



NOTA CRÍTICA

Thinking Out of Bounds: A Critical Analysis of Academic and Human Rights Writings on Migrant Deaths in the U.S.-Mexico Border Region

Joseph Nevins
Vassar College

The number of unauthorized immigrants who have died attempting to cross the U.S. southern boundary from Mexico has grown to alarming levels. It is conservatively estimated that between January 1995 and September 2003—a time of an intensified enforcement strategy along the U.S.-Mexico boundary—there were over 2,600 documented deaths of unauthorized migrants in the border region (see CRLAF, 2003). These deaths have received critical attention by academics, policy analysts, and human rights advocates and monitors alike (see, among others, ACLU and CRLAF, 2001; Bustamante, 2001; Cornelius, 2001; Esbach *et al.*, 2001; Hing, 2001; and Reyes *et al.*, 2002).¹

In part because of such scrutiny, the government of the United States and, to a lesser extent, that of Mexico, have responded in various ways. The U.S. government has instituted patrol flights to spot migrants in distress, and it has in-

creased search-and-rescue missions in hazardous areas. U.S. authorities have also posted warning signs at high-risk crossing points, distributed fliers in Mexican border towns, and advertised on Mexican radio and television stations advising would-be migrants of the potential dangers. Recently, Washington has constructed 30-foot towers with signal beacons in “high-risk” areas of the desert that, when activated by migrants, send a distress signal to the Border Patrol. (Washington currently has plans to construct 20 of these towers.) For its part, the Mexican government has undertaken initiatives including an education campaign to warn migrants of the dangers they face and explain how to better prepare and protect themselves if they are going to cross (Associated Press, 2002; Reuters, 2002; Villalobos, 2003; U.S. CBP, 2003). Despite these efforts, there has not been a significant reduction in the

¹ I am grateful for the constructive comments made by two anonymous reviewers.



growth of the death toll. Indeed, crossing the boundary seems to have become only more deadly, with June 2002 being the deadliest month on record in terms of the number of fatalities (see CRLAF, 2002; Nevins, 2002a).

The reactions of academics, policy analysts, and human rights advocates who have monitored, reported on, and analyzed the migrant deaths differ significantly from the responses of government officials—especially those in the United States. Nevertheless, collectively, the reactions share a key foundational assumption: The U.S. government has a right to control its territorial boundaries and, thus, to determine who can enter the country. These parties who criticize and issue blame for the deaths avoid indicating the principle reason why such deaths occur: the very presence of the international boundary as an enforced line of control. Instead, responses tend to decry the deaths while focusing on epiphenomenal factors.

In this article, I do not seek to explain why these parties fail to critique boundary enforcement in and of itself—an endeavor that would require guesswork. Instead, I focus on how this failure reflects and helps to reproduce three interrelated “ways of seeing” (Berger, 1980). The first has to do with a conceptualization of space that accepts national territorial sovereignty as unproblematic. The second concerns a conceptualization of violence that is insufficiently

structural. And the third relates to a conservative interpretation of what constitutes human rights.

In analyzing these worldviews, I examine critically some principle writings by academics and policy analysts. My intent is not to castigate the authors—most of whom, collectively, have played a significant role in raising the profile of a tragic issue: the growing death toll in the border region. However, given that all the writings seem to be informed by a desire to bring about an end to such deaths, it is imperative to engage in a critical dialogue about the factors that give rise to the fatalities. I assert that by not calling for an end to boundary enforcement as it relates to immigration or by legitimating such enforcement, the authors are resigning themselves to migrant deaths—albeit in smaller numbers than are currently occurring if what they advocate in terms of remedial measures were to be put into place. Migrant deaths are the inevitable outcome of a border regime characterized by intense, transboundary social relations, marked socioeconomic inequality between the United States and migrant-sending countries (in terms of the U.S. southern boundary, principally Mexico and, to a lesser extent, Central American nations), and boundary enforcement. Thus, as long as significant migratory pressures exist coupled with boundary regulation, migrant deaths will continue. Beyond the matter of migrant deaths, human rights concerns related to boundary and immigration enforce-



ment also exist, which have important moral and political implications for academic and policy analysts concerned with the well-being of unauthorized immigrants. Before developing this line of analysis, however, the article provides a brief historical geographical overview of migrant deaths along the boundary.

*Historical Roots
of Migrant Deaths*

There is nothing new about risk and death being part of extralegal boundary crossing. Entering the United States without authorization has long been dangerous. As early as the late 1800s, for example, many unauthorized Chinese immigrants died while trying to circumvent boundary enforcement resulting from the Chinese Exclusion Act of 1882 (Lee, 2003). In 1953, floodwaters from the Rio Grande reportedly claimed the lives of between 300 and 400 would-be boundary crossers (García, 1980; also see Annerino, 1999).

Tragedies were still common in the 1980s and the early 1990s, before the boundary buildup initiated during the early years of the Clinton administration (see Curry, 1986; Bailey *et al.*, 1996; Wambaugh, 1984). They also occur in other “crossing” areas, such as the Caribbean. There, a high number of would-be immigrants from the Dominican Republic have drowned or

been eaten by sharks as they tried to reach Puerto Rico to board a flight to the United States free of immigration controls (see Fineman, 1998).

