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The Substance of Solidarity: What the Response to the COVID-19 Pandemic Says About the Global Refugee Regime

Magdalena Perzyna

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Abstract

The 'European migrant crisis' of 2015 brought to light the urgent need for solidarity and responsibility-sharing in dealing with large influxes of people fleeing war, conflict and persecution. This spirit was captured in two subsequent international agreements: the Global Compact on Refugees (GCR) (2018) and the Global Compact for Safe and Orderly Migration (GCM) (2018). In the midst of a very different kind of crisis – the global COVID-19 pandemic – the need for solidarity and responsibility-sharing is all the more imperative as COVID-19 has become a 'risk multiplier' for asylum seekers, compounding existing drivers. By examining how Western nation states in the global North have responded to asylum seekers during the pandemic against the backdrop of existing international refugee law, practice, and policy, this essay seeks to evaluate the normative potential of the GCR and the GCM for the entrenchment of the principle of solidarity. Employing the theoretical framework of governmentality, it argues that despite the rhetoric of responsibility-sharing, the reactions of Western nation states reflect an existing trend toward exclusionary impulses, with countries reflexively reverting to patterns of state-centric, insular protectionism. Taking these issues into consideration, the essay goes on to focus on Canada's response to the COVID-19 pandemic in light of its proximity to and relationship with the United States to illustrate how biopower is being deployed to exclude in line with neoliberal rationalities, even in a country that is usually heralded as a beacon of humanitarianism. The essay concludes with a guarded diagnosis that warns of the potential for an international protection crisis should civil society fail to challenge prevailing biopolitics.

Keywords: COVID-19, Asylum Seekers, Refugees, Solidarity, Responsibility-sharing, Governmentality, Biopower, Neoliberal, Canada, United States

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Introduction

The current COVID-19 global pandemic has forced the world into uncharted territory, stressing health delivery systems, choking the global economy and challenging fundamental human rights to mobility and asylum. As nation states including Canada respond to the crisis by closing borders to non-essential travel, the vulnerability of asylum seekers and refugees is being brought into sharp relief through violations of international asylum law. The overall response of countries with regard to asylum seekers during the first months of the pandemic demonstrate a turn away from the spirit of solidarity that is the hope and promise of international agreements such as the *Global Compact on Refugees* (GCR) (2018) and the *Global Compact for Safe and Orderly Migration* (GCM) (2018), towards sovereign-centered approaches that privilege the primacy of the nation state. At a time when the entire world is grappling with containing the virus, the imbalance of power between the global North and global South has been underscored by the proliferation of isolationist policies, suggesting that the substance of solidarity at the global level continues to be more rhetorical than practical. Instead, as nations exercise unprecedented biopower over their populations, ad hoc exclusionary policies barring asylum seekers that posture as exceptional, have the very real potential to become entrenched as the new normal.

Given that over eighty percent of the world's 70.8 million forcibly displaced people are either internally displaced or residing in low to middle-income neighbouring countries, the overwhelming 'burden'¹ of the world's unprecedented number of displaced people continues to fall on a handful of countries in the global South (UNHCR, 2019a). This number is inclusive of nearly 25.9 million refugees, of whom just under 64 000 or less than 0.003% were resettled in 2019 after being identified by the United Nations High Commissioner for Refugees (UNHCR) as being unable to return home and having particular vulnerabilities in their country of asylum (UNHCR, 2020a). These numbers tell of an astronomical imbalance. Yet in spite of failing to share the responsibility for protecting refugees in any meaningful way (Amnesty International, 2020), many countries of the global North have closed their borders to asylum seekers as a result of the COVID-19 pandemic, flouting both international law and global responsibility sharing norms (Frellick, Triggs, Mustafa & Evans, 2020). These actions have prompted the UNHCR's High Commissioner for Refugees Filippo Grandi, to express concern that measures adopted by some countries could block the right to seek asylum altogether: "All states must manage their borders in the context of this unique crisis as they see fit. But these measures should not result in closure of avenues to asylum, or of forcing people to return to situations of danger" (UNHCR, 2020b). In this context, COVID-19 has become a 'risk multiplier' for asylum seekers, compounding existing drivers like war, conflict and climate change (Keaten, 2020). Unable to avail themselves of protection from their governments, asylum seekers are caught in an existential vacuum as the global refugee regime has ground to a halt.

