

ORIGINAL ARTICLE

Looking in a mirror: Asylum in the United States as a reflection of white supremacy

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Abstract

Objective: We contend that the asylum process in the United States exhibits how confinement, surveillance, and deportation work together to extend the primary logics of white supremacy: genocide, anti-blackness, and orientalism. We envision abolition work that uplifts not only asylum seekers but all people with lived experiences of coerced mobility.

Methods: Through the lenses of critical race, decolonial theory, and abolition, we conceptualize the asylum process beyond only one violent system that coerces the mobility of migrants.

Results: We build a theory that extends scholarly conversations about asylum processes as a system of racial/colonial surveillance, control, and state-sanctioned violence and that informs abolitionist practices.

Conclusion: In order to eradicate all forms of detention, we must build robust strategies that demolish the pillars of white supremacy and rebuild new politics that reject the notion of freedom as a reward to well-behaved people, resist coerced mobility, foster shared power arrangements in which people with lived experiences of oppression organize to help each other, and reorient a capitalist system that commoditizes and exploits people's oppression. Striving for anything less will lead to more violence.

People who seek asylum in the United States confront a government that has publicly announced that more detention centers will open for families with children with unauthorized status, shackle electronic monitoring devices to their bodies while they wait for a judge to decide whether they can legally stay, and enforce a zero-tolerance policy that criminally prosecutes asylum seekers for unlawful entry. An increasingly popular call to action is to abolish U.S. Immigration and Customs Enforcement (ICE). Yet considering how the immigration system impacts migrant communities is, as Davis (2003) and Alexander (2020) argue, one aspect of the process. Abolishing just U.S. Immigration and Customs Enforcement (ICE) can lead to violence, raising a dangerous normative suggestion that some people should be detained while others should not.

In this article, we consider asylum seekers as one subgroup of an increasingly growing population that law enforcement agencies have placed under some form of control for suspected criminal behavior (Lerman and Weaver 2014), despite not engaging in any illegal activity. Hernández (2017) has argued, “the jail, the prison, and the immigrant detention camp are all architecture of a permanent society of racial

exclusion, domination, and elimination.” We similarly observe that asylum in the United States exhibits how confinement, surveillance, and deportation work together to preserve white supremacy. Our analysis offers an important contribution by building theory that extends scholarly conversations about asylum processes as a system of racial/colonial surveillance, control, and state-sanctioned violence. Through the lenses of critical race and decolonial theory, we envision abolition work that uplifts not only asylum seekers but all people with lived experiences of coerced mobility.

We organize our article as follows. First, we describe the asylum process in the United States. We then critically examine how the asylum process reflects the main logics of white supremacy. We conclude the article by highlighting abolitionist work that goes beyond narrowly rejecting an unjust immigration system to eradicating white supremacy outright.

ASYLUM IN THE UNITED STATES

According to the United Nations 1951 Refugee Convention and 1980 Refugee Act (Long-García 2020), migrants can claim asylum by demonstrating a well-founded fear of persecution for reasons of race, religion, nationality, political opinion, or membership in a particular social group. A credible fear interview (CFI) is given to undocumented people arriving at U.S. ports of entry (Ruíz and Sertler 2019).¹ Through this process, asylum seekers must provide evidence to demonstrate a “significant possibility” of credibly establishing past persecution or a well-founded fear of future persecution. When asylum seekers reach the border, they are forced to live in detention until they can pass a CFI interview in front of an asylum officer. Once a positive decision is made, asylum seekers are released into the United States to await a full hearing before an immigration judge which usually takes place years later.

People requesting asylum in the United States are mainly from the Global South. According to the Department of Homeland Security (DHS), nationals of China, Venezuela, and El Salvador accounted for nearly 38 percent of people granted asylum in 2019. Central American asylum claims have more than quadrupled between 2010 and 2019, though a significant number of cases are still under review due to court backlogs (Monin, Batalova, and Lai 2021). Further, a disproportionate percentage of foreign nationals who have no lawful means of entering the country and asks for asylum, or who are apprehended as an unauthorized migrant and file an asylum request (known as a defensive application) are from Central America (50.1 percent) and Mexico (14.4 percent) (García 2006; Menjívar and Abrego 2012).