In the late 1980s and early 1990s, migrant deaths along the U.S.-Mexico boundary were declining vis-à-vis the migrant death toll of the mid-1980s. Since that time, however, the number of deaths has grown considerably (Esbach *et al.*, 2001; Reyes *et al.*, 2002). Along southern California’s section of the boundary—home of Washington’s “Operation Gatekeeper” (see Nevins, 2002c)—there were 23 deaths during the 1994 calendar year, for example. Since then, there has been a sharp upward trend, with an average of 134 deaths annually between 1998 and 2001. Along the entire Southwest boundary, documented deaths increased from 87 in 1996 to an average of 391 between 1998 and 2001 (derived from CRLAF; also see Cornelius, 2001), which corresponds to the implementation of a new enforcement strategy. As opposed to the old one of apprehending migrants after they cross, the new strategy is one of “territorial denial” or “prevention through deterrence,” which attempts to thwart migrants from entering the United States through the forward deployment of growing numbers of Border Patrol agents and increased use of surveillance technologies and support infrastructure.²

² According to the national strategic vision of the U.S. Border Patrol (1994: 6): “The Border Patrol will achieve the goals of its strategy by bringing a decisive number of enforcement resources to bear in each major entry corridor [such as El Paso and San Diego]. The Border Patrol will increase the number of agents on the line [the boundary]



Assessing changes in rates of migrant deaths over time is complicated by data sets that draw upon different geographies (the U.S. side versus both sides of the boundary), utilize different sources, and make different assumptions. Meanwhile, no comprehensive data set exists of migrant deaths over a long period. The U.S. Border Patrol, for example, did not keep national statistics on migrant deaths prior to fiscal year 1999; before that, individual Border Patrol sectors kept their own, but it is not possible to aggregate this data due to variations in reporting (see Reyes *et al.*, 1999). Given these limitations, it is difficult to assess the severity of migrant deaths in the context of the Clinton-era-initiated boundary buildup vis-à-vis previous decades.

The most comprehensive study is one by researchers with the Center for Immigration Research at the University of Houston (Esbach *et al.*, 2001). Despite problems associated with how the study framed its investigations—which may have led to an undercount of migrant deaths (see Reyes *et al.*, 2002)—the findings suggest that there is not a significant difference between the annual numbers of *documented* fatalities in the mid- to late-1990s and the numbers in the mid-1980s. Indeed, they are re-

markably similar. It is likely, however, that the more recent numbers are relatively conservative (vis-à-vis those from 1985-1993) as a considerably higher proportion of total deaths is taking place in isolated, rural areas—an outgrowth of the post-1993 boundary buildup strategy, which has pushed crossers away from urbanized areas—and thus many corpses are never found (see Cornelius, 2001; CRLAF; Esbach *et al.*, 2001; Reyes *et al.*, 2002). Hence, it is very likely that migrant deaths have increased because of the 1990s buildup. Nevertheless, migrants died in significant numbers before the strategy initiated during Clinton's first term. Immigrants trying to cross the boundary clandestinely have died in very large numbers as early as the 1950s. Whatever the current situation, crossing the boundary without authorization has long been a deadly enterprise. It has only become more so in the past decade.

By the Border Patrol's own criteria, this suggests that the various operations that make up its enhanced boundary-enforcement strategy are failing to some degree (see U.S. Border Patrol, 1994). U.S. officials expected that operations such as Hold-the-Line (El Paso), Gatekeeper (southern Cali-

and make effective use of technology, raising the risk of apprehension high enough to be an effective deterrent. Because the deterrent effect of apprehensions does not become effective in stopping the flow until apprehensions approach 100% of those attempting entry, the strategic objective is to maximize the apprehension rate. Although a 100% apprehension rate is an unrealistic goal, we believe we can achieve a rate of apprehensions sufficiently high to raise the risk of apprehension to the point that many will consider it futile to continue to attempt illegal entry.”



fornia), Safeguard (Arizona), and Rio Grande (Brownsville) would discourage a significant number of migrants from crossing: By pushing them out into mountain and desert areas, migrants—after making a cost-benefit analysis—would rationally decide to forego the risks. Given that this has not happened, Washington is arguably responsible (at least partially) for the deaths. By knowingly “forcing” people to cross risky terrain, U.S. authorities contribute to the resulting fatalities. Indeed, this is the dominant manner in which boundary-buildup critics frame the problem of migrant deaths.

Framing the Fatalities

By establishing the infrastructure that makes it more difficult for migrants to cross in urbanized areas, U.S. authorities have increased the likelihood that unauthorized migrants will attempt to cross in rural areas where the enforcement apparatus is less dense, areas that are also more life threatening given the hazardous environmental conditions. Nevertheless, Washington refuses to acknowledge any responsibility for the growing death toll. Instead, it blames professional smugglers, or *coyotes*, for leading people into high-risk areas and then abandoning them (see, for example, *Los Angeles Times*, 1998), even though the significant growth in the use of *coyotes* has been the predictable, direct result of the

enhanced boundary-enforcement strategy (Andreas, 2000; Cornelius 1998, 2001; Reyes *et al.*, 2002). Indeed, the Border Patrol points to increased fees charged by smugglers (presumably a result of increased demand and hardship) as one of the indices of the Border Patrol’s success (see U.S. Border Patrol, 1994).

Washington’s contention that the *coyotes* are culpable seems to have resonated even with the Mexican government. For example, a joint press release with the U.S. government in response to the deaths of 14 Mexican migrants in Arizona in May 2001 stated, “Both governments have begun an investigation to identify the smugglers responsible for this tragedy, and pledge close cooperation to find these criminals and bring them to justice. The governments . . . condemn the actions of smugglers who put the lives of would-be migrants at risk” (Governments of the United States and Mexico, 2001). Echoing this perspective, the United Nations similarly focuses on smugglers in assigning blame for migrant deaths (UNCHR, 2002).

