

When the State Shatters Families. The US Family Separation Policy of 2018, Cruelty and Patrimonial Sovereignty

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In 2018, the Trump administration separated thousands of families arriving at the US–Mexico border to ask for asylum in the framework of its “zero-tolerance” policy. This extraordinary act of cruelty violated several provisions of international human rights, refugee, and family protections, many of which the United States itself had drafted, initiated, and championed. The article asks about the understanding of sovereignty that underscored the zero-tolerance policy. Drawing on Max Weber’s distinction of several forms of legitimating political authority, the article develops the argument that this policy reflects a patrimonial understanding of sovereignty and how this understanding intersects with notions of family and nation. It specifically discusses these intersections in the case of United States’ sovereignty developing in a settler colonial state and in contested borderlands. By developing this perspective, the article draws out the conditions of possibility under which institutional and structural violence can tip into explicitly cruel policies like those of the US family separations of 2018. The article contributes, on the one hand, to analyze deeply the foundations of US understandings of the state’s sovereignty and, on the other hand, to better comprehending which types of sovereignty enable cruelty against migrants and refugees at which points in time.

En 2018, l’administration Trump a séparé des milliers de familles arrivant à la frontière américano-mexicaine pour demander l’asile dans le cadre de sa politique de « tolérance zéro ». Cet acte de cruauté extraordinaire a enfreint plusieurs dispositions des droits de l’homme internationaux et de protection des réfugiés et des familles alors que nombre d’entre elles avaient été rédigées, initiées et défendues par les États-Unis eux-mêmes. Cet article s’interroge sur la conception de la souveraineté qui a sous-tendu cette politique de tolérance zéro. Il s’appuie sur la distinction faite par Max Weber entre plusieurs formes de légitimation de l’autorité politique et développe l’argument selon lequel cette politique reflète une conception patrimoniale de la souveraineté. Il évoque également la manière dont cette conception s’entrecroise avec les notions de famille et de nation. Il aborde plus précisément ces entrecroisements dans le cas de la souveraineté des États-Unis se développant dans un État colonial de peuplement comprenant des régions frontalières disputées. En développant ce point de vue, cet article met en évidence les conditions de possibilité dans lesquelles la violence institutionnelle et structurelle peut basculer dans des politiques explicitement cruelles comme celles des séparations de familles menées par les États-Unis en 2018. Il contribue, d’une part, à une analyse approfondie des bases fondamentales des conceptions américaines de la souveraineté de l’État et, d’autre part, à une amélioration de la compréhension des types de souveraineté qui permettent la cruauté à l’égard des migrants et des réfugiés et à quels moments.

En 2018, la administración de Trump separó a miles de familias que llegaban a la frontera entre los Estados Unidos y México para pedir asilo en el marco de su política de “tolerancia cero”. Este extraordinario acto de crueldad infringió varias disposiciones de derechos humanos internacionales, de protección de los refugiados y de la familia, muchas de ellas redactadas, iniciadas y defendidas por los Estados Unidos. En el artículo se plantea la comprensión de la soberanía que subyace a la política de tolerancia cero. A partir de la distinción de Max Weber de varias formas de legitimación de la autoridad política, el artículo desarrolla el argumento de que esta política refleja una concepción patrimonial de la soberanía y cómo esta concepción confluye con las nociones de familia y nación. En concreto, analiza estas intersecciones en el caso de la soberanía de los Estados Unidos que se desarrolla en un estado colonial en tierras fronterizas disputadas. Mediante el desarrollo de esta perspectiva, el artículo expone las condiciones de posibilidad bajo las cuales la violencia institucional y estructural puede volcarse en políticas explícitamente crueles como las de las separaciones familiares estadounidenses de 2018. El artículo contribuye, por un lado, a analizar en profundidad los fundamentos de la concepción estadounidense de la soberanía del Estado y, por otro, a comprender mejor qué tipos de soberanía permiten la crueldad contra los migrantes y refugiados en qué momentos.

Introduction

In 2018, the United States enacted a “zero-tolerance” policy toward migrants at the Mexican border. As part of this policy, children were separated from their parents who presented themselves at ports of entry to ask for asylum. Numbers of how many children were taken range from 2,551, according to the White House in July 2018, to more than 6,000. In 2021, the US Department of Homeland Security concluded on 5,636 separations of which 3,913 were undertaken as direct consequences of “zero tolerance” (Rhodan 2018; Rizzo 2018; Blitzer 2019; Ward 2021; USDHS 2021).

The children were held in inhuman conditions in makeshift shelters, warehouses, and abandoned shopping centers. They were grouped in cages and slept on the floor without appropriate access to sanitary facilities and

medical care. Documentation of their physical and mental health was poor. At least six children who had been apprehended crossing the border without their parents died in Customs and Border Police (CBP) custody in 2018 and 2019 because of lack of medical attention. While these deaths did not happen as a consequence of CBP separating the family, they were due to the zero-tolerance policy as the threat of family separation pushed parents to send their children alone (Moore 2020; Southern Border 2021).