Despite pleas for solidarity and compassion, reports from around the world suggest that Grandi's call is not being heeded. In the United States the openly anti-immigrant and racist president Trump has not only fanned the flames of xenophobia by referring to COVID-19 as the 'Chinese virus' (Orbey, 2020), but also accelerated illegal deportations of asylum seekers, including minors, through sweeping orders made by the Centers for Disease Control and Prevention (CDC) (Bochenek, 2020; Garrett, 2020; Lakhani, 2020). In other parts

¹ Although 'responsibility sharing' has emerged as a less loaded term to describe the distribution of costs and benefits resulting from refugee situations between states, the term 'burden' is used here to highlight the collective reluctance of nation states to exercise solidarity. For a discussion of terminology see Ineli-Ciger (2019).

of the world, reports from the Bangladeshi coast guard reveal that that at least sixty Rohingya asylum seekers died while another 396 were rescued, found starving aboard a vessel that had been at sea for several months after being turned back from Malaysia twice due to concerns over COVID-19 (Parekh, 2020). While the Médecins Sans Frontières (MSF) urged the United Kingdom to help resettle vulnerable children from over-crowded Aegean refugee camps in Greece,² the Foreign Office refused stating that the UK would continue to support the implementation of the EU-Turkey deal, which has sought to prevent asylum seekers from reaching Europe for the past four years (Townsend, 2020). In addition, the Italian government has ordered the quarantine of the last two NGO rescue ships operative in the Central Mediterranean effectively shutting down humanitarian missions at sea while Malta and Italy continue unlawful interception and push-back operations resulting in the forcible return of refugees and migrants to Libya, a country both the European Court of Human Rights and the United Nations has declared unsafe (Asia Pacific Refugee Rights Network, 2020; Zander, 2020). While not intended as a comprehensive survey of violations, this brief inventory of responses targeting asylum seekers during the first months of the global COVID-19 pandemic demonstrates a magnification of persistent trends towards the externalization of migration controls, whereby countries implement strategies to stem migration flows before they can reach their respective borders (Frelick, Kysel & Podkul, 2016). The prevalence of such violations puts into question the substance of the commitment to solidarity and responsibility-sharing of the global refugee regime.

By examining how Western nation states in the global North have responded to asylum seekers during the pandemic against the backdrop of existing international refugee law, practice, and policy, this essay seeks to evaluate the normative potential of recent international agreements like the GCR (2018) for the entrenchment of the principle of solidarity. Employing the theoretical framework of governmentality, it argues that despite the rhetoric of responsibility-sharing, the reactions of Western nation states reflect an existing trend toward exclusionary impulses, with countries reflexively reverting to patterns of state-centric, insular protectionism. Taking these issues into consideration, the essay goes on to focus on Canada's response to the COVID-19 pandemic in light of its proximity to and relationship with the United States to illustrate how biopower is being deployed to exclude in line with neoliberal rationalities, even in a country that is usually heralded as a beacon of humanitarianism. The essay concludes with a guarded diagnosis that warns of the potential for an international protection crisis should civil society fail to challenge prevailing biopolitics.

Foucault, Governmentality, and the Global Refugee Regime

Foucault observed that the art of liberal government is exercised beyond the reach of localized disciplinary institutions like the administration, police and military, through less overtly political institutions that nevertheless function to create pliable, self-controlling subjects (Dean, 2019). Schools, universities, psychiatrists and the media are all examples of technologies of power through which knowledge is disseminated to maintain the dominance of the hegemonic class by establishing shared aspirational values and norms (withDefiance, 2013). Foucault (2007) used the term 'governmentality' to refer to the organized practices, techniques and rationalities used to produce, care for and/or dominate individual subjects. In this configuration, neoliberalism is the historically developed discourse

² The population density in Aegean camps is up to two hundred thousand people per square kilometre (Chotiner, 2020).

or rationality through which contemporary Western power is justified and maintained by providing a normative template for the way that society should be (Christie & Sidhu, 2006). Neoliberal ideology is anchored by an unwavering belief in capitalist free market economics and a retreat from the social supports of the welfare state and is further characterized by the veneration of individual self-reliance, accountability, productivity, competitiveness and efficiency (Gilbert, 2020). While governmentality has been applied ubiquitously as a theoretical lens at the level of the nation state, scholars such as Lippert (1999) have convincingly demonstrated the usefulness of governmentality as a toolkit for understanding the international refugee regime as well.