Given that such boundaries and their associated practices are inherent to the modern state, it is not surprising that officials of national governments (or their collective expressions, such as the United Nations) do not call into question—even indirectly—the right to regulate national territorial boundaries. Those outside formal state structures, however, have the



space to offer far-reaching critiques. Indeed, numerous academics and migrant and human rights organizations take a very different approach: Rather than focusing their critical attention on smugglers, they concentrate on the enhanced boundary-enforcement strategy. These individuals and organizations have blamed the strategy for the deaths. Generally, however, they also accept boundary and immigration enforcement as a legitimate state activity.

An article by Bill Ong Hing on Operation Gatekeeper's "dark side," for example, argues that the deaths that have taken place in the southern California border region since Gatekeeper's implementation on October 1, 1994 "are the direct result of the philosophy of 'control through deterrence' embodied in Operation Gatekeeper. By closing off traditional corridors of entrance used by undocumented migrants, Operation Gatekeeper has pushed migrants into far more treacherous areas" (Hing, 2001:124). Similarly, a complaint submitted by the American Civil Liberties Union (ACLU) of southern California and the California Rural Legal Assistance Foundation (CRLAF) to the Inter-American Commission on Human Rights contends, "The facts show that Operation Gatekeeper was designed to place migrants in mortal danger in order to deter their entry into the United States. The facts also reveal that hundreds of migrants have died as

a result of Operation Gatekeeper along the California-Mexico border" (ACLU and CRLAF, 2001:1). For these analysts, the solution to the growing migrant death toll is the discontinuation of the enhanced enforcement strategy—one, they argue, that violates international law because it puts migrants in deadly peril—of which Gatekeeper is the most high-profile and lethal component.

What this means in a practical sense is not clear as the authors do not put forth an explicit outline of what they think a more humane boundary-enforcement strategy—one consistent with international law—would look like. The lack of clarity is compounded by the fact that Gatekeeper and similar operations are not temporary endeavors. They are now institutionalized, having become the normal method of boundary enforcement. As such, ending Operation Gatekeeper-like practices could mean—among other things—a reduction in the number of Border Patrol agents in the Southwest and dismantling of scores of miles of walls and fencing. This, of course, would make the boundary easier to cross for would-be unauthorized immigrants. However, it is far from clear that the overall impact in terms of the number of unauthorized entries would be significant as there is no conclusive proof that the boundary buildup has significantly reduced the number of entries. An August 2001 report by the U.S. Government's



General Accounting Office declared that, although the new strategy has caused a discernible shift of unauthorized migrant traffic away from urban areas, it “remains unclear” the extent to which the strategy “may have affected overall illegal entry along the Southwest border” (U.S. GAO, 2001:2). A more recent study by the Public Policy Institute of California established similar findings (Reyes *et al.*, 2002). Thus, Hing (2001:163) argues, “Reverting to pre-Gatekeeper enforcement strategies would be no less effective, in terms of apprehensions and deterrence, but would result in far fewer deaths. The less dangerous routes to entry would be re-opened and the need for high-priced smugglers reduced.”

How many fewer deaths would result were the enhanced boundary-enforcement strategy to end is a matter of debate. In their authoritative study on migrant deaths, Karl Esbach, Jacqueline Hagan, and Néstor Rodríguez argue that it is not boundary enforcement *per se* that causes deaths. Rather, it is the policies behind the enforcement “that ultimately determines the migrants’ mode of entry” and thus the levels of risk that migrants face. In this regard, these authors would seem to agree that the current strategy is an important factor in the deaths since late 1994. However, it is too simple, they argue, to say that the current boundary-enforcement strategy is responsible for migrant deaths, as fatalities

were occurring before the boundary buildup. In that regard, the authors contend that “migrant border deaths will continue to parallel the temporal and spatial contours of undocumented immigration.” They will only cease to occur if there is “a completely controlled border or the emergence of home-country economies as or more prosperous than the United States.” And discontinuing intensified boundary enforcement—the current regime—does not make sense, as it “will only mean the return of migrant border deaths to earlier patterns, not the disappearance of death” (Esbach *et al.*, 2002:iii).

The University of Houston researchers are undoubtedly correct. Indeed, their study—and past experience—suggest that the number of immigrant deaths could still be quite high if the federal government were to revert to the pre-1994 boundary-enforcement strategy. Whereas Hing (explicitly) and the ACLU/CRLAF (implicitly, by default) suggest a return to the pre-Clinton boundary-enforcement regime and, thus, a situation that would still lead to a large numbers of deaths, Esbach, Hagan, and Rodríguez (2001:64-65) see the need to focus on long-term solutions and, in the short- and medium-terms, a program that allows for greater numbers of legal immigrants:

The long-term solution . . . lies in reducing the demand for undocumented entry . . . by reducing the sharp differences in the efficiencies of the



economies of neighboring countries. In the meantime, the most promising policy solutions . . . are those that acknowledge the persisting demand in the United States for Mexican labor. Programs that expand channels of legal migration will be the most effective way to address the level of migrant mortality at the border, because they remove the migrants from the rivers, canals, ranches, and deserts, and put them back in the seats of the motor coach and airplane.