“Zero tolerance” involved three federal agencies who were all advised by the Attorney General to follow it without discretion: the CBP who apprehended the families and separated the children from their parents, the Immigration and Customs Enforcement (ICE) who detained the parents, and the Department of Health and Human Services (DHHS) who (did not) “took care” of the children once they were

separated from their parents. All three agencies failed to record personal data and to document the whereabouts of parents and children. Parents were deported without their children and children were placed into foster care even if a close relative was living in the United States. As a consequence, reuniting families became extremely difficult. In June 2021, more than a thousand children were still waiting to be reunited with their parents (Al Jazeera 2021; Jordan 2021; Soboroff 2021; USDHS 2021; Ward 2021). The cruelty of the separations and of the condition of detention shocked public opinion in the United States and abroad.

The article seeks to answer the question how and why a state like the United States, who prides itself of being the beacon of democratic freedoms and rights, and who initiated many of the international codifications of human rights their policy was violating, could undertake a policy that was intentionally and so obviously cruel. It argues that this cruelty was the result of, on the one hand, a migration policy that is built around a patrimonial understanding of sovereignty, which is the dominant paradigm of sovereignty in contested spaces (like those of settler colonial states such as the United States) and, on the other hand, the amalgam of a particular patriarchal view of families and nation. The article investigates the role of immigration, settler colonialism, and family policies in socially, culturally, and politically constructing such an understanding of sovereignty as a condition of possibility for transforming the structural and institutional violence that the US immigration system generally displays into the personalized, face-to-face cruelty of individual border patrol agents separating children from their parents and placing them in inhuman detention spaces.

The article proceeds in three parts. First, it exposes the problem of zero tolerance as a problem of sovereignty. It then discusses, in a second part, Max Weber's distinction between bureaucratic and traditional legitimacy of authority to rule. The aim of the section is to elaborate that a patrimonial understanding of sovereignty includes a more or less explicit hierarchical understanding of society that essentially implies an idea of families that deserve the state's protections and families that do not. The section takes up the feminist argument that state power lies in assigning and reproducing social structures that assign protection to the masculine and care to the feminine sphere. By extension, I argue that patrimonial states reserve the protection-care choice exclusively for families that correspond to dominant narratives of the "good family," hence excluding others from the precaution that family life and especially children are, *sui generis*, protectable lives. The section further clarifies that the distinction between protectable and non-protectable families operates at the intersection of understandings of patrimonial sovereignty, of patriarchal family structures, and of an *ethnos* understanding of the nation.

The politics of taking or harming children is consequently intersecting with other politics of discrimination and exclusion, notably politics of sexist or racial oppression; this can be observed in the continual reiteration of politics of exclusion in processes of nation-state building. The third section, therefore, discusses how these two different understandings are articulated in US border politics. The particularity of the US–Mexican border being its historical, social, and political ambiguity, it is a primordial space in which sovereignty claims and politics are enacted and materialized because it is a space where the settler state of the United States has to contend with the historical fuzziness of its imperial Latin American borderlands (Adelman and Aron 1999; Hernández 2011; Cravey 2016; Chomsky 2021). The "zero-tolerance" policy of 2018 represents but one stage and the

most visible layer of a longer lasting process of continual and permanent (re) construction of US American statehood by seeking to (literally) wall in the United States' territorial border claims in the setting of otherwise imperial Latin American politics (Dudziak and Volpp 2005; Jones and Johnson 2016; Grandin 2021). This section develops this argument by looking at the parallels of immigration policies and other politics of "taking children" in the history of colonizing the lands (Wolfe 2016; Chomsky 2021, 14). The family separations policy of 2018 is simultaneously a legacy and an essential component of a long US history of shattering families of people who, by dominant groups in US American politics, were particularly destined to be excluded from sovereignty such as the first nations, the enfranchised black communities, and the non-North European and non-Protestant occupants of what would become the United States' southwest.

"Zero Tolerance" as a Problem of Sovereignty

The striking feature of the 2018 zero-tolerance policy was the insistence of those who designed the policy in the White House, the Department of Justice, and the other federal agencies involved, that it was not only legal but actually the very defense of the rule of law. This understanding of the rule of law did not include obedience to international and national constitutional prohibitions of cruelty and did not perceive of the policy as being an infringement on human rights. On the contrary, the Trump administration saw their actions as an enactment of their sovereignty, which, in turn, legitimated its cruelty. What was at stake with the 2018 family separation policy and what caused this enormous uproar of protest was the ease with which a democratic government came to dehumanize children and to disregard universal understandings of protecting human dignity and lives.