The usefulness of the theoretical framework of governmentality to the understanding of the international refugee regime and its response to the COVID-19 pandemic lies not only in its understanding of the subtleties of power and control in governance but also in the recognition of its remedial predilections. Foucault (1997) used the term biopower to describe technologies of power concerned with the welfare of the population, including wellness, health, longevity and material well-being. While the rationality for the exercise of biopower is tied to an investment in the common good of the population, the flipside is that biopolitical technologies routinely do away with life in order to preserve it (Foucault, 1997). Thus asylum seekers are often construed as security risks (Greussing & Boomgaarden, 2017; Lawlor & Tolley, 2017), potential terrorists (Bradimore & Bauder, 2012; Greenberg & Hier, 2001; Ibrahim 2005; Krishnamurti, 2013) as well as economic threats (Hier and Greenberg 2002; Quinsaat 2014; Pratt & Valverde, 2016), justifying their detention and expulsion from wealthy states in the global North. The identification of failure and the impulse for corrective action is a central feature of governmentality (Lippert, 1999). Through biopolitics, life itself emerges as the object of control, be it for the prevention of disease or the tracking of refugee movements (Lemke, 2010). Thus, Western states are able to practice what may be considered violent or despotic forms of rule alongside what appear to be refined liberal practices (Valverde, 1996). This duplicity has been demonstrated throughout the pandemic as states have exercised biopower by closing borders to asylum seekers, construing them as risks to the well-being of their populations, while simultaneously pledging funds to organizations like the World Health Organization, thereby demonstrating their liberal benevolence and moral superiority.³

Constructing 'Refugeeness'

The historical development of a discourse around 'refugeeness' has facilitated the dispersal of power beyond the boundaries of the nation state. This has allowed Western states to extend liberal rationality as a 'non-political' intervention in the global South (Lippert, 1999). As Agamben (2017) points out, in state-based systems inalienable democratic rights reveal themselves as lacking without the protection of citizenship. Existing outside the borders of the nation, the figure of the 'refugee' represents a deviation from the norm of biopolitical existence (Owens, 2007). Interventions to solve the predicament of the refugee, always involve some sort of incorporation into a territory – whether it be through repatriation, integration or resettlement in a third country – so that the rights that flow from the state can be availed and order restored (Owens, 2007). In the larger global arena, 'refugeeness' has facilitated Western 'non-political' intervention outside the borders of nation states by constructing the refugee as an 'Other', yielding from immoral, illiberal places that require Western aid, development and intervention through global institutions like the UNHCR as

³ Canada is an example. See (Blanchfield, 2020).

well as NGOs and other non-state actors (Lippert, 1999). Walters (2010) has dubbed the proliferation of such international efforts as the development of the 'humanitarian border', where experts and authorities from the global North move across networks of refugee camps and aid agencies counting, quantifying and spreading medical, legal and spiritual knowledge to the 'victimized' populations of the global South. Although international agreements like the GCR (2018) purport to foster the development of solidarity and responsibility sharing during large-scale refugee movements, all of the elements of the agreements are explicitly voluntary and non-binding (Ineli-Ciger, 2019; Refugees International, 2018). While they are laudable for the ideals that they envision, they remain in the domain of 'soft law', more in line with recommendations or guidelines than enforceable hard law. In light of the current COVID-19 pandemic and resulting global recession and given that the rise of populism and anti-immigrant sentiment is often exacerbated by economic crisis (Kwak & Wallace, 2018; Lesińska, 2014), the current global climate presents an important opportunity to gauge the substance of solidarity at time when the global refugee regime is undergoing a unique period of stress.