Hence, the authors present two long-term options: a completely controlled border—something they do not seem to think is a realistic possibility, but, nevertheless, one that they mention—and some sort of economic development program that facilitates a significant reduction in socioeconomic insecurity within migrant-sending countries.

As is the case with all the authors discussed, Esbach, Hagan, and Rodríguez limit their advocacy to remedial measures that either explicitly or implicitly endorse boundary and immigration enforcement. As a result, some potential solutions to the problem of migrant deaths are not even considered. In this regard, what the various authors do *not* say about migrant deaths is, in a number of ways, at least as important as what they say. Taken together, their discourse and silence are emblematic of particular worldviews, ones that draw upon and reinforce specific conceptions of space, human rights, and violence.

Normalization of National Space

Effective immigration and boundary enforcement are practices of recent origin in human history, ones tied to the rise of the modern territorial state. Until the twentieth century, state controls over the movement of peoples—with few exceptions—were relatively weak (Dowty, 1987; Harris, 2002; also see Torpey, 2000). The history of the U.S.-Mexico boundary and its associated enforcement practices reflect this. Immigration policing along the boundary only emerged in the 1880s, and the U.S. Border Patrol did not come into existence until 1924 (see Nevins, 2002c).

Despite the recent appearance of these practices, the U.S. public at large accepts them, and many people actively demand them as a way of maintaining and enhancing national territorial sovereignty. Thus, apart from the high numbers of migrant deaths, the current boundary-enforcement regime (migrant deaths aside) is strikingly uncontroversial within the United States. This largely reflects a widespread perception that boundary control is a necessary endeavor of the state, one deserving of extensive resources. The presence of such sentiment has not always existed, however. Apart from relatively brief moments, Washington officialdom and the general public had scant interest in unauthorized-immigration and boundary-control issues before the 1970s. The shift reflects, among other



things, a normalization of boundary enforcement in the American politico-geographical imagination. It also represents a particular stage in the development of the United States as a nation-state, one in which, at least in terms of immigration, the U.S.-Mexico divide has increasingly shifted from a border, a zone of gradual transition, to a boundary, a stark line of demarcation—one that divides law, order, and prosperity from chaos, lawlessness, and poverty (Nevins, 2002c). Thus, for the vast majority of Americans—including Latinos (see Vila, 2000)—the wrongness of “illegal” immigration is beyond question, and there is, therefore, no reason to debate policies that aim to stop extra-legal immigration (Nevins, 2002c).

Such opinion reflects an embracing of national territorial sovereignty and a rejection of those who challenge it by attempting to traverse national boundaries without authorization. This is because the “illegal alien” is someone who is officially out of place—in a space where she or he does not belong. The practice of territoriality—the effort to exert influence over people or other phenomena by asserting control over a defined geographic area—reinforces the designation of the unauthorized immigrant as “illegal.” Territoriality helps to obfuscate and normalize social relations between controller and controlled, and it displaces those relations onto the territory itself, thus reifying it and the power it em-

bodies (Sack, 1986). Just as the boundary and its associated practices and identities (such as citizen, “alien,” “legal,” and “illegal”) have become normal, so, too, have the migrant deaths, in that most people in the United States accept them as simply a fact of life, as a perhaps sad but acceptable outcome of the perceived necessity to enforce “our” boundaries.

The authors discussed here help to reproduce this worldview by endorsing, explicitly or implicitly, the putative right of the U.S. government to enforce its boundaries. Although they decry the deaths and criticize the boundary buildup for contributing to them, they help to legitimate boundary enforcement overall. As Hing, for example, writes, “The issue... is not whether the United States has a right to control its border.” Nevertheless, this is not an unconditional right, he stresses. “Rather, the issue is whether the United States has abused that right with a strategy designed to maximize the physical risks, thereby ensuring that hundreds of migrants would die.” In explaining himself, he goes on to point out that the United States government, in a response to the Inter-American Commission on Human Rights, has argued that every state has a right to control entry into its national territory and to take “*effective and reasonable*” [my emphasis] steps to deter unlawful entries. Hing does not take issue with this position, but suggests that Gatekeeper does not con-



stitute a “reasonable” practice, thus implying that it is the specific manifestation of boundary policing embodied by Gatekeeper—not boundary enforcement in and of itself—which is illegitimate (2001:164-165). Along the same lines, the ACLU and CRLAF (2001:10) complaint states that “the United States has a right to protect its borders and implement an effective border policy,” but in trying to realize this putative right, “it must do so in a manner that minimizes the threat to life.” Thus, it seems that as long as the boundary-enforcement regime is “reasonable”—which presumably means that it does not lead to an excessive number of migrant deaths—boundary and immigration enforcement is a legitimate state activity.

The University of Houston team does not explicitly state that the federal government has a right to police its boundaries and to determine who can enter its territory. However, they implicitly endorse this right when, in laying out their prescriptions for minimizing migrant deaths, they fail to mention ending boundary enforcement as it relates to immigration. Meanwhile, they bring up the possibility of a completely controlled boundary as an option, although they quickly dismiss it as something unattainable (see Esbach *et al.*, 2001). However, by putting forth that option, while not offering the opposite, they reinforce the perception that boundary en-

forcement is a rightful practice of the state.