The Supreme Court has ruled that deportation was beyond the reach of the Constitution that affords due process (Hester 2010). This ruling has contributed to upholding the practice of confining noncitizens (including asylum seekers) in local jails, prisons, processing facilities, and detention centers (Hernández 2017). Subsequent legislation (e.g., McCarran–Walter Act of 1952, Anti-terrorism and Effective Death Penalty Act of 1996, Illegal Immigration Reform and Immigrant Responsibility Act of 1996) mandated immigration authorities to detain and expedite removing noncitizens for violating immigration laws (Golash-Boza 2015; Sampaio 2015).

While waiting for their deportation hearing, asylum seekers are not physically detained but are required to check in periodically with ICE. Studies have shown that ICE has increasingly forced asylum seekers to enroll in its Alternative to Detention (ATD) Programs (Gómez Cervantes, Menjívar, and Staples 2017). Some are subject to the Intensive Supervision Appearance Program (ISAP), which shackles ankle monitors with GPS capabilities onto enrollees. To clarify, ICE’s ATD Programs are not really an alternative but rather another form of procedural detention to ensure attendance at immigration court proceedings. Surveillance ends only after the individual has successfully won their asylum case, which could take years. ISAP enrollees are often subject to a “cocktail” of different ATD methods (Finnie, Guzik, and Pinales 2012), including mandatory home visits from ISAP staff, telephonic monitoring, check-ins at ISAP offices, voice recognition software, and radio frequency monitoring. Further, ATD can be strategically invasive and extend surveillance to other community members, as asylum seekers on GPS can be exploited as bait to

¹ CFIs are also given to people who enter without inspection (EWI). CFIs are for anyone who is in expedited removal proceedings, which includes everyone at the border who doesn’t have permission to enter.

reach other immigrants. In effect, ICE has built digital and mobile jails that restrict the free movement of people who are disproportionately black and brown (Alexander 2020).

ASYLUM AND THE LOGICS OF WHITE SUPREMACY

Scholars argue that the main intent of the U.S. immigration system is to punish by isolation (Loyd and Mountz 2014). To achieve this basic goal, U.S. administrative agencies such as Customs and Border Patrol (CBP), ICE, DHS as well as private contractors from the prison-tech industry have built a system to enable the dispersal, separation, concealment, control, and killing of immigrants. Yet these punitive tools are not exclusively used in migration control; rather, they are state expressions of an unfettered commitment to white supremacy, which Andrea Smith (2012) has argued include mainly three primary logics: (1) genocide, (2) slaveability/anti-black racism, and, (3) orientalism.

Genocide

The asylum process transpires on land acquired through genocide. White European settlers killed Native Americans and indigenous populations to seize lands in the name of a perceived destiny that whites rule and profit from an “uncivilized” western frontier (Hernández 2017; Wolfe 2006). Scholars have shown that genocide is used to redefine the terms of citizenship on stolen land (Wolfe 2006), allowing colonizers to destroy indigenous ways of defining membership and movement. To this end, “settler colonialism” is integral for nation-building, which includes enacting immigration policies that select white- and white-passing newcomers, without the input of indigenous people (see *Decarceral Futures* symposium edited by Aiken and Silverman 2021).

The scarcity of legal and linguistic resources that would facilitate a safe and informed asylum process reflects colonial interests, conquest, and indigenous erasure. In 2020, over 250,000 Guatemalan migrants were detained at the U.S.–Mexican border. More than half were Mayans, many speak no or little Spanish, the dominant language that the U.S. government falsely presumes that all Latin American groups speak. The U.S. government claims to provide proper interpretation at all points in the immigration process; yet, in practice, it rarely offers Mayan-language interpretation at the border or in holding cells, or in the courtroom (Nolan 2019). Mayan speakers are expected to testify in Spanish before a judge through a Spanish-English interpreter. Language is a matter of life and death for Mayan-language asylum seekers, as they often are not supported equitably to navigate CFIs.

Anti-blackness

The process of finding asylum from oppression is rooted in anti-black racism, which renders black people as nothing more than property and inherently enslavable (Smith 2012). Through the Missouri Compromise of 1820, as Walter Johnson (2020) writes, slavery expanded into the western frontier and state leaders worked to preserve localized white power from free blacks. In 1847, Missouri passed a state law that “no free negro or mulatto shall under any pretext, emigrate to this state from any other State or Territory,” which made free black immigration illegal. The law also required resident-free blacks to post a \$1000 bond to continue living in St. Louis, perpetuating a lived experience of always awaiting removal (Johnson 2020).