What made the 2018 events stand out was the extraordinary cruelty of refusing families protection and care who by US law and international conventions on human rights, on refugees, and on the prevention of genocide and protection of children specifically deserved such. US immigration politics has since its inception at the end of the nineteenth century incorporated cruelty, whether in the form of pogroms against Chinese migrants to make them "self-deport," the incarceration of Japanese–Americans during World War II, or the 1994 Border Strategy that has pushed undocumented migrants into the highly dangerous Arizona desert where thousands die every year from thirst and heat (De León 2015; Gokee, Haeden, and De León 2020).² These forms of cruelty have been and are, however, politically different from the 2018 family separations. They did not directly authorize state agents to be cruel to children and families even if state agencies can be accused of engaging in serious acts of negligence. Zero tolerance, however, was based on an explicit order that went down the command chain from the Department of Justice to the individual border patrol agent (PBS 2019a). The Department of Justice presented the policy as a banal, administrative measure intended to, in the words of the Attorney General Jeff Sessions, "*promote and enforce the rule of law*" (USDOJ 2018).

In terms of international politics, a state's rule of law means a state's sovereignty if the latter is understood to be

²The CBP has recorded more than seven thousand and five hundred deaths at the Southwest from 1998 until 2018, the last year on record (CBP 2021). The CBP records only deaths that were discovered by or reported to the CBP. Humanitarian organizations and news organizations have reported an increase of yearly deaths in 2019 and 2020 so the actual figure is probably much higher. In Pima County alone, three thousand and four hundred migrants have died crossing the border since 1999. See <https://humaneborders.info/>, accessed July 12, 2021.

the authority to make and enforce law on a given territory. In the following, I will argue that we can observe, in the United States, two distinct understandings of sovereignty, one that perceives the government's authority as emanating from the difficulty of governing a complex society; and another one, that understands the authority of a government akin to the authority accorded to a clan eldest who will decide over policies in the best interest of the kinship group (patrimonial sovereignty). While violence against migrants can be and has been justified in both frameworks, those legitimations are articulated very differently and, hence, open up different options of politically engaging with them.

Critical security studies and critical border studies have compellingly analyzed the various scenarios in which governments have used migration and border politics to enhance the force and power of the state as bureaucratic apparatus and as generator of ideological discourses (Reeves 2014; Yuval-Davis, Georgie, and Cassidy 2019; Bauder 2020; Radziwinowiczówna 2020). They have argued convincingly that on many different levels, migrants have come to incorporate the "perverse" (Weber 2016), the "bare life" (Agamben 2020), the security threat in personam (Bigo 2002), the racial alter ego of the white citizen (Beltrán 2020) or the "impossible subject" (Ngai 2004). In critical security studies in particular, the focus of migration analysis has been on the figure of the "risky" refugee that allows triggering politics of exception and by that mechanism strengthens the state's power (Huysmans and Squire 2009). Yet, "sovereignty" itself has been treated as an amorphous concept and not been differentiated per se; while we know that migrants have been racialized, criminalized, and migration securitized, we still know little about the sovereignty that these acts have been and are constructing. Yet, how a government understands what sovereignty means is not only important for how it deals with migrants but also for how it makes international politics with respect to its borders, border-crossing, and transnational society/ies.

Twenty-five years after Roxanne Lynne Doty's observation that "*questions of national identity and its relevance to sovereignty (are) dismissed because they are presumed not to be problems*" (Doty 1996, 121), international relations theory is still paying scant attention to variance in the way political actors interpret what kind of sovereign the state is.

The State as *Dominium* and the Sovereign as Family Father

From the outset of his run for presidency, Donald Trump had made immigration the most important issue of his campaign. The influence of extreme nativists in his campaign and transition team was strong: Stephen Bannon, Stephen Miller, Jeff Sessions, and a range of aids who managed to stay in the dark, such as Gene Hamilton, Andrew Bremberg, Andrew Veprek, Zina Bash, John Zadrozny, David Wetmore, and Trevor Whetstone, and prominent Republicans such as Texas Attorney General Ken Paxton (Blitzer 2017, 2018, 2020; Hirschfeld Davis and Shear 2019; PBS 2019b; Shear 2021). In January 2017, they immediately took legal and administrative action to close the borders to new immigrants and hunt down undocumented migrants living in the United States for deportation. They made a high number of low key changes to administrative regulations and directives³ that almost silently turned mi-

grant lives to hell (Pierce, Jessica, and Selee 2018; Kocher 2019; Wickenden 2020). The changes aimed at further criminalizing immigration, either by making the law so much more arcane that it became extremely difficult and expensive for migrants to navigate or by cranking up the severity of sentence for breaches of entry, visa, or stay regulations (PBS 2019c). "Zero tolerance" was presented as such an administrative measure by the Attorney General Jeff Sessions. Ken Cucinelli who had been (irregularly) appointed in 2019 by the Trump administration as the acting director of the Department of Homeland Security emphasized in a TV interview that zero tolerance was a policy to protect the rule of law (PBS 2019d).

These arguments were centered around the idea that the President and his administration were the embodiment of sovereign power; hence, all questions relating to borders and immigration were, therefore, the prerogative of the President. Importantly, these anti-immigration advisers argued that border and immigration were an almost exclusive domain of the President not so much because they were a matter of security (that too) but simply because of the office of the President itself. "*And the bottom line is, the President's powers in this area represent the apex of executive authority*" (ABC 2017), Stephen Miller said on national TV and repeated later that the (exclusive) power to make immigration law is vested in President (Fox News 2017) and that "*his power will not be questioned*" (Washington Post 2017).