Boundary control—in addition to being a politico-legal matter—is a moral one. In his article on migrant deaths, Wayne Cornelius raises the issue of morality. “Not just the efficacy,” Cornelius writes, “but the morality of a strategy of immigration control that *deliberately* [my emphasis] places people in harm’s way should be debated.” However, Cornelius (2001:681) comes to this conclusion after suggesting that boundary enforcement can only work as a tool of immigration control in the unlikely situation that there is sufficient “political will in Congress and the society as a whole to do what is necessary to strengthen enforcement of immigration laws in the workplace.” Thus, to the extent that he raises moral questions about the current strategy, Cornelius—in a manner similar to Hing (2001)—only does so to the extent that it contributes to migrant deaths. Regardless of intentions, the effect of such writing is to legitimate boundary and immigration control—as long as it does not seem to lead *deliberately* to migrant deaths, as the current strategy allegedly does. Presumably, in terms of the well-being of unauthorized immigrants, Cornelius would also find morally unacceptable other boundary- and immigration-enforcement outcomes. However, because he does not say anything about the morality of immigration control and



boundary policing *per se*, he endorses them by default. Indeed, he implicitly legitimates them when discussing workplace enforcement.

Although human rights concerns seem to animate the writings of most of the authors, it is striking how little they speak explicitly of human rights. Moreover, when they do, it is in a manner that restricts itself to a rather conservative reading of international human rights law. They thus say nothing about a right to freedom of movement, whereas they all—explicitly or implicitly—endorse the right of the state to control its boundaries and to determine who can enter national territory. In this regard, they subordinate the human rights of migrants to a right claimed by the state.

A Conservative Conception of Human Rights

None of the international conventions on human rights explicitly states that human beings have a right to freedom of movement. Perhaps for this reason, some of the authors discussed here (Cornelius, 2001; Esbach *et al.*, 2001; Reyes *et al.*, 2001) do not utilize the concept of human rights in critiquing the enhanced boundary-enforcement strategy. Some of those who do employ the concept of human rights (Bustamante, 2001; and Hing, 2001) do so by referencing the approach of the ACLU/CRLAF (2001). In their complaint to the

Inter-American Commission on Human Rights, the two advocacy organizations draw on Article 1 of the American Declaration of the Rights and Duties of Man, which states that “[e]very human being has the right to life, liberty, and the security of the person.” The ACLU/CRLAF document argues that the U.S. government violates this article because the current boundary-enforcement strategy “is intentionally designed to place migrants in mortal danger” (ACLU and CRLAF, 2001:10). Thus, it seems that a boundary-enforcement strategy consistent with human rights would not place migrants in potentially deadly situations. However, given that migrant deaths precede were occurring before the implementation of the current strategy, it is hard to imagine a *serious* boundary policing strategy that would *not* place migrants, at least those trying to beat the enforcement web, in mortal danger.

That said, states can and do regulate immigration by other means than just territorial-boundary policing. A state could, for example, intensively police residential areas and workplaces, thus greatly limiting the ability of unauthorized migrants to exist within national space. That approach would seem to flow from Jorge Bustamante’s statement that he is *not* suggesting “that a sovereign right of a country to determine who should enter and who should not is a source of violations of human rights” (2002:344). In asserting



that, Bustamante echoes a foundational assumption of the ACLU/CRLAF position. That assumption, along with the nature of the ACLU/CRLAF critique of the current boundary-enforcement strategy, are manifestations of a conservative notion of what constitutes human rights or, at the very least, of a failure to push the limits of mainstream conceptions of those rights.

Clearly, a profound contradiction exists between what is virtually an unlimited right of states to regulate immigration and the universality of human rights as expressed by various international conventions and declarations (see Curtotti 2002). In addition to Article 1 of the American Declaration of the Rights and Duties of Man, various articles of the Universal Declaration of Human Rights (UDHR) are relevant to the rights of migrants:

Article 1. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 3. Everyone has the right to life, liberty, and security of person.

Article 23. (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work, and to protection against unemployment. (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

Article 25. (1) Everyone has the

right to a standard of living adequate for the health and well-being of himself and of his family. . . .

Article 28. Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

There are similar articles in a variety of international human rights covenants, but, again, none of them speaks explicitly about international freedom of movement. Article 13 (2) of the UDHR, however, does state that “Everyone has the right to leave any country, including his own, and to return to his country.” Although one can argue that this right implies the freedom to enter any country—as the right to leave a country is meaningless without a corresponding right to enter another—this is clearly not what the architects of the declaration intended. Nevertheless, Article 28 obligates us not only to focus on clearly defined rights but also to concern ourselves with what is necessary to achieve the rights enumerated in the UDHR. Given the gross socioeconomic disparities and profound socioeconomic insecurity that plague many countries, the right to freedom of movement is necessary to achieve some of the rights quoted above. How, for example, can one have a right to work, to free choice of employment, if one does not have mobility (in a legal sense) (see Harris, 2002)? And how meaningful is a right to an adequate standard of living if one does not have

the right, through movement across space, to access the resources needed to realize that standard? By not addressing the contradiction between the human rights it espouses and the putative right of states to regulate immigration, the international human rights regime reproduces social injustice.

A recent report on the U.S.-Mexico border, by the Special Rapporteur on the Human Rights of Migrants of the United Nations Commission on Human Rights, reflects this contradiction. The report's author, Gabriela Rodríguez Pizarro, emphasizes the right of the United States to regulate its boundaries, while recognizing migrant deaths as a problem. She thus suggests that the current boundary-enforcement regime must do more to ensure respect for the right to life. However, the measures she champions do not include a weakening of the boundary-enforcement web, as suggested by the ACLU/CRLAF (2001) and Hing (2001). Instead, she merely advocates measures that have already proven to be largely ineffective: the dissemination of information to would-be migrants about the dangers of crossing; search-and-rescue missions; placement of water tanks in the desert; and efforts to combat smuggling rings (UNHCR, 2002).