Technologies of Externalization

As liberal democracies have moved to prioritize economic migrants, the world has seen the proliferation and dispersal of biopolitical technologies of surveillance and control that facilitate the unfettered movement of goods while simultaneously employing highly regulated and exclusionary systems for the movement of people, asylum seekers and migrants in particular (Côté-Boucher, 2015; Bell, 2006; Molnar, 2019; Walters, 2015). Neoliberal rationalities have facilitated the development of immigration policies based on rigid taxonomies of desirability that correlate human value with the potential for economization (Walsh, 2011). Canada's 'points system' which has been emulated around the world, is a case in point. While attracting highly educated and skilled migrants, points systems close the doors to those judged to be of lesser 'immigrant quality', entrenching discriminatory criteria and draining human resources from source countries in the global South (Duncan, 2012; Tannock, 2011; Walsh, 2011). Within these taxonomies, people fleeing war, conflict and persecution find their lives devalued and their movements curtailed. While the *Convention* (1951) and the corresponding *Protocol* (1967) dictate the legal obligations for the provision of asylum once an asylum seeker has reached the sovereign territory of signatory states, the global trend has been to circumvent this legal obligation, especially where geography renders states isolated and remote, through the implementation of various technologies and policies that close off legal avenues for triggering the right to asylum.

The repertoire of interdiction and externalization technologies is vast and protean and reflects the way in which power functions as a circulation of practices. Interdiction refers to the practice by which nation states control and manage migrant and refugee flows by prohibiting, intercepting, deflecting and externalizing border controls by moving the locus of enforcement beyond their geographical borders (Davidson, 2003; Kernerman, 2008; Nessel, 2009). The tools range widely and cover policies like the imposition of visa requirements on refugee producing countries, the stationing of liaison officers in airports overseas to intercept possible asylum seekers travelling on fraudulent documents, carrier sanctions that punish airlines and ships for transporting improperly documented passengers and the interception and deflection of ships suspected of carrying migrants (Gammeltoft-Hansen & Hathaway, 2015; Macklin, 2004). They also include policies such as mandatory long-term immigration

detention, bi-lateral readmission agreements,⁴ financial incentives for source countries to prevent migration, off-shore and extraterritorial processing, and safe third country provisions (Betts, 2009; Caron, 2017; Ghezelbash, 2017; Hyndman & Mountz, 2008). Governments in the global North learn migration management strategies by example, and regularly cross-transfer policies designed to restrict access to sovereign territory (Hyndman & Reynolds, 2015).

The adoption of restrictive measures in one country often places pressure on other countries to follow suit, or subject themselves to the risk of being a target for unwanted immigration (Ghezelbash, 2017). Safe third country agreements which deny access to refugee determination procedures in one state on the grounds that asylum seekers could have requested asylum in another state through which they passed, are one example of cross-transfer. The key concepts of the policy were first formally defined in the European Union's (EU) Dublin Convention (Kjaergaard, 1994). They were subsequently emulated by Canada in the form of the *Canada-US Safe Third Country Agreement* (STCA) (2004) as a concession for a package of post-9/11 security measures pushed by the US (Macklin, 2004). More recently, the policy has found expression in the US's *Third Country Transit Bar*⁵ which precludes almost all non-Mexican asylum seekers at the southern border from pursuing refuge in the United States (Department for Homeland Security, 2019). McGuire-Smith (2020) points out that the Department of Homeland Security and the Department of Justice has justified the rule as being "in keeping with the efforts of other liberal democracies to prevent forum shopping by directing asylum seekers to present their claims in the first safe country in which they arrive" citing the EU's Dublin Regulations as evidence (pp.541-542). Interdiction and externalization technologies are not static and are constantly perfected and innovated in response to new migration routes and changing refugee flows.

Alongside the measures for preventing asylum discussed above, nation states of the global North also attempt to stem the flow of asylum seekers by shifting forums from the refugee regime. Betts (2009) has demonstrated how a new regime of 'parallel domains' has developed alongside the existing UNHCR refugee regime, creating opportunities for states to switch venues and focus on migration and security governance instead of refugee protection. Many of these new border control mechanisms have been identified as being inconsistent with the well-established international legal principle of non-refoulement,⁶ which holds that refugees should not be forcibly returned to countries in which they face a well-founded fear of persecution (Betts, 2009; Caron, 2017). Despite the fact that the principle of non-refoulement is so well established that it is considered to be part of customary law – meaning that it even applies to states that are not signatories to the Convention & Protocol (1967) – states have still managed to innovate their way around its mandates (Ineli-Ciger, 2019). Hyndman & Mountz (2008) have used the term 'neo-refoulement' to capture the

⁴ Readmission agreements "involve a requesting state (a destination state where irregular immigrants and refugees aspire to relocate) and a requested state (an origin state that is a source of irregular immigration to the destination state), and require the requested/origin state to re-admit its own nationals if they are found to be in the requesting/destination state illegally" (Caron, 2017).