An intentional retrenchment of the free people’s movement is evident in asylum-seeking (Loyd et al. 2012). Asylum seekers are forcibly enrolled into ISAP and have punitive measures inflicted on them for violating programmatic rules. Further, tools such as ankle monitors allow authorities to exercise disciplinary power more freely, innervating the most basic, routinized, and trivial aspects of everyday life (Gómez Cervantes, Menjívar, and Staples 2017). The daily surveillance of asylum seekers shows how law

enforcement agents have normalized confining people who are escaping violence as part of their American experience.

Anti-blackness also anchors a capitalist system that has expanded systems of mass incarceration and mass deportation. Enslavement of people and their progeny have augmented their owners' wealth and political power to maintain the production of capital based on violence against black, brown, and indigenous peoples (Alexander 2020; Johnson 2020; Wolfe 2006). Despite the passage of the 13th Amendment that abolished slavery and involuntary servitude, the legacy of anti-blackness is found in immigration control and incarceration (Sharma 2021), which have expanded exponentially due to profits in the control, exploitation, and elimination of vulnerable human beings (Alexander 2020). For example, according to a 2021 Report by the U.S. Government Accountability Office (GAO), the DHS Act of 2020 provided about \$3.14 billion for ICE to operate its immigration detention system, which is mainly operated by for-profit prison and surveillance technology companies. As of July 2019, according to the Transactional Records Access Clearinghouse, CoreCivic and Geo Group operate facilities that detain 53 percent of all people held in custody. These companies are also publicly traded on the New York Stock Exchange. The GAO report further states that ICE increasingly incorporates "guaranteed minimum payments into its contracts and agreements, whereby ICE agrees to pay detention facility operators for a fixed number of detention beds regardless of whether it uses them." Social justice organizations such as the Detention Watch Network have criticized ICE contracts with a "bed mandate" for providing a steady profit stream and a perverse incentive to increase enforcement to maximize tax dollars.

Capitalism has accelerated the evolution of systems of racial control, even amid public criticisms of mass incarceration (Alexander 2020). Proponents of ATD programs argue that surveillance technology is more cost-effective than keeping someone confined; however, legal scholars argue that this estimate is grossly exaggerated (Finnie, Guzik, and Pinales 2012). In 2010, Geo Group acquired BI Incorporated, which specializes in electronic offender-tracking equipment and services. ICE contracts its ISAP Program out to BI, which operates as an appendage of a larger detention complex that seeks to collect more data on human behavior for the sole purpose of detention and removal. Upon adding supervised release services to its business model, Geo Group officials boasted that the company is now able to serve clients "throughout the entire corrections lifecycle" (Gruberg 2015).

Orientalism

The logic of orientalism is a process of the West's defining itself as a superior civilization by constructing itself in opposition to certain peoples or nations who are deemed as inferior and a constant threat (Smith 2012). Violence inflicted on asylum seekers is an artifact of a geopolitical context where white European settlers pursued their fantasies of attaining more power in the west by killing indigenous people from what is now considered Mexico and Central America (Hernández 2017). The prospect of having Mexicans—who local and national political leaders constructed as lazy, unintelligent, and violent—as rights-bearing citizens of the United States was enough to motivate Congress to engage in a war that provoked Mexican retaliation over the annexation of Texas (Gómez 2018).

The logic of orientalism facilitates an interrogation of the physical and mental spaces in which asylum seekers supposedly are safe from violence. The U.S. immigration system forces migrants into an abusive relationship in which they must ask and apply for asylum. As other works on gender-based violence in refugee law have forcefully argued (Nayak 2015; Ruíz and Sertler 2019), administrative language such as "significant possibility," "evidence," and "credibility" provide the specter of "being just about the facts." The CFI is a method of structural gaslighting (Ruíz and Sertler 2019), in which authorities minimize asylum seekers' claims of fear by shifting a declaration of pain and trauma into an interrogation about whether they acted "appropriately" in the face of danger (e.g., filed a police report, spoke publicly about abuse, attempted to relocate in another region of their country).

Gender and heteronormativity also structure criminality and punishment of other historically marginalized groups. In the 1996 federal reforms to welfare and immigration, Latina immigrants were constructed

as a threat to the welfare state (Golash-Bozaa and Hondagneu-Sotelo 2013; Newton 2008). Scholars have also shown that Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual, and Other non-heterosexual people (LGBTQIA+) asylees face a difficult and violent process in a documented process (Chávez 2013). Asylum officials use inaccurate, stereotypical, or degrading measures to determine and verify LGBTQIA+ individuals' sexual orientation, which has fostered longer jail time and sentences to death (Redcay, Luquet, and Huggin 2019).