Amnesty International takes a position that is even more conservative than that of the United Nations. In a 1998 report, Amnesty states that it "does not take issue

with the sovereign right of the United States to police its international borders in order to determine whether individuals have the legal right to enter the country." However, the organization continues, Washington "must do so in a manner which complies with its international human rights obligations" (Amnesty International, 1998:1). In discussing those human rights obligations, however, Amnesty displays a narrow perspective on what constitutes human rights as they relate to migrant deaths. It does so by default: In its 50-page report, the world's premier nongovernmental human rights organization does not discuss migrant deaths at all. It does concern itself with physical injury to unauthorized migrants, but it does so only when the direct actions of individual boundary-enforcement authorities (for example, beatings and shootings of migrants) cause it. In focusing on that rather than critically scrutinizing migrant deaths that occur in attempting to elude a boundary-enforcement regime, Amnesty International is employing a particular conception of violence.

Narrow Notion of Violence

Johan Galtung (1969) argues for an expanded conceptualization of violence, contending that we should concern ourselves primarily with outcomes, not means. In this regard, social practices (individual,



collective, and institutionalized) that harm humans constitute violence. Thus, Galtung defines *violence* in part as that which prevents us from achieving *realizable* social goals deemed by most to be desirable (for example, a healthy diet, access to potable water, or adequate health care and housing for all). When an identifiable actor commits the violence, it is *direct* or *personal* in terms of its origins. When there is no actor present—or when an undesirable or unjust outcome arises from seemingly acceptable, institutionalized practices of “legitimate” organizations (such as the state)—the violence is *indirect* or *structural*. Although neither type of violence is inherently worse (we can only judge the significance of a particular type of violence in a specific context), we tend to focus our outrage on direct or personal violence because it is visible as action. We put far less emphasis on structural violence. Because of the lack of obvious actors, structural violence is often hidden, or it seems “natural”—a part of our normal surroundings. The lack of visible agency for the human suffering that results from structural violence usually means that it goes unnoticed and unchallenged. In the case of such violence, not only do we often not see its causes, it is not even visible *as violence* (Galtung, 1969; Nevins, 2002b).

Violence pervades the lives of immigrants who have crossed the U.S.-Mexico boundary without authorization. From the physical

attacks many of them experience—either from so-called border bandits and unscrupulous smugglers, or from state authorities (on both sides of the boundary)—to the poverty that many face due to low wages and an inability to access many public services, large numbers of unauthorized immigrants in the United States encounter violence (broadly defined) on a regular basis.

Migrant deaths due to having to traverse dangerous terrain to elude the boundary-enforcement web are the most tragic example of this hidden violence. Although a number of the authors critiqued here implicitly recognize that the current boundary-enforcement regime is an example of structural violence, this recognition is insufficiently structural as it limits itself to a manifestation of boundary enforcement (in the form of operations like Gatekeeper), rather than boundary enforcement in and of itself. Recent migrant deaths are not merely illustrative of the violence of the current boundary-enforcement regime but of boundary-enforcement in general—that is, if we accept Galtung’s contention that we must expand our notion of the concept to include what prevents the achieving of realizable social goals deemed by most to be desirable and if we recognize human rights covenants and declarations as examples of such social goals. Thus, what denies human rights, or, more specifically, the means to realize these rights (in this



case, freedom of movement) is an example of violence. The principal perpetrators of the violence are the state actors who, under the rubric of the law, construct and enforce the territorial and politico-legal boundaries that unauthorized immigrants must overcome, often at great personal risk.

The intentions of these actors are not important—especially if we accept the premise that one is responsible for the likely or predictable consequences of one's actions. It is too simple to suggest that migrant deaths that take place in the context of trying to elude boundary enforcement are accidents, or even surprises. Although specific deaths or the exact number of fatalities in the growing tally are not predictable, large numbers of deaths as a collectivity are foreseeable: They are destined to happen due to structures and actions of violence that are not seen as violence. Hence, in thinking about violence, we should focus on outcomes and consequences—especially those that are predictable—rather than concerning ourselves with means. If we do this, we realize that a death caused by a bullet is not morally more reprehensible than one caused by practices and social structures, such as those embodied by the U.S.-Mexico boundary-enforcement regime.

As discussed earlier, the convention is to focus on violence of a direct or personal nature and to concentrate far less on institutionalized or structural forms. In many ways,

this is not surprising as personal or direct violence *shows*. It disturbs the normal environment, whereas structural violence *is* the normal environment—at least in part. That said, structural violence can become visible in a highly dynamic society, one in which political forces are effectively challenging dominant ideas of what constitutes violence and nonviolence (Galtung, 1969). Hence, academics, researchers, and migrant-rights advocates concerned with migrant deaths must challenge boundary enforcement itself—especially if the goal is to embrace unauthorized migrants as human beings endowed with a full set of basic and universal rights.

