intersects directly with the representation of agency for migrants as threatening and suspicious. The illegal mode of border crossing, and the association with criminal networks and activity, further undermines the asylum claims of these individuals, justifying their exclusion and, in many ways, allowing their deaths.

Mbembe and Meintjes (2003) expand on Mbembe's initial introduction of necropolitics, writing: "This essay assumes 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… To exercise sovereignty is to exercise control over mortality and to define life as the deployment and manifestation of power."[30] Here, sovereignty becomes expressed as the right to kill.[31] Biopower, they write, functions through dividing people into those who must live and those who must die.[32] The 'must' here is critical: this understanding of necropolitics preserves and presumes an active decision – and an active taking of life. It is perhaps for this reason that necropolitics has been taken up in the study of new forms of warfare, and particularly of drones.

In maritime migration in particular, this form of the 'sovereign decision' takes on an interesting shape. The maritime space is unique in the absence of clear delineations of sovereign territory. Instead, sovereignty 'moves' with the ships that fly national flags – a condition fundamentally complicated by the prevalence of flags of convenience. With respect to the decision to kill/of who must die, the death in question

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[29] Jorgen Carling and Maria Herandez-Carretero, "Protecting Europe and Protecting Migrants? Strategies for Managing Unauthorised Migration from Africa" *British Journal of Politics and International Relations,* 13:1 (2011), 42-58.

[30] J.A. Mbembe and Libby Meintjes, "Necropolitics" *Public Culture* 15:1 (2003), 11.

[31] Mbembe and Meintjes, "Necropolitics", 14.

[32] Mbembe and Meintjes, "Necropolitics", 16.

is drowning, and the decision, often, is one of rescue. The law of the sea requires that every state require that a vessel flying its flag render assistance and rescue any person 'in danger of being lost'.[33] What this exactly means, however, is up for debate and is largely down to state interpretation. As Borelli and Stanford note, the relevant rules set 'a high standard for the concept of distress', and ships are often legitimately able to ignore boats that are dangerously overcrowded and ill-equiped.[34] The ECHR has begun to introduce regulations that may introduce a positive obligation for rescue, laying out criteria that include seaworthiness, overcrowding, a lack of supplies, and the presence of pregnant women, but these remain tentative.[35]

To understand the decision to assist and rescue as a necropolitical decision, however, equates 'allowing to die' with the decision to kill. Is it the case that setting the conditions of a death, or of 'leaving to die' – as occurred with an infamous sinking in 2012 – is the same as the act of violence resulting in death? That failing to rescue, thus admitting the rescued into the biopolitical order by bringing them into the sovereign space, is the same as deciding who must die? Evans argues that for Foucault, killing is not necessarily direct.[36] Foucault argues that killing "does not mean simply murder as such, but also every form of indirect murder: the fact of exposing someone to death, increasing the risk of death for some people, or, quite simply, political death, expulsion, rejection."[37] If we understand the necropolitical as the power to allow to

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[33] S. Borelli and Stanford, B., "Troubled Waters in the Mare Nostrum: Interception and Push-Backs of Migrants in the Mediterranean and the European Convention on Human Rights", in *Uluslararası Hukuk ve Politika – Review of International Law and Politics,* 10 (2014), 56.

[34] Borelli and Stanford, "Troubled Waters", 57.

[35] Borelli and Stanford, "Troubled Waters", 61-63.

[36] Brad Evans, 'Foucault's Legacy: Security, War and Violence in the 21st Century' *Security Dialogue* 41:4 (2010), 425.

[37] Michel Foucault, *Society Must Be Defended: Lectures at the College de France 1975-1976.* (New York: Picador, 2003), 256.

die because there is no compulsion to save, or preserve - because the death is meaningless - this is indeed the terrain we are treading upon.

The actions of security operations and border patrols in the maritime space may not be active killing. It is, however, the case that the system fails to provide for clear rescue or to affirm life over death; the default is not to save, to allow to live. Rather, the structural conditions are established such that maritime irregular migrants are allowed to die. The rate and risk of death in the Mediterranean space is so high, that it is a present and immanent reality – perhaps more so than life. Death is the cause of flight and, perhaps, its consequence. The maritime space, with blurred sovereignty and uncertain boundaries of responsibility and decision-taking, becomes a necropolitical space.