By invoking the role of protection that the sovereign is supposed to play, by repeating further on in these interviews the duty of care that the President has toward the US population, and by finally invoking the President's role as guardian of "law and order," Stephen Miller presents an image of the President as standing above parliamentary quarrels, judiciary scholasticism, and messy public opinions and having a direct mandate to protect "the" people. The president is, *in personam*, incorporating the United States' federal sovereignty.

In order to grasp the imaginary that inspires such an understanding of the sovereign and of sovereignty, it is helpful to draw on Max Weber's distinction between different forms of legitimating authority to rule (*Herrschaft*, in German).⁴ Weber distinguished between authority and (pure) power, the latter he saw as reducible to sheer force that cannot hold a political community together over the long term or durably found domination in the institution of the state (Anter 1996, 46, 65). In order for authority to rely on durable domination, it has to be recognized by the dominated as legitimate, and he argued that different social orders will produce different forms of legitimation (Weber 1972, 28–29). The question he sought to answer was: on what was the state's monopoly of legitimate violence founded given that the population was becoming more and more "socialized," that is, distant to each other, socially, culturally, and functionally differentiated and where communication, contact, and exchange had, at once, become larger and mediated? Without ever calling it this way, Weber's thinking turned around the questions of the conditions of possibility for constructing sovereignty (i.e., legitimate authority to rule) in ever more ambiguous political

fifty-seven alone were presidential orders and none were legislative changes that would have gone through the law-making process of Congress.

⁴The German word *Herrschaft* can mean, depending on context, "rule," "authority," "domination." Andreas Anter argues that Weber used the term as equivalent to "sovereignty" in nineteenth-century state theories (Anter 1996, 41). By using the term "authority to rule," I try to account for the variance in meaning of the German word. The above discussion relies on the reading of Max Weber in German (Weber 1972, 1988a, 1988b).

³The Immigration Policy Tracking Project (2021), set up by Professor Lucas Guttentag and maintained by Stanford and Yale Law School students, tracked 1,064 changes to immigration laws and policies between 2017 and 2021, of which

communities (see, for instance, Weber [1988b, 471–83]; see Treiber [2016] for a discussion of the heuristics of legitimacy, state, and authority).

Weber categorically distinguished different ways on how authority to rule can be legitimized: first, legitimacy based on the charisma of the leader; second, legitimacy based on tradition, heritage, and legacy; and, third, legitimacy based on the expertise and universal validity of the rules produced (Weber 1972, 124–76). Contrary to common misunderstandings of Weber's theory, these idealtypes do not reflect historical stages or "real types" but rather descriptions that allow distinguishing different sources the ruler can draw on to justify their authority and the monopolization of the means of violence in the "hands" of the institution of the state (Weber 1972, 28–30). The key distinction between these different modes is that they are socially differently organized and, consequently, reflect different social and political orders (Weber 1972, 17, 19; Breuer 2009). In this respect, they also reflect different normative expectations of how political communities *should* be and who in society should legitimately exercise the power that comes with sovereignty.

While charismatic legitimacy is necessarily, by definition, tied to one charismatic personality, the hero so to say, traditional and bureaucratic legitimacy are transferrable and already rest on a separation of the person from the status where the legitimacy is credited to the office and not the person alone (Weber 1972, 29). The difference between traditional and bureaucratic legitimacy is, however, the degree to which "office" and authority are depersonalized.

While traditional authority still requires a specific person to hold office, bureaucratic legitimacy is understood to be entirely based on "objective," entirely depersonalized criteria such as the certification of the office holder as an "expert" of the role they are supposed to play (Weber 1972, 551–79). Traditional authority does not imply that there is no bureaucracy attached to the ruler but that this bureaucracy, its offices, and the office holders are established and work in a system of personalized loyalty centered around the ruler and not on the basis of depersonalized, "rational" laws.⁵

Traditionally legitimated authority varies according to social organization. Weber counted patrimonial rule to the traditional forms of authority because its rules, norms, and social orders are hierarchically organized and oriented toward the maintenance of the hierarchical social order that confers authority to a male clan or family eldest (Weber 1972, 542, 580–624). In a patrimonial system, it is precisely the role of laws and norms to regenerate the social order of the patrimonium, including the material property relations and domestic division of labor, with its large social hierarchy where men are above women and older people above younger people, family closer to the patriarch above family further away from the patriarch, and some groups within the household classified as non-family despite their crucial supporting role of the dominium (e.g., slaves in ancient Greek households). Patrimonial authority in a wider sense can be understood as such authority that governs over the reproduction of the same gendered, racialized, and classed logics as that of a dominium (Weber 1972, 602–605; see also Owens 2016). Bureaucratic authority, on the other hand, does not have a person at its center. Its structures, offices, and tasks are defined not by what they provide to a specific person but to a "raison d'Etat."

⁵The notion of rationality is central to Weber's sociology, yet discussing it here would be leading too far. For more, see Brubaker (2013).