⁵ The *Third Country Transit Bar* was struck down by a Federal judge on June 30th, 2020. The Court found that the government "unlawfully promulgated" the rule without sufficient consultation in an attempt to bypass the Administrative Procedures Act (Hsu, 2020).

⁶ Article 33(1) of the *Convention & Protocol* (1967) states that: "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."

practice of deploying multiple technologies and bundled policies to make it almost impossible for asylum seekers to reach the borders of Western states. While interdiction and externalization methods are generally developed through the legal avenues and policy instruments discussed above, the COVID-19 pandemic has been used by nation states to justify extra-legal measures, including the use of blanket border closures, that many experts and scholars fear have the potential to become entrenched as more permanent solutions, placing the global refugee regime at risk (Chotiner, 2020; Evans, Frelick, Mustafa & Triggs, 2020). The following section will explore how biopolitical interventions following the declaration of COVID-19 as a global pandemic square up against the notion of responsibility-sharing in the global refugee regime.

COVID-19 Border Closures & ‘The State of Exception’

Observing the modern global proliferation of extra-legal measures justified in terms of security and risk aversion, Agamben (2005) has theorized that we are living in times characterized by an on-going ‘state of exception’. However, the current pandemic has brought the world to a ‘state of exception 2.0’, where nation states are deploying exceptional measures with great speed and minimal due process, provoking potentially global consequences. While the true biopolitical effects of COVID-19 measures are still unfolding, it is clear that some populations will be more affected than others. According to Gillian Triggs, Assistant Secretary-General of the United Nations, 167 countries have closed their borders as a result of COVID-19 after the World Health Organization (WHO) declared it to be a pandemic on March 11th, 2020 (Evans, Frelick, Mustafa & Triggs, 2020). Of these, 57 states have made no exceptions for asylum seekers, including the United States, Mexico and Canada (Reidy, 2020). This means that many people around the world fleeing for their lives have no way to avail themselves of the legal protections of the *Convention* (1951) and the global refugee regime.

An early evaluation of the biopolitics of COVID-19 suggest that technologies of exclusion such as blanket border closures for asylum seekers represent self-serving isolationism rather than a balanced weighing of risks. While such measures may appear to be commensurate with the dangers posed by the virus, health professionals around the world have been adamant that the most effective way to deal with the virus is to for countries to take a ‘whole of society approach’ and include asylum seekers in their national health care systems (Berger et al, 2020; Evans, Frelick, Mustafa & Triggs, 2020; Kluge et al, 2020; Lau et al, 2020). Furthermore, the WHO’s *International Health Regulations* (2005), which represent a legally binding Treaty between 196 countries with the mandate to preserve global health security, stipulate that the prevention and response to the international spread of disease must be proportional to the risk and guarantee “full respect for the dignity, human rights and fundamental freedoms of persons” (Article 3). Travel bans, especially when combined with populist rhetoric that seeks to blame the virus on ‘foreigners’, such as the anti-Chinese rhetoric characterized by the Trump administration, have the potential to incite discrimination, stigmatize migrant communities and undermine public-health goals (Berger et al, 2020; Brownstein, 2020; Lau et al, 2020; Logie & Turan, 2020). Journalists in the US have documented how fear of reprisal and deportation is preventing undocumented migrants from seeking care (Raff, 2020; McFarling, 2020).

A survey of historical responses to outbreaks of infectious disease attests to the fact that these tend to unfold in chronologically predictable ways. Jones (2020) illustrates how initially there is a lack of recognition of the seriousness of the problem, followed by morally grounded public responses and mechanistic interpretations, and finally there are government actions, such as quarantine, which tend to exacerbate power imbalances