Ashutosh and Mountz write that "[s]hips evoke transnational flows, but... Also represent the power of nation-states in guiding migrant mobilities."[38] This 'guidance' takes place through concrete imaginings of what is politically desirable; what is possible is deflection. Policies of interdiction and interception are constituent of the sovereign decision to 'allow to die'; European state policy is geared fundamentally towards the prevention of a necessary incorporation of migrants into the biopolitical order.

Fundamentally, maritime policies are about delegitimising the agency of the migrant. This, of course, serves to reaffirm and validate a restrictive and security-based approach. It also enables a narrative for the politics of protection and rescue that undergird the humanitarian response to deaths at sea. In a retelling of the deterrence narrative that asserts that any generous resettlement or rescue at sea will only 'encourage' further migration, campaigns to rescue migrants are based upon their right to life and, more specifically because of the legal

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[38] I. Ashutosh and A. Mountz, 'The geopolitics of migrant mobility: tracing state relations through refugee claims, boats and discourses' *Geopolitics* 17:2 (2012), 337.

particularities of rescue and subsequent responsibility, their right to life within the political order of the rescuing (European) state.

In many ways, the policies of push-back affirm this notion; the goal is prevent the claiming of this subjectivity. When migrants do reach European shores, they are reincorporated into a specific order not as active subjects or agents, but as continued exceptions. In what Nyers calls 'sovereign retakings',[39] the actions of states reincorporate migrants into the political order in very specific ways. The systematic exclusion of migrants from the body politic through enclosure in 'reception centres' or mandated housing operates to manage and control the political agency of the asylum seeker, and to render it impotent within the sovereign order. The operation of the Eurodac database, which treats the personal information of asylum seekers and migrants under different systems of privacy and use than that of citizens, affirms the difference between citizen and non-citizen. Maurits refers to the transposition of migrants into digital traces through their inclusion in databases as 'ghosting'.[40] The migrants are not 'real', and are only ephemerally present – but they are permanently so. Any inclusion into the order – through provision of housing and other support – is done on the basis of the inscription of a fundamental difference between asylum seekers and irregular migrants, and the legitimate citizen. Even when migrants are able to access the biopolitical space, a different death exists. Foucault includes political death as exclusion in his conceptualisation of 'letting die'.[41] This, then, is the impact of the victimisation of the refugee and, within the politics of migration and asylum, the biopolitical and the necropolitical are two sides of the same coin.

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[39] Nyers, *Rethinking Refugees*.
[40] Peter Maurits, "Vanishing Migrants and the impossibility of a European Union", *Interventions*, 17:4 (2015), 503-518.
[41] Foucault, *Society Must Be Defended*.

The Life of the Refugee: protest

Biopolitics is about the power to 'make live and let die'. An analysis of refugee politics that focuses on exclusion, as above, lends itself very closely to Agamben's understanding of biopolitics as remaining with the structures of sovereign power; it remains an expression of a sovereign decision. For Agamben, bare life is life that can be killed, but not sacrificed; the death is not meaningful. These are the dynamics, I have argued above, which enable the policies of push-back and interdiction, and exclusion and political death, that have generated a necropolitics of asylum. However, this analysis continues to neglect migrants themselves and, when we account for migrants not as figures – victims or threats – but as subjects, a different politics is revealed. Biopolitics for Foucault was not limiting, but expansive, and contained within it its own possibilities of contestation and challenge. I argue that we can see this in migrant protest, where asylum seekers refuse their exclusion. When we are attentive to how refugees and asylum seekers represent themselves, a new politics emerges as protestors assert, fundamentally, that they are present, and here.

To illustrate, in Vienna, Berlin, and Paris, we have seen the emergence of 'refugee protest camps.' In Vienna, the protestors take clear ownership of the action:

> We ourselves, the refugees, make the demonstration and we are the ones who want it. It is our fight. We thank everybody for their help, but we don't allow anybody to use us. This is a self-organized struggle of and by refugees, one that needs your support, your presence on the street on Saturday.[42]

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[42] Refugee Protest Camp Vienna, "Speech on occasion of the protest song contest at the theatre Rabenhof", modified February 13, http://refugeecampvienna.noblogs. org/post/2013/02/13/speach-on-occasion-of-the-protestsongcontest-at-the-theatre-rabenhof/

The protests and actions we are witnessing across Europe are unprecedented in their scale, and also in the form they are taking.[43] They are led by noncitizens, and are engaging in strategies and demands that contest citizenship as the only framework for understanding political action by making the refugees and asylum seekers fully visible as political subjects. The visibility of protesters is essential to contesting their exclusion. Moreover, by grounding this visibility not in representation – thereby creating only a future set of figures to compete with the victim/threat tropes – but in political action and voice. Further, and very importantly, these actions are grounded fully in being present, and in being here.