Importantly, according to Weber, traditional authority and bureaucratic authority are fundamentally different in the way they relate to the role and purpose of law. In societies with patrimonial forms of authority, the purpose of myths, laws, and rules is to institutionalize loyalty to the central authority, to normatively uphold the social hierarchy on which the ruler's authority is based, and to codify the material conditions under which the patrimonium is reproduced. In bureaucratic authority systems, on the other hand, the purpose of law is to solve problems of distribution of ideal and material goods as well as communication, coordination, and justice in complex, differentiated, and "disenchanted" societies.

Because the understanding of authority as being legitimized through tradition does not situate the social hierarchies' origins and logics of reproduction inside society, the "rule of law" is not, or only in very limited ways, debatable. This is a key difference to bureaucratic-legal authority that even requires continual revision, debate, and reinterpretation precisely because its purpose is not to serve one specific kind of social hierarchy and authority (even if the real bureaucracies Weber discussed were highly classed and gendered, which he, contrary to his wife, only partially acknowledged; see Weber 1912; Bologh 1990; Kreisky 1996). Hence, bureaucratic authority implies an immanent vision of *making* laws, as contrary to simply interpreting externally given rules like systems of traditional authority.

The question of how authority to rule is legitimated must not be confound with the question by which mechanism this legitimacy is conferred to the sovereign in the first place. These categories of legitimacy do not map easily on political systems. Charismatic legitimacy is not necessarily restricted to leader cults but can also exist in large, highly differentiated, industrialized societies. Inversely, the immense bureaucratic power of highly repressive yet relatively efficient social engineering states such as contemporary China demonstrates that the "modernity" of bureaucracy does not necessarily imply a democratic or an open society. In the real world, idealtypes do not exist but political systems represent some configuration of all three. In democracies, the distinction of these conceptions of legitimacy allow to disentangle how voters express their expectations of how and by what kind of sovereign they should be legitimately governed.

Intersections of Family, Sovereignty, and Nation

While the distinction between bureaucratic-legal sovereignty and patrimonial sovereignty can tell us how the authority to rule is imagined as legitimate, it also tells us about the images of family that underfeed these understandings. Family is, on the other hand, a common metaphor for nations. Consequently, concepts of bureaucratic-legal and patrimonial sovereignty intersect with imaginaries of patriarchal or egalitarian families, which, in turn, intersect with imaginaries of the nation.

In order to argue that different family images shape different metaphors of the nation, George Lakoff proposes to distinguish between the "strict father" (patriarchal) model of family and nation and the "nurturing parent" model (Lakoff 2010). In the former, the family is a hierarchical community ordered around the father figure whose authority is, if not absolute, then still clearly superior to all other members of the family. The patriarchal family is ordered along gender, age, bodily ability, and race so that male family members are superordinated to females, elder to young, bodily abled to bodily disabled, and "white" to

“black” (taking into account the amorphous social constructiveness of racialized categories). The strict father is naturalized to be authorized to maintain this order and to use violence to do so, if need is. Violence can even be considered inevitable in this model since, ultimately, the authority of the patriarch and of the entire hierarchy rests upon the rights and entitlements of each family member to provide or receive protection and care.

In the nurturing parent model, on the other hand, the family is understood as a community in which each member takes up a different role in satisfying the needs of other family members. For instance, more mature members of the family fulfill a range of care functions for children because raising children simply requires them to do so. Role distribution in the family is determined by needs and common “negotiation” over these as all members of the family are equal in their potential to become needy. Every position in the family, whether of authority or of receiving care, is thus determined by every family member’s capacity to respond to the other’s needs; this means that family structures are flexible, open to change, shifting over time, and always subject to negotiation. Violence is morally frowned upon as an expression of family order, or family ordering processes, as it violates the basic premise that every family member at some point in time may take any other role.

Reflecting these two imaginaries of the family onto the metaphor of the nation as family, a congruence appears between the republican paradigm of the nation as “demos” and the organicist–biologist paradigm of the nation as “ethnos” (Berezin and Alexander 1999). It is a common understanding of both types of ‘imagined community’ that they are modeled on family metaphors (Yuval-Davis, Wemyss, and Cassidy 2008). The ethnos imaginary intersects with the patriarchal family model insofar as it postulates a common nation based on the presumption of a common ancestry and that it implies a “naturally given” social order by using metaphors that draw on nature, biology, and ancestry. In these “natural orders,” social hierarchies are deterministically preordained. They are centered around patriarchal structures of gender, age, able-bodiedness, class, and race. The hierarchies within the nation are by deduction seen as determining also the legitimacy to govern by giving the father figure primacy over others in the community.

The patriarchal family model, the ethnic nation metaphor, and the patrimonial sovereignty map relatively easily on each other because they have developed together as feminist state theories have argued (e.g., Okin). As will be discussed further below, the historical development of nation states, such as the United States, revolve around constructing the nation state on the patriarchal family ideal against the odds of alternative models, resistances, and disturbances.