between civilians and the state. Despite the indiscriminate nature of viruses like COVID-19, nation states have the tendency to overemphasize the risk of 'out groups', prompting rising levels of ethnocentrism (van Bavel et al, 2020). The desire to assign blame and the concomitant xenophobia is a recurring theme in epidemics. For example, in the 14th century the bubonic plague unleashed massive violence in Europe, including the murder of Catalans in Sicily, clerics and beggars around the continent as well as pogroms against Jews that eradicated over one thousand communities (van Bavel et al, 2020). More recently, Haitians were blamed for the HIV/AIDS crisis in the US, while Ebola led to the widespread stigmatization of African migrants (Ventura, 2016). Anti-Chinese discrimination has similarly emerged as a recurrent problem, whether with the plague in San Francisco at the turn of the 20th century, SARS in 2003, or COVID-19 today (Jones, 2020). The employment of military discourse by political leaders and the media, including terms such as 'targets', 'enemy' and 'fighting', frame illnesses as something foreign and invasive, provoking fear and paranoia (Logie & Turan, 2020). The vocabulary of war is also used to justify recourse to extensive government powers that stifle human rights and political resistance (Agamben, 2005). Given the lessons of history, the clarity of international legal standards as well as the consistent advice of leading global health institutions and doctors alike, the closure of borders to asylum seekers cannot be justified in terms of medical necessity, but rather appears to be consistent with the neoliberal trends of externalization outlined above.

In addition to violating international law and providing fodder for xenophobia, restrictions on movement and the exclusion of asylum seekers and non-citizens from national health responses may also reduce individuals' ability to seek access to health care, further facilitating the spread of the virus (Lau et al, 2020). International observers are already warning of an impending crisis in Venezuela, where US sanctions have crippled the economy and left the population without adequate medicine or protective gear (Chotiner, 2020; Daniels, 2020). In Cúcuta, a city on the Colombian side of the border, as many as 40 000 Venezuelans arrived daily until March 14, when Colombia closed its borders in a bid to stem the spread of COVID-19 (Daniels, 2020). Furthermore, closing borders exacerbates illegal border crossings, increasing the potential for the virus to spread undetected (Ventura, 2016). On a spectrum of what constitutes essential travel, fleeing for one's life due to persecution, war or violence should be at the apex. Seeing as business travel, online commerce and temporary foreign worker programs have continued to operate during the pandemic with necessary accommodations for quarantine measures, closing borders to asylum seekers fails to meet the *International Health Regulation's* (2005) proportionality test, which requires that measures should be weighed against risk. Instead, given the disproportionate risks faced by asylum seekers, their exclusion appears to reflect an expression of neoliberal taxonomies of the differential value of human life, consistent with the predilections of liberal governmentality.

Perhaps one of the most challenging and potentially lethal threats posed by COVID-19 is the vulnerability of the 2.6 million refugees confined to UNHCR refugee camps (UNHCRb, 2020). In what is perhaps a cruel irony, the UNHCR currently manages more refugee camps than any other institution in the world (Hathaway, 2016). While framed in the discourse of humanitarianism, refugee camps exemplify the limits of biopower, confining their inhabitants and often denying mobility rights. At the margins of nation states and administered by non-state actors, refugee camps represent the extreme manifestation of a global refusal to share responsibility for refugees (Hathaway, 2016). For Agamben (2017) the camp is the epitome of biopolitical subjugation with individuals reduced to a state of 'bare life', having no political freedom and in a permanent 'state of exception' where they can be regulated and governed without limit. As Maalki (1995) has convincingly argued, it was within the refugee camp that the ontology of 'refugeeness' was truly established. Through administrative and bureaucratic processes, the camp enabled the confinement, counting,

screening, segregation, education and rehabilitation of the population to an extent where the refugee “emerged as a knowable, nameable figure and as an object of social-scientific knowledge” (p.498). The current pandemic has caused medical professionals and humanitarian watchdogs to sound the alarm for the potential devastation that COVID-19 outbreaks will have on populations confined to refugee camps where overcrowding is the norm, access to clean water is limited and conditions are often squalid (Evans, Frelick, Mustafa & Triggs, 2020; Lau et al, 2020; UNHCR, 2020c). In Cox’s Bazar in Bangladesh, which hosts about a million Rohingya Muslim refugees from Myanmar, the density is between forty thousand and seventy thousand people per square kilometre (Chotiner, 2020). The conditions in Greek camps are so poor that the Médecins Sans Frontières has called for the immediate release of all refugees (MSF, 2020). Global border closures have also forced the UNHCR to halt its refugee resettlement program for the first time since its inception (Evans, Frelick, Mustafa & Triggs, 2020). With social distancing an impossibility and medical resources unavailable, refugee camps may prove to be one of the greatest human tragedies of the pandemic, emblematic of the unequal value placed on the lives of refugees.