At the centre of the protests that are emerging across Europe is the very specific tactic of occupation. The establishment of protest 'camps' situates the protest in a local context in ways that are highly visible, fixing the excluded noncitizen as quite firmly 'here'. In contesting the isolating and exclusionary policies of states, which require that migrants live in immigration reception centres or in remote, pre-selected housing, the protest camps directly engage a politics of fixity and location, contesting the monopoly citizenship seemingly exercises over presence, over being 'here'.

By asserting their presence within society, and contesting their exclusion, the protestors are bringing to bear new forms of conduct within the biopolitical order. Citizenship, grounded in territory, links being 'here' – or, importantly, being 'allowed' to be here - with being a political subject. In doing so, the framework of citizenship equates legal status with belonging, and interposes these as the necessary criteria for being present – and so for being seen, heard, and recognised. In contesting the isolation of detention and reception centres, the refugee

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[43] Katrin McGuaran and Kees Hudig, "Refugee Protests in Europe: fighting for the right to stay" *Statewatch Journal: reflections on the state and civil liberties in Europe 23*:3/4 (2014): 28.

protesters are challenging these criteria and re-taking presence. They are contesting citizenship as the necessary qualification for speaking and participating. In doing so, they are relocating a different subjectivity in presence, populating the 'space' of society with subjects that are in addition to the citizen. Presence is asserted by the protest camps first and foremost in the contestation of the isolation imposed upon asylum seekers by European states. As one migrant in Vienna declared during a press conference in March 2013, marking the move from the Votive Church to the Servite Monastery, the protesters were determined that their new home would not be a small 'Traiskirchen' (a 'refugee camp') that isolates refugees from society.[44] Rather, the refugees in Vienna placed visibility at the centre of action – despite the heightened risks of deportation such exposure was likely to produce. Hansen, Falkentoft and Rode argue that by using '*visibility* and *political agency* in itself, [the camp] is a strategy breaking with the security problem of *exclusion* and *otherness*'.[45] Similarly, Nair argues that the protest camps are a 'performance of resistance to oppression through the bodily occupation in, and passage through, public spaces, in defiance of the political invisibility that legal and state structures impose on them' (2012, 784). Moreover, this visibility is understood to actually counter the heightened vulnerability that migrants experience. As a refugee in Vienna stated on 'Refugee Support Day', November 4, 2013, 'it is essential for us to stay public and visible, otherwise our movement will die and we will be

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[44] Refugee Protest Camp Vienna, "AUDIO: [own words] Striking refugees now at Servite Monastery: Press Conference by refugees, church and Caritas on March 4, 2013', modifed March 4, 2013, http://refugeecampvienna.noblogs.org/post/2013/03/04/audio-o-ton-protestierende-refugees-nun-im-servitenkloster-pressekonferenz-von-refugee-kirche-und-caritas-am-4-marz-2013/

[45] Nanna Kathrine Hansen, Maja Felicia Falkentoft, and Carsten Baltzer Rode, "Desecuritizing Migration: the Case of the Berlin Refugee Strike" *Special Project* (Roskilde Universitet: Institut for Samfund og Globalisering, 2014), 64.

deported'.[46] The summer of 2013 saw the deliberate practice of visibility applied beyond the occupations themselves. "From July till August 2013, we will go out to public places, show ourselves and call everyone, including representative people from Austrian politics and civil society, to come and listen to our demands for solutions."[47] Occupation as a political technique of resistance is about fixing asylum seekers as political participants who are here, and their continued presence depends upon the claiming and use of space.