On the other hand, the narratives of the demos nation (one where citizens come together to form a community of public affairs, the republic), of the nurturing family, and of bureaucratic–legal sovereignty are less likely to be congruent for the simple reason that all three imply the idea of open social construction processes (Abizadeh 2012). All three involve a consideration of *becoming* a national of so-and-so country, of *becoming* a certain family role, and of *becoming* part of a bureaucratic–legal apparatus of government. As there is no natural necessity to become any of this, individuals are seen not only as capable of autonomous decision-making in this respect (e.g., Ernest Renan’s famous “daily plebiscite” as a quintessential definition of the demos nation) but also of creating their own forms of

belonging that are neither national (e.g., cosmopolitan visions of community) nor biologically or any other way deterministically defined family, or in the realm of established laws and institutions (e.g., in some anarchical utopias), or that correspond only to one form of these three paradigms (e.g., the Soviet Stalin Era can be interpreted as a highly gendered and hierarchical conception of family matching with an a-national paradigm of community, which was, in turn, bureaucratic–legal).

In international politics, the patriarchal family model, the ethnos narrative of the nation, and the patrimonial sovereignty imply a strict separation of nations similar to the imaginary of strictly separated kinship systems or households. Patrimonial sovereignty is, therefore, articulated specifically around ideas of demography and territorial control. While the former reflects biological-ethnicizing ideas of lineage, ancestry, and heritage, the latter serves as physical marker of the patriarch’s exercise of power.

Patrimonial Sovereignty in the United States and the Disciplining of Families

Violence, and in particular cruel violence, plays an important role in the governance of demography and territory so much that there is nothing particular about the fact that a US president and his administration order and execute violent disciplining of groups in the population that risks disturbing patriarchal and patrimonial sovereignty. However, it is the how, when, why violence is used by who against whom that varies according to the specific understanding of sovereignty. My argument is that patrimonial sovereignty combined with patriarchal family and ethnic nationalism requires violence against families “that don’t belong” in order to reestablish or assert the power structures that maintain patrimonial sovereignty in the first place. Thus, in contested spaces, such as US borderlands, and over contested subjects (“impossible subjects” as Ngai calls them), violence will be directed against them.

The Trump administration’s zero-tolerance policy is a case in point. All through his presidency, Donald Trump embodied patrimonial sovereignty that was infused by a patriarchal family image and an ethnic concept of the nation. The 2016 electoral campaign illustrates well the contrast between patrimonial sovereignty and bureaucratic–legal understandings. While Hillary Clinton presented herself as a competent, knowledgeable political expert, Donald Trump acted out the role of the patriarch, the head of a dominium. Clinton’s approach was to put forward her education, her excellent knowledge of law, politics, and government, and she particularly emphasized her distant, cool, and unpersonal approach to decision-making. Trump’s appeal, on the other hand, was to family loyalty, to protection of “his own,” and to property and wealth. Clinton aimed at being conferred bureaucratic legitimacy based on the recognition of her capacities; Trump aimed at being conferred patrimonial, traditional legitimacy as the “alpha male” of a nation-clan (McAdams 2017).

These differences were articulated in highly gendered and racialized discourses of social order. Where Clinton argued that social change was necessary and good, Trump stood for the defense of rigid gender, race, and class hierarchies. A range of postelection studies show how Trump’s voters heard in his anti-immigration and security discourses a language of protection, care, and support (Brandt Ryborg Jønsson 2017; Fording and Schram 2017; Schrock et al. 2017; Homolar and Scholz 2019; Hart 2020).

Recent analyses of voting behavior furthermore finds that white women voted for Trump not despite his sexist language but because of it (Junn 2017; Casese and Barnes 2019; Deckman and Casese 2021). Additionally, Trump proved to be particularly popular among Evangelicals and the Christian Right. Antiabortionists traded their dismay of his adultery for the hope that he would restore the United States to a white, Christian, and patriarchal nation (Rozell 2018; Whitehead, Perry, and Baker 2018; Denker 2019). Trump's rhetoric fully reflected an understanding of sovereignty as the authority of a clan eldest who cares for his own, who shields the family/ nation from outside influences, and who defends the purity and honor of the family line (Duffy 2019).

How Patrimonial Sovereignty Became the Dominant Understanding of US Sovereignty

The Trump presidency from its campaign all the way to the insurrection of January 6 is an almost caricatural embodiment of a patrimonial understanding of sovereignty. It can be argued that such an extreme form of this understanding was successful because it has been already deeply institutionalized and rooted in US politics through the colonization history of the United States' nation-building process. Inversely argued, the bureaucratic-legal understanding of sovereignty, as enshrined in the Constitution, has always been a minority understanding precisely because the colonial nature of the US state has infused it from the outset with a precarious conception of openness and potential accessibility to "others" who might dispute the state's legitimacy to exist altogether (see Zolberg 2006).

The US American state construction process has, from the outset, been fraught with a hardly commensurable tension between the Constitution's universalist language of equality and freedom, and its racist and segregationist political practices in slavery and colonization (Gerstle 2001). These historic processes are of a complexity that makes their summary jagged, yet, the next section attempts to redraw its broad lines. The aim is to show that the family separations of 2018 are in the continuity of politics of constructing and asserting patrimonial sovereignty through border and population policies.