FREEDOM DREAMING

Attorneys, case managers, and advocates work tirelessly toward acquiring proper housing, health services, and protection for vulnerable populations. Nevertheless, service providers and attorneys will still advise based on the white supremacist laws set forth in the United States. Until all forms of detention are abolished, people whose lives are most proximately impacted by the carceral state are unable to live their lives completely free of stigma, perpetual surveillance, and fear.

What institutions, ideas, and strategies for action should emerge from the dust of a dismantled detention complex? We conclude by providing some ideas that arise from our critical analysis. First, we need a new politics that rejects the notion of freedom as a reward to well-behaved people. Law enforcement agencies such as ICE and privatized prison contractors cultivate a false premise that freedom is something attained and awarded to compliant people. To this end, people who resist and exercise agency to not adhere to the rules coercing the freedom of movement are typically viewed as problematic and deviant. This dynamic is attributed to dominant and dangerous tropes that uphold the state's constructed categories of "good/legitimate" and "bad/illegitimate" immigrants (Abrego and Negrón-Gonzales 2020; Viturro 2009; Walia and Tagore 2009). The state has intentionally used these categories to build public consent to use force against black, brown, indigenous, LGBTQIA+, and other marginalized people. Binaries such as good/bad or legal/illegal also obscure the abolitionist goal of preserving dignity, respect, and the freedom of movement of all human beings.

"No Borders" is one example of a politics that rejects border controls as well as national identities and the array of migrant identities that borders create (Anderson, Sharma, and Wright 2009). While often conceptualized as radical or dismissed as being purely utopian, Anderson, Sharma, and Wright (2009) and fellow *Refuge* symposium co-authors forcefully argue that No Borders politics is being practiced in everyday life where people reimagine themselves beyond state- and capitalist imposed identities such as "criminal," "migrant," or "worker" to simply humans expressing their natural right of movement. No Borders politics is complementary to other calls to rethink global systems. Nation-state collaborations to demilitarize and open borders where people can freely migrate if they choose to do so have been proposed (Hayter 2004). Some have argued open borders must be accompanied by globalizing human rights and solidarity with those who are dispossessed by the ravages of capital (Darder 2007). Others call to reduce North-South hierarchies stratified by economic prosperity, skill, and legal status (Castles 2004) while also critiquing that open borders already exist but only for highly skilled workers.

The freedom of movement also calls for the emergence of dual power arrangements in new democratic institutions that directly challenge the legitimacy of the status quo and settler colonizer mentalities (McDowell and Fernandez 2018). For example, mutual aid—people with lived experiences of oppression organize to help each other—facilitates solidarity as a form of resistance (Medina 2013) and makes it possible for them to survive the present and build a future without prisons (Davis and Fayter 2021). Through mutual aid, people ask and pursue their own questions, lead decision making, and drive the course of action. In such arrangements where power and decision making are shared, mutual aid work must also be structured to incorporate indigenous people, radically welcome their cultural practices, and acknowledge the stolen land on which movement takes place.

Last, mutual aid work and scholarship also call for the need to rebuild and reorient a capitalist system that commoditizes and exploits people's oppression. A social services sector within a growing non-profit industrial complex has emerged to comply with rather than dismantle the U.S. carceral state. Indeed, it

is important to improve access to social services and educate the public about the atrocities that systems of violence inflict. However, few mechanisms exist for oppressed groups to improve the quality of social services and repair harm at all systemic levels. As a consequence, service providers and advocates may also perpetuate a common misperception: The most vulnerable should just be grateful that they receive any assistance at all. To this end, when people are positioned only as service consumers or storytellers of oppression, they can be retraumatized, limited in untethering themselves from violent systems, and prevented from using their own creativity to problem solve. More than people with lived experiences of oppression are centered in abolitionist work, dual power arrangements should encourage service providers, advocates, and academic researchers to intentionally de-center and re-position themselves as mutual partners.

CONCLUSION

On June 25, 2020, DHS deployed more than 700 ICE and CBP agents who used surveillance technology and military tactics at Black Lives Matter protests in several cities across the United States. These state-endorsed actions—and witnessing border patrol and immigration enforcement officers rallying around police and other law enforcement agents responding to protests—serve as a critical reminder for ICE, police, and prison abolitionists. In order to eradicate all forms of detention, we must build a robust strategy that is informed by the lived experiences of all people who are reclaiming their freedom on stolen land and must do by toppling the pillars of white supremacy.

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CONFLICT OF INTEREST

The authors declare no conflict of interest.

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