As in Vienna, breaking the isolation of refugees is also a key political stake in the German actions. At the core of the movement is the campaign against the policy of mandatory residence, *Residenzpflict*, which bans asylum seekers from travel within Germany. Other demands focused on the shutdown of the *Lagers*, an end to deportations, and the granting of residence permits for asylum seekers.[48] The protesters stated:

> We, refugees from various camps in Germany, united our local actions and set off to Berlin. Starting from Würzburg, we covered the distance of 600km in about a month. Because of our visits to the refugee camps along the route, we were able to expose the isolation of the refugees, and invited them to leave their camps and join our march… We declare that we intend to fight the laws and policies that violate our freedom and dignity.[49]

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[46] Refugee Protest Camp Vienna, "Refugee Support Day: Monday, 4/11/2013", modified on November 2, 2013, http://refugeecampvienna.noblogs.org/post/2013/11/02/refugee-support-day-monday-4112013/.

[47] Refugee Protest Camp Vienna, "Month of visibility – we still demand our rights! We need a solution!", modified on July 12, 2013, http://refugeecampvienna.noblogs.org/post/2013/07/12/month-of-visibility-we-still-demand-our-rights-we-need-a-solution/

[48] Hansen et al, "Desecuritizing Migration", 28.

[49] Refugeecamp Berlin Info, 'Why We Marched to Berlin and Why We Continue Our Resistance', modified on January 1, 2013, http://refugeecampberlininfo.tumblr.com/.

The statement issued on the occasion of the hunger strike in Munich in November 2014 asserted:

> Lagers/camps are prisons for us. Residenzpflicht/residential obligation is a sign of slavery. Restrictions of work and study are made to divide us from society and to force us to be in inhuman situations. Deportations by Dublin regulations are a sign of political organized policy from EU countries. At this point we want to say we are not poor refugees, OUR RIGHTS HAVE BEEN STOLEN.[50]

Again, in presence a political right is claimed: the right to be seen, to be here.[51]

Moving beyond the biopolitical order that maintains citizenship as the guiding framework for understanding political agency, in theory or in practice, is difficult. In many ways, this difficulty reflects a recognition that non-citizens live in difficult and marginalised circumstances which render them particularly vulnerable to the often violent impositions of sovereign power; citizen political action, by contrast, is legitimised and validated and so is reasonably safely enacted.[52] The vulnerability of non-citizens is particularly clear in the condition of deportability; ultimately, the noncitizen can be evicted,[53] while freedom from deportation is one of the 'few remaining privileges' of citizens;[54] it is exclusion, and returns the politics of asylum to the necropolitical. Deportability "robs individuals, particularly those without lawful migration status, of the practical ability to claim even the most basic of rights lest they bring

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[50] November 23 2014.

[51] Heather L. Johnson, "These Fine Lines: Locating Noncitizenship in Political Protest in Europe" *Citizenship Studies* 19:8 (2015): 951-965.

[52] Johnson, "The Other Side of the Fence"

[53] Andreas Oberprantacher, "Holey Union: Contested European Frontier Zones" *Journal of Conflictology* 5:2 (2014): 72-80.

[54] Bridget Anderson, Matthew J. Gibney and Emanuela Paoletti, "Citizenship, deportation and the boundaries of belonging" *Citizenship Studies* 15:5 (2011), 548.

themselves to the attention of immigration authorities."[55] This dynamic is starkly visible in the European protests, and a central demand for most movements is an end to deportations. The demands of the refugees in Vienna are particularly focused on this in response to a state crack-down on protesters in the wake of the occupation. Since 2013, Austria has undertaken a concerted campaign that focuses on the criminalization of the refugees, accusing several prominent protesters of being human traffickers and arresting, detaining, and removing them on this basis. The protest has become oriented firmly around contradicting these controlling moves of the state: "[t]he Refugee Protest Movement Vienna insists on no further deportations of refugees and no criminalization of politically active refugees who draw attention to human rights violations in their home countries."[56] Stopping the deportations is a clear strategy for making visibility less risky and thus creating political space for refugee action; without this minimal protection, so the argument goes, action simply is not taken. The recognition of vulnerability can quickly become an assumption that agency itself is never enacted – or cannot be enacted – because it is too dangerous. Agency becomes unexpected.[57]

It is very clear that refugees, non-citizens, do undertake political action. Their ongoing participation and engagement is well documented and described throughout critical literature.[58] Reflecting on circumstances in Italy, Oliveri sees migrant protest as potentially re-inventing the premises and conditions of being political.[59] Protesters in Italy, he

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[55] Anderson et al., "Citizenship", 552.