After the surprise election night in November 2016, the restrictionists in the Trump administration swiftly proceeded to realize the antiimmigration agenda of his campaign. Despite the Republicans holding a majority in both chambers in the first two years, the Trump administration mainly governed through executive orders, congressional review acts, and changes to administrative regulations. In institutional terms, many of these acts aimed at circumventing or even dismantling institutional checks-and-balances as well as imposing executive authority over legislative and jurisdictional authority, on the one hand, and federal authority over state, regional, or local executive authority, on the other hand. Immigration and law enforcement are both policy areas in which such a centralization of federal authority is the easiest justifiable, as both domains pertain to the monopoly of legitimate violence and the integrity of territory and borders. In the patrimonial view, border protection is state protection *sui generis*.

In colonial settler states, this traditional understanding of sovereignty has in many ways become institutionalized and hegemonic because of the synchronous process of state building and settler colonization (Wolfe 2016). In the United States in particular, the building of the federal state

and the establishment of its national authority build upon the process of colonial expansion to the West. Since the late-nineteenth century, immigration control has played a particularly important role of asserting sovereignty in those spaces where the federal state's authority was contested, in its borderlands. Borderlands are spaces of ambiguity, passage, mixing cultures and languages, populations, families, and children; they are realms of exchange, trade, and mobility (Hämäläinen and Truett 2011). They are also spaces of ontological uncertainty, consistently and constantly chipping away at any fixity a sovereign would like to establish to make their reign durable and strong. The US-Mexican borderlands have, thus, become a prime site of constructing US sovereignty (Hernández 2010).

There, the territorial conquest of the frontier was followed physically, culturally, and politically "eliminating" those who had been occupying the new US southwest since centuries, namely the native American population and Spanish-Mexican settlers (Weber 1982; Jones 1996; Blackhawk 2006; Hämäläinen and Truett 2009; Dunbar-Ortiz 2014; Launius and Boyce 2021). Ideologically, this was achieved through two moves: the othering of these people, notably through the denigration and criminalization of their cultural practices, chiefly among these their family and parenting cultures; and the co-constitution of an understanding of 'the rule of law' that casts a culturally specific imaginary of the nation and of citizenship—English-origin, racially white, religiously protestant, heterosexual, "hard working"—as universal. In an inverse move, anyone who was not considered following the thus codified law and social norms was racialized as outcast (Zolberg 2006; Hernández 2020; Chomsky 2021). Throughout the nineteenth century, these politics of controlling settlement and of driving away unwanted communities were locally enacted as the federal government lacked the reach to incorporate these processes into a systematic policy of immigration and border controls (Goodman 2020). The 1882 Chinese Exclusion Act changed this. This federal act established immigration and border control firmly as the defining of the United States' federal authority and, ultimately, sovereignty.

Immigration politics was, however, not the only policy field in which patrimonial understandings of the federal government's authority to rule were established and institutionalized. In the white, masculine, heterosexual, Protestant, English imaginary of the patrimonium over which the US president was reigning, this implied foremost controlling demography and reproduction through the control of families and predominantly in a view of ethnos democracy.⁶ Given the United States' need for immigrants to fulfill their settlement project, immigration, marriage, family, and social policies became intimately intertwined in the politics of "good" reproduction, that is, of white, Christian, English, and heterosexual families (Baca Zinn 1998; Cott 1998; Newman 1999; Briggs 2000; Beisel and Kay 2004; Bredbenner 2018; Briggs 2018; Cochran et al. 2019).

These policies included the disciplining and policing of white women's reproduction (e.g., the loss of citizenship for white women when marrying a foreigner), the racially differentiated policies of abortion, and shattering non-white families as a matter of law and "care" by removing children from their parents. A range of feminist historians has drawn out how the federal state's social services have enabled the "legal" disciplining of African-American, native American, and other economically and socially disadvantaged commu-

⁶Gerstle discusses this at length with the ambiguous politics of Theodore Roosevelt. (See Gerstle 2001.)

nities through taking children from their families (Newman 1999; Briggs 2020). During slavery, the selling of newborn babies or young toddlers was an explicit means of terrorizing slaves and of preventing them to build up solidarity networks. In the case of indigenous communities, taking their children and placing them in homes such as the Indian Boarding Schools or the adoptive and foster care system was a common practice in English settler states (United States, Canada, Australia, and New Zealand) with the explicit aim of “getting the Indian out of the child” and destroying indigenous cultures, languages, and social structures (Child 2016; Gram 2016).