Conclusion

The contemporary situation in the U.S.-Mexico border region is one in which both the unauthorized movement (northward) of people across the international boundary and efforts to stop them have never been greater. It is at this intersection that the growing number of migrant deaths is taking place. However, migrant deaths are not of recent origin. They preceded the implementation of the current boundary-enforcement regime, and this fact exposes boundary enforcement as being the factor, in and of itself, that puts unauthorized migrants in mortal danger. That migrant deaths have increased in the context of the current intensified enforcement regime only suggests that “thicker”



enforcement creates greater risks for unauthorized crossers—a quantitative difference, albeit one of disgraceful proportions, not a qualitative one.

Thus, if the goal is stop migrant deaths, calls to end enhanced enforcement are not sufficient. Implicit in such calls is that boundary enforcement, if it is to occur, should not put migrants in mortal danger—at least, not to the extent that it does currently. Hence, those who criticize the new strategy for reasons of heightened migrant fatalities implicitly allow as a potential solution a radical *increase* in resources dedicated to boundary enforcement—the idea being that one could make the enforcement web so effective that migrants could not cross the boundary without authorization and put themselves in harm's way trying to do so. Given the intense socioeconomic links—especially those associated with the burgeoning cross-boundary commercial ties—such an intensification of enforcement would be *politically* difficult (if not impossible) to realize, however (see Andreas, 2001; Nevins, 2002c). In any case, it is doubtful that the authors examined here would desire a radical intensification of boundary enforcement to levels much higher than those that exist currently. However, because they explicitly or implicitly endorse the

federal government's right to enforce its territorial boundaries and only specifically challenge certain manifestations of boundary enforcement, not the assumptions and practices underlying them, they do not preclude the possibility of a substantial increase in boundary enforcement. Similarly, they do not forestall intense policing in the interior as a substitute for boundary enforcement.

As such, the writings and positions examined here reinforce a narrow conceptualization of human rights and justify the view that the right of the state to regulate immigration is greater than the human rights of noncitizens. Thus, human rights—including the right to an adequate standard of living and the right to work—are effectively accorded second-class status. In arguing this, I acknowledge that a right to freedom of movement might collide with other rights—most importantly that of societies to secure public order and the general welfare.³ But if we understand transboundary freedom of movement to be a basic human right as opposed to a privilege accorded by states, it forces us to arrive at solutions to problems associated with in-migration (for the receiving society) other than those that erect obstacles to freedom of movement. Such solutions are possible if the politico-geographical vision and will exist.

³ Article 29 (2) of the *Universal Declaration of Human Rights* states, "In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order, and the general welfare in a democratic society."

That said, some or all of the authors critiqued here might have reasons for not wanting to challenge the global status quo that divides the world into nominally sovereign territorial states that have the right to determine who can enter and reside within their boundaries. However, because none makes efforts to explain and defend their explicit or implicit support for the state's right to regulate territorial boundaries and im-

migration, their positions are not evident. These matters are too important to assume without justification. Those concerned with migrant deaths, and the human rights of immigrants more generally, must debate this matter. Profound issues of politics, ethics, and morality—ones with literally life-and-death implications—are at stake (see Carens, 1999 and 2000; Curtotti, 2002; Miller and Hashmi, 2001).

Bibliography

- American Civil Liberties Union and California Rural Legal Assistance Foundation (ACLU and CRLAF), *Petitioner's Second Supplemental Memorandum Submitted to the Inter-American Commission on Human Rights, American Civil Liberties Union of San Diego and Imperial Counties and California Rural Legal Assistance Foundation v. United States of America*, May 9, 2001.
- Amnesty International, *United States of America: Human Rights Concerns in the Border Region with Mexico* (Amnesty International Index: AMR 51/03/98), London, Amnesty International, 1998.
- Andreas, Peter, *Border Games: Policing the U.S.-Mexico Divide*, Ithaca and London, Cornell University Press, 2000.
- Annerino, John, *Dead in Their Tracks: Crossing America's Borderlands*, New York, Four Walls Eight Windows, 1999.
- Associated Press, "Border Patrol to Add More Beacons in Desert", *The Arizona Republic*, August 4, 2002.
- Bailey, Stanley R., Karl Eschbach, Jaqueline Maria Hagan, and Néstor Rodríguez, "Migrant Deaths at the Texas-Mexico Border, 1985-1994", Center for Immigration Research- University of Houston, January, 1996.
- Berger, John, *Ways of Seeing*, Harmondsworth (U.K.), Penguin, 1980.
- Bustamante, Jorge A., "Immigrants' Vulnerability as Subject of Human Rights", *International Migration Review*, 36(2), 2002, pp. 333-54.
- , "Proposition 187 and Operation Gatekeeper: Cases for the Sociology of International Migrations and Human Rights", *Migraciones Internacionales*, 1(1), 2001, pp. 7-34.
- California Rural Legal Assistance Foundation (CRLAF), website available at <http://www.stop-gatekeeper.org>.



- California Rural Legal Assistance Foundation (CRLAF), "June was the Deadliest Month So Far at the Border" (press release), July 9, 2002, available online at <http://www.stopgatekeeper.org/English/index.html>.
- , "Nueve años ...y contando" (press release), September 30, 2003, on file with author.
- Carens, Joseph H., "Reconsidering Open Borders: A Reply to Meilander", *International Migration Review*, 33(4), 1999, pp. 1082-97.
- , "Open Borders and Liberal Limits: A Response to Isbister", *International Migration Review*, 34(2), 2000, pp. 636-43.
- Cornelius, Wayne A., "Death at the Border: Efficacy and Unintended Consequences of U.S. Immigration Control Policy", *Population and Development Review*, 27(4), 2001, pp. 661-85.
- , "The Structural Embeddedness of Demand for Mexican Immigrant Labor: New Evidence from California", in Marcelo Suárez-Orozco (ed.), *Crossings: Mexican Immigration in Interdisciplinary Perspectives*, Cambridge (MA), Harvard University Press, 1998, pp. 115-44.
- Curry, Bill, "Hunt for Better Life Leads Aliens to 'Season of Death'", in *Los Angeles Times*, June 16, 1986, p. 1.
- Curtotti, Michael, "Barriers to International Freedom of Movement: A Lacuna in International Human Rights Law?", in *New Challenges and New States: What Role for International Law*, edited by Australian and New Zealand Society of International Law, 2002, pp. 129-43. Proceedings of the 10th Annual Conference, Australian and New Zealand Society of International Law, June 14-16, 2002, Canberra, Australian National University.
- Dowty, Alan, *Closed Borders: The Contemporary Assault on Freedom of Movement*, New Haven and London, Yale University Press, 1987.
- Esbach, Karl, Jacqueline Hagan, and Néstor Rodríguez, "Causes and Trends in Migrant Deaths along the U.S.-Mexico Border, 1985-1998", Center for Immigration Research- University of Houston, March, 2001, available online at <http://www.uh.edu/cir/death.htm>.
- Fineman, Mark, "Dominican Bones Line Pathway to States", *Los Angeles Times*, May 12, 1998, p. A1.
- Galtung, Johan, "Violence, Peace, and Peace Research", *Journal of Peace Research*, 6(3), 1969, pp. 167-91.
- García, Juan Ramón, *Operation Wetback: The Mass Deportation of Mexican Undocumented Workers in 1954*, Westport (CN), Greenwood Press, 1980.
- Governments of the United States and Mexico. "Joint Statement by the Governments of the United States and Mexico on the Deaths of Fourteen Migrants in the Arizona Desert." Tlatelolco, Mexico City, May 24, 2001. Available online at <http://www.migracion-internacional.com/docum/index.html?buttonbot=/docum/jointmay2001.html>.

- Harris, Nigel, *Thinking the Unthinkable: The Immigration Myth Exposed*, London, I.B. Tauris Publishers, 2002.
- Hing, Bill Ong, "The Dark Side of Operation Gatekeeper", *U.C. Davis Journal of International Law & Policy*, 7 (2), 2001, pp. 121-68.
- Lee, Erika, *At America's Gate: Chinese Immigration during the Exclusion Era, 1882-1943*, Chapel Hill, University of North Carolina Press, 2003.
- Los Angeles Times, "Hard Line on Human Coyotes", in *Los Angeles Times*, August 20, 1998, p. B8.
- Miller, David, and Sohail H. Hashmi, *Boundaries and Justice: Diverse Ethical Perspectives*, Princeton (NJ), Princeton University Press, 2001.
- Nevins, Joseph, "Border Death-Trap: Time to Tear Down America's Berlin Wall", in *Oakland Tribune*, August 1, 2002a.
- , "(Mis)Representing East Timor's Past: Structural-Symbolic Violence, International Law, and the Institutionalization of Injustice", *The Journal of Human Rights*, 1(4), 2002b, pp. 523-40.
- , *Operation Gatekeeper: The Rise of the "Illegal Alien" and the Making of the U.S.-Mexico Boundary*, New York, Routledge, 2002c.
- Reuters, "Mexican Stars in INS Effort to Cut Border Deaths", Reuters, July 23, 2002.
- Reyes, Belinda I., Hans P. Johnson, and Richard Van Swearingen, *Holding the Line? The Effect of the Recent Border Build-up on Unauthorized Immigration*, San Francisco, Public Policy Institute of California, 2002.
- Sack, Robert David, *Human Territoriality: Its Theory and History*, Cambridge and New York, Cambridge University Press, 1986.
- Torpey, John, *The Invention of the Passport: Surveillance, Citizenship and the State*, Cambridge, Cambridge University Press, 2000.
- U.S. Border Patrol, "Border Patrol Strategic Plan: 1994 and Beyond" (National Strategy), Washington, DC, U.S. Border Patrol, 1994.
- U.S. GAO (U.S. General Accounting Office), *INS' Southwest Border Strategy: Resource and Impact Issues Remain After Seven Years*, GAO-01-842, August, 2001, Washington (DC), U.S. GAO.
- United Nations Commission on Human Rights, "Human Rights of Migrants," report by Gabriela Rodríguez Pizarro, Special Rapporteur (E/CN.4/2003/85/Add.3), October 30, 2002.
- U.S. CBP (United States Customs and Border Protection), "CBP Launches Operation Desert Safeguard Aimed at Preventing Migrant Deaths", Press Release, June 3, 2003. Available online at http://www.customs.ustras.gov/xp/cgov/newsroom/press_releases/062003/06032003.xml.
- Vila, Pablo, *Crossing Borders, Reinforcing Borders: Social Categories, Metaphors and Narrative Identities on the U.S.-Mexico Border*, Austin, University of Texas Press, 2000.



Villalobos, Louie, "Mexican Officials Campaign to Prevent Border Deaths", in *The Yuma Sun*, August 24, 2003. Available online at http://yumasun.com/artman/publish/articles/story_6867.shtml.
Wambaugh, Joseph, *Lines and Shadows*, New York, William Morrow and Company, Inc., 1984.