[56] Michael Platzer, *Report to the United Nations: Deportation of Protestors against Inhumane Conditions in Refugee Camps and Asylum Procedures in Austria*. August 28 2013, http://refugeecampvienna.noblogs.org/post/2013/08/25/report-to-the-un-deportation-of-protestors-against-inhumane-conditions-in-refugee-camps-and-asylum-procedures-in-austria/

[57] Federico Oliveri, "Migrants as activist citizens in Italy: understanding the new cycles of struggles" *Citizenship Studies* 16:5-6 (2012), 799.

[58] (cf. De Genova 2010; Johnson 2014; McNevin 2006; Nyers 2006; Rygiel 2011)

[59] Oliveri, "Migrants as activist citizens," 795.

writes, "collectively demonstrated that it is possible to stand up and ask for respect even when you live under the continuous risk of being deported." [60] These politics break the Citizen-Agent assumption. Nevertheless, efforts to understand this break, and to engage with refugees as agents, often return to citizenship itself as a framework, and utilize its ideas and norms to understand agency in other forms. Rygiel writes:

> It is useful, I think, to theorize migrant struggles in terms of citizenship because the language of citizenship invokes agency with respect to subjects who are frequently depicted in the popular imagination, media, and government policy as being something other than political beings.[61]

In this, she draws attention to the ways in which migrants assert themselves as political subjects by making claims against certain perceived injustices and inequalities and through collective action. [62] Citizens are not the agents here, but citizenship remains the discourse and framework through which agency and voice are understood; the fundamental order is maintained.

As much as scholars struggle to escape from citizenship as the defining framework for action, so too do the protesters themselves. The non-citizen protests are always already navigating a tense and contradictory relationship with citizenship. [63] Within the articulated demands of the migrants themselves, citizenship is simultaneously contested, while also demanded as a right in itself. For Tyler and Marciniak "[c]itizenship is a site of struggle within these protests: it is

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[60] Oliveri, "Migrants as activist citizens," 794.
[61] Kim Rygiel, (2011). "Bordering solidarities: migrant activism and the politics of movement and camps at Calais" *Citizenship Studies* 15:1 (2011), 6.
[62] Rygiel, "Bordering solidarities, 6.
[63] Oliveri, "Migrants as activist citizens",

both the goal which many immigrant protestors are striving to achieve and the regime of exclusion which they are protesting against."[64] They write: "inevitably, one of the main strategies of migrants and pro-migrant activists is to demand the rights of citizenship, however, problematic or precarious this citizenship may have become."[65] Many of the protester's demands are for membership, for inclusion, and for recognition, all of which in one way or another are an appeal to and for citizenship.

It is clear that in both theory and practice – in both scholarly engagements with refugee politics, and in actual refugee political movements – there is a tension between a desire to contest the equivalence of the Citizen-Agent, and the pragmatic use of the frameworks and concepts of citizenship to express key political demands. As Hindess argues, however, it is not at all clear whether a return or reinvigoration of citizenship is a productive way of accessing emergent forms of political agency.[66] They too clearly maintain the dominant form of conduct as what is acceptable, and legitimate. Hindess puts out a clear call to unsettle the valourization of citizenship as a divisive regime built upon exclusivity which, he argues, embeds a negative view of other ways of life.[67] For Papadopoulos and Tsianos, '[t]he more one tries to support rights and representation through citizenship, the more one contributes to the restriction of movement."[68] To apply the framework of citizenship to refugee action risks missing key elements of the politics that are being articulated within noncitizen protest and engagement. Within these protests refugees find a voice on their own terms, demanding an equality of place that is excessive of a return to citizenship and that requires new

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[64] Imogen Tyler and Katarzyna Marciniak, "Immigrant Protest: an introduction" *Citizenship Studies* 17:2 (2013), 153.

[65] Tyler and Marciniak, "Immigrant Protest", 146.

[66] Barry Hindess, "Citizenship for All" *Citizenship Studies* 8:3 (2004), 305-315.

[67] Hindess, "Citizenship for All", 306.