Since the increasing criticism toward boarding schools in the wake of the civil rights movement that led to their closure in the 1970s, the removal of children from indigenous families did not stop but changed appearance. Generally speaking, the 1960s and 1970s broke massively into the dominance of patrimonial understandings of the federal government’s and states’ legal authority. The civil rights movement and the social change of the 1970s feminist, peace, Red Power, Lesbian and Gay, and other alternative live movements reclaimed the generality of the Constitution’s rights and freedoms. They replaced the patrimonial, English-family centered thinking of law with individualized civil and human rights thinking that led to the legalization and widening social acceptance of divorce, abortion, homosexuality (also in immigration where in the 1965 Act homosexuality was no more an impediment to entering the United States), and alternative forms of quasi-family living arrangements. However, the massive social, political, and legal changes of the 1970s also led to a major conservative backlash that has since centered around reformulating law in a way that it continues to privilege the white, English, middle-class, heterosexual, nucleus family. Criminalization of a range of “deviant” behaviors has been the most common form in which the legal advances of the 1960s and 1970s have been reversed. Such practices of stigmatization led to a disproportional taking of children from black, indigenous, or other minority group parents and particularly single mothers who were declared as unfit for parenting because of their poverty or lifestyle (Jacobs 2013).

Laura Briggs shows how, for instance, the 1970s’ successful contestation of practices of removing children from African–American or Indian–American families and communities was reversed a decade later. In the 1980s, the association of “crack babies” with African–American communities and of fetal alcohol syndrome with Indian–American communities legitimated large-scale taking of children (Roberts 1991; Hall 2010; Briggs 2020). Indian authorities, for instance, had achieved in the 1970s that social services would need the approval of local indigenous authorities to place indigenous children in foster care outside the community and that children would be placed with close kin or other indigenous families (Mannes 1996). However, through the criminalization of drug and alcohol use, federal services were able to override these local authorities when they withdrew children from jailed mothers and placed them in the foster care system away from their kin and nation (Brown 2020).

These examples show that the stabilization of the United States’ social (and political) hierarchies has been achieved since the late 1970s through the shifting of federal state authority from the welfare state to the carceral state. Both have always co-existed as Julilly Kohler-Hausmann argues, but with the social changes of the 1960s and 1970s, the question has become “not if the state had a role in inequality or handling social problems; it was what strategies work, for which

populations, and which problems” (Kohler-Hausmann 2019). Since the 1980s, the United States pursued a masculinist approach of “getting tough” on crime, drugs, welfare abuse, and immigration. This shaped the vision that certain populations could not be integrated to full citizenship and that the best the state could do was to control, contain, and remove them. Both systems worked together to normalize the criminalization of these groups and to “forg(e) an underclass” (Kohler-Hausmann 2017, 289) in order to undermine the newly achieved civil rights of African–Americans and Indian–Americans. This “getting tough” approach was also increasingly extended to immigrant communities.

Since its last major overhaul in 1964, the US immigration law has become extremely complex making it almost impossible to legally migrate (especially from Latin America) with the effect that the number of undocumented migrants in the United States has substantially increased (for an overview, see Ngai [2004], Hernández [2010], and Goodman [2020]). As a result, immigration and immigrants have been criminalized as penalties for “illegal” entry have become more severe, and minor offences have become triggers for detention and deportation. Consequently, the institutional structures to detain and deport migrants have been massively expanded (Hernández 2019; Hiemstra 2019a). The number of migrants held in the United States’ “incarceration archipelago” (Hernández 2019) has increased almost six-fold in thirty years, from eighty-five thousand people in 1995 to more than four hundred and seventy-seven thousand in 2012 (Global Detention Project 2016), representing a considerable share of the United States’ private prison corporations’ profits (Benenson 2018).

The establishment of the incarceration state has also extended the power of federal agencies into the local, regional, and state judicial realm where decades before it would not have had legal standing. Through the amendment of Section 287(g) to the Immigration and Nationality Act, local law enforcement officers have to enforce the federal immigration law. Some local authorities have declared their entire jurisdictional territory a “sanctuary,” but the large majority of local authorities is complying with Section 287(g). Consequently, undocumented migrants have become subject to constant policing and surveillance on the basis of their racial appearance and subject to incarceration and deportation for offences such as minor traffic infringements even if they have resided in the United States for decades or have US citizen families. An estimated 4.4 million children are at a risk of seeing their families disrupted by deportation (American Immigration Council 2021).

The criminalization of migration has furthermore allowed the United States to reach its power across the border into Mexico and into the “Northern Triangle” (Honduras, Guatemala, and El Salvador). Part of this interference has been what the migration scholar Nancy Hiemstra calls an “extraterritorial sprawl of US policing” since the 1980s (Hiemstra 2019b, 46). Through a range of international cooperation agreements such as the 2004 Merida Agreement or in the framework of the North American Free Trade Agreement, the US finances policing and border control in Latin America (see Wilson and Valenzuela 2014). Such programs have massively militarized Mexico’s borders with enormous effects on the human rights of refugees and the local population. This reproduces patterns of US American meddling in Latin American politics, which has a long and bloody history with its support for repressive regimes and “security forces” terror, conflict, and human rights abuse (Chomsky 2021). It can be convincingly argued that most of the armed conflicts of the

region that people are fleeing nowadays have been if not ignited but at least sustained and catalyzed by US interference.

The Trump administration continued this outsourcