

Homo Sacer and the Illegal Immigrant

By

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ABSTRACT

My own research on the Chinese diaspora in the Americas in the nineteenth and early twentieth centuries seeks to understand how Chinese migrants were constructed as people without rights in legal regimes as different as colonial Cuba, Peru, Mexico, the US and Canada. In today's US popular imagination, the "illegal" is a Mexican, but the first "illegals" were Chinese. The entire US immigration bureaucracy developed as a mechanism to track and exclude Chinese migrants. The legal regimes developed throughout the Americas to regulate Chinese migration were intimately linked to what Michel Foucault describes as biopolitical power. Immigration bureaucracies, along with medical inspections and increasingly elaborate documentation procedures allowed the state to intervene at the intimate level of the body. The state therefore became the guarantor and protector of life itself. However, as Italian philosopher Giorgio Agamben shows in his book *Homo Sacer*, state intervention in the regulation of life itself has led to the most extreme forms of violence in the twentieth century: concentration camps in Nazi Germany.

Where do undocumented immigrants, those "outside the law" as Motomura would put it, fit into the biopolitical power of the state? Are they merely excess that the state seeks to control and expel, or do they serve other purposes? I argue that the immigrants outside the law serve the same function as the "homo sacer" (sacred man) in ancient Rome, as an outsider against whom the privileges of citizenship can be contrasted. The sacred man was a person who by virtue of having broken the law was seen as an outsider, and therefore was able to be killed by anyone. While it may not be legally sanctioned to kill undocumented immigrants in the US, discourses in the popular media and by government officials render immigrants vulnerable to the denial of basic human rights like health, education and welfare. The recent comments by Republican presidential candidate Herman Cain about building an electrified fence with alligators in a moat to prevent Mexicans from crossing the border suggests the extent to which those immigrants outside the law have become not only *personas non grata*, but people who can and should be killed.

The liberal model developed in the eighteenth and nineteenth centuries in Europe and the United States understood all rights as originating from contracts. Citizenship is the legal contract that grants people rights within the bounds of a particular sovereign state, at least until that time when those rights are retracted in a state of emergency or exception. One's citizenship rights even extend extraterritorially beyond the limits of the nation-state through diplomatic treaties and agreements. Over the past two centuries, subaltern groups (slaves, women, workers, racial minorities) have struggled to gain citizenship rights, but in doing so they necessarily reify the nation-state and thereby also solidify the category of those without rights.

Rather than arguing for granting inclusion of particular groups, whether through amnesty or other forms of a path toward citizenship, I would question the whole framework of citizenship as the basis of rights. The illegal alien acts as a visible reminder to citizens of their privilege, and as such does the political work of legitimizing state sovereignty and creating hegemony. A transnational approach to the issue of rights needs to move beyond the sovereignty of the nation-state. Expanding citizenship rights to new groups does not undermine the right of the state to deny basic human rights; it strengthens it. The increasing liberality of immigration laws since 1965 has coincided with growing militarization and surveillance of immigrants in virtually every space both public and private. (the border, workplaces, homes, and public streets). While the strategic political struggles to grant more rights to immigrants “outside the law” are important, they do nothing to articulate a new vision of transnational rights in an increasingly globalized world.