[68] Dimitris Papadopoulos and Vassilis Tsianos, "After Citizenship: autonomy of migration, organisational ontology and mobile commons" *Citizenship Studies* 17:2 (2013), 187.

frameworks for political action. As Papadopoulos and Tsianos argue,

> Migrants' politics develop their own codes, their own practices, their own logics which are almost imperceptible from the perspective of existing political action: firstly, because we are not trained to perceive them as 'proper' politics and, secondly, because they create an excess that *cannot* be addressed *in* the existing system of political representation.[69]

In the somewhat dry words of Clifford Aghator, a refugee protester in Refugee Protest Camp Vienna, "[t]he refugees and asylum seekers alike are not entirely idiots or illiterates who do not know their rights, or who do not recognize when their rights are being infringed upon." Gržinić argues: "[t]he refugees broke the predetermined space of politics in which only predetermined actors – let's say citizens – have visibility and are taken seriously when asking for democratic rights."[70] They are not simply citizens in another guise; they are subjects in themselves, outside of the 'normal' biopolitical framework. In the protest camps, the assertion of being 'here' grounds claims of rights and political voice not in citizenship, but in physical presence and visibility that is determined by the asylum seekers themselves. To contest isolation, and to claim belonging in this sense is not a claim to citizenship as 'the' territorially relevant identity, but to bypass citizenship and to claim political agency on the basis of being present, and *seen*.

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[69] Papadopoulos and Tsianos, "After Citizenship," 188.
[70] Marina Gržinić, "A Refugee Protest Camp in Vienna and the European Union's Processes of Racialization, Seclusion and Discrimination" *e-flux journal* 43 (2013).

Conclusion

By the end of August 2015, Europe (and the world) was locked in the most significant refugee crisis since the Second World War. Asylum seekers, largely from Syria but also from Afghanistan, Yemen, Eritrea, Iraq, and Somalia, among others, were arriving at Europe's borders in unprecedented numbers. This particular crisis had a different character than many mass flows in recent memory, shaped largely by the route of choice: the Mediterranean. The passage through Libya to the Southern European states of Italy and Greece in particular, which are themselves locked in an economic and financial crisis, is a brutally dangerous one. Unprecedented numbers of migrants are dying at sea, and yet the boats continue to come – and the crossing seems to get more dangerous. By August, the number of known deaths in the Mediterranean was over 3500 in that year alone. Meanwhile, asylum seekers had also started to arrive at the Eastern borders, undertaking difficult journeys across land to avoid the perils of the sea. The political reaction in Europe was largely ineffectual. Minimal support was provided via the receiving frontier states, and there was widespread inertia if not outright resistance to cooperative and coordinated resettlement programs for those who were arriving. The politics of asylum in Europe are not shaped by welcome; rather, they are suspicious of refugee migration. The policies and practices of border security carry the day.

At the end of August, the conversation changed. It changed shockingly, and abruptly. A single picture – the image of a drowned child, washed up on a Turkish shore, arrested the public and garnered a moment of unprecedented popular support and loud demands for Europe to do something to protect the innocent. The story of three-year-old Aylan Kurdi and his family – his mother and two siblings also drowned in the crossing, leaving only his father surviving – humanized the crisis in a way nothing else had. More than the facts of the story, however, his

image galvanized action. In the wake of its publication, Germany announced that it would resettle 120,000 Syrian refugees, and pan-European talks began in earnest to address the crisis in concrete ways. The change, however, is rooted in a particular representation of the refugee as a victim, which controls the political agency of the refugee and denies the figure of the refugee any subjectivity. This representation enables state practices and policies that establishing a necropolitical order within the politics of asylum, enforcing exclusion and resulting, ultimately, in the meaningless death of thousands.

Jennifer Hyndman writes: "The placement in displacement matters. Mobility is political."[71] Visibility matters. The argument about noncitizen politics ultimately becomes that noncitizens do not, or perhaps cannot, exercise political agency until they have achieved citizenship. For Arendt, "[the] fundamental deprivation of human rights is manifested first and above all in the deprivation of a place in the world which makes opinions significant and actions effective."[72] In practices of protest and occupation, in making themselves visible, refugees are harnessing new modes of subjectivity based upon self-fashioning. [73] Foucault's understanding of power is that it is exercised by subjects who are free.[74] In enacting this, refugees contest their exclusion and reinscribe their lives, their presence, with meaning that re-imagines our political worlds.

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[71] Hyndman, *Managing Displacement*: 25.
[72] Hannah Arendt, *The Origins of Totalitarianism*. (New York: Harvest, 1951), 176.
[73] Milchman and Rosenberg, "Review Essay," 336.
[74] Foucault, *Society*, 339.

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