Canada, the USA & COVID-19

Canada’s response to the pandemic has unfolded along lines consistent with a neoliberal governmentality. On March 21st, using its executive powers, the Government of Canada released an Order-in-Council pursuant to the *Quarantine Act* (2005) and the *Emergencies Act* (1985) reversing a statement made two days prior that promised new border measures that would introduce non-discriminatory screening and self-isolation measures for asylum seekers in response to the ongoing COVID-19 pandemic (Sutorius, Butler-McPhee & Neve, 2020). Instead, the government announced a new decision, made with the US government, to shut the border almost entirely to people seeking refugee protection in Canada when entering from the US. This exercise of executive powers to fundamentally alter Canadian refugee policy in the absence of public consultation and debate is without precedent (Mercier & Rehaag, 2020). The decision was immediately condemned by the Canadian Council for Refugees, Amnesty International and many other organizations for violating Canadian law, international Treaties and for deviating from established medical best-practices (CCR, 2020; CCR et al, 2020; Sutorius, Butler-McPhee & Neve, 2020). These criticisms are particularly poignant given the transparent neoliberal bias in keeping borders open to temporary foreign workers, international students and business travel (Government of Canada, 2020).

Yet in spite of the condemnation that Canada’s response has received, these actions are not inconsistent with recent asylum policy. Over the course of the past few decades, Canada has struggled with conflicting discourses of ‘risky’ and ‘bogus’ refugees and its international reputation for humanitarian assistance (Molnar, 2016). As a result, the Canadian government has favoured resettlement from UN-vetted refugee camps, allowing the state to handpick refugees as part of a controlled and managed nation-building exercise. In 2002, Canada signed a bilateral accord with the United States, the *Canada-US Safe Third Country Agreement* (STCA) (2004) which states that asylum seekers making claims in Canada must file their asylum claims in the US if they have travelled through that country en route to Canada. While in normal circumstances the agreement provides a ‘loophole’ for asylum seekers who cross at ‘irregular’ land border crossings (like the infamous one at Roxham Rd. Québec), the terms of the agreement have led to what Macklin (2004) has described as the ‘discursive disappearance of refugees’ wherein the right to seek refuge is delegitimized as asylum seekers forced to cross overland ‘illegally’ are criminalized, and framed by politicians and the media as ‘queue-jumpers’ rather than as deserving individuals

exercising their human rights. Under the cover of COVID-19, this 'loophole' has been singlehandedly eliminated through the use of emergency powers which have led to changes that result in a de facto extension of the STCA across the entire land border (Mercier & Rehaag). In addition, as the US has increasingly eschewed established refugee law with its own flurry of executive orders, asylum seekers challenging Canadian sovereignty by circumventing the STCA are exposing the duplicity of Canadian refugee policy by highlighting Canada's potential complicity in refouling asylum seekers back to the US.

Since the election of Donald Trump, scholars and advocates have increasingly called into question the safety of the United States for asylum seekers (CCR, 2018). The annual average daily population in Immigration and Customs Enforcement (ICE) detention has risen more than seven times in the past 25 years to a peak of more than 500 000 individuals in 2019; more than the rest of the world combined (Keller & Wagner, 2020; Meyer, Franco-Paredes, Parmar, Yasin, & Gartland, 2020). This trend reflects the neoliberal rationality of a for-profit system of incarcerating migrants held under administrative immigration law (Del Valle & Herrera, 2020; Keller & Wagner, 2020). Individuals who are incarcerated, including immigrants in ICE detention, are among the most vulnerable to COVID-19 because of the impossibility of social-distancing combined with existing drivers of inequality (Meyer, Franco-Paredes, Parmar, Yasin, & Gartland, 2020). Instead of releasing migrants held by ICE to avert the threat of the pandemic, the United States has accelerated deportations, including those of unaccompanied children (Garrett, 2020). Many of the returnees have tested positive for COVID-19, spreading the virus into vulnerable communities in the northern triangle of Central America (Garrett, 2020; Reidy, 2020). As Guttentag (2020) observes, the sweeping CDC removal order is designed to dismantle existing legal protections of border arrivals under the guise of public health, which the Trump administration has been unable to achieve using immigration laws alone prior to the pandemic. The combined US response to asylum seekers and migrants during the COVID-19 crisis has underscored Trump's racist anti-immigrant discourse. By closing borders to asylum seekers, Canada is complicit in violating domestic and international law and placing asylum seekers at risk for refoulement to countries where their lives are in danger.

'A Space of Possibility'

While the character of global biopolitics emerging out of the COVID-19 pandemic has shed light on who society considers to be important, moments of crisis that expose social inequality also provide opportunities for social change. Agamben (2005) sees power as concentrated and repressive but his theory of 'bare life', while poignant and visceral, represents an essentialization of the extremes. Such an essentialization has the effect of reifying 'refugeeness'. Foucault's (2007) more elastic conception of power as dispersed through intricate networks, provides more flexibility and allows for the recognition that governments do not have a monopoly on power. It also provides for the recognition that refugees possess agency and have identities beyond the political (Malkki, 1995). The involvement of refugees as well as non-state actors, NGOs and civil society in the framework of both the GCR (2018) and the GCM (2018) may provide the agreements with the potential to harness the existing humanitarian infrastructure toward the ends of solidarity and responsibility sharing from below (Rother & Steinhilper, 2019). However, a revolutionary, socially inspired biopolitics focused on fostering equity and democracy will be impossible unless individual and political rights are protected and enabled by enforcing the social rights of all human beings, especially those who are most at risk (Giroux, 2008). Focusing on 'magic bullet' strategies like the search for vaccines without tackling the social determinants that exacerbate the vulnerability of displaced populations, leaves the entire world just as

susceptible to the inevitable next pandemic (Ventura, 2016). Given the heightened potential for the exploitation of sovereign power, the pandemic marks a 'space of possibility' where civil society must challenge and critique prevailing discourses and hegemonic power structures. As Lemke (2010) has argued, this is an opportune time to ask:

Who profits from the regulation and optimization of life processes (through financial gain, political influence, scientific reputation, social prestige, and so forth) and in what form, and who bears the costs and suffers as a result (through poverty, disease, premature death, and so forth)? What forms of exploitation and commercialization of human and non-human life can we observe? (p.177).

The heightened 'state of exception' induced by the COVID-19 global pandemic has made the present a perfect time to reconsider global inequality through a holistic lens that traces the threads of power to the source of populist rhetoric, xenophobia, corporate greed and the disproportionate impacts these have on displaced populations of the global South.

Conclusion

The global COVID-19 pandemic has prompted nation states around the world to close borders to asylum seekers, violating international health and asylum law while leaving asylum seekers vulnerable to refoulement. Meanwhile, health professionals around the world have been unanimous in underscoring the importance of a 'whole of society' approach for containment that provides healthcare for everyone, irrespective of immigration status. The divergence between global best practices and the advice of medical professionals with the actions of nation states are emblematic of a greater tendency towards the use of biopolitical technologies of governance that give primacy to neoliberal-biased immigration policies which place value on human life in economic terms. Couched in humanitarian doublespeak that claims to protect asylum seekers, countries in the global North have worked to erect more and more technological and legal barriers to asylum, while appearing to support UN efforts to bolster solidarity and responsibility-sharing in the global refugee regime through various international agreements. Factoring in the correlation between economic crisis and xenophobia and combined with the disregard for international asylum law that has been displayed by nation states during the prevailing COVID-19 pandemic, the normative potential for existing agreements to foster future solidarity and responsibility-sharing in the global refugee regime is questionable. Given the extremity of the current 'state of exception', it is vital for civil society to organize and challenge the power structures that reproduce inequalities between the global North and the global South. While neoliberalism has been successful in neutralizing political dissent, especially from the left (Dean, 2019), the recent resurgence of social movements like Black Lives Matter, represent the potential of widespread pent up frustration with inequality to manifest as political will for propelling social change. To this end, the global effects of the COVID-19 pandemic have opened up a 'space of possibility'. It will be up to civil society to challenge what Fassin (2001) has called the 'biopolitics of otherness' and resist the further proliferation of neoliberal technologies of governmentality that reproduce the conditions that create refugees in the first place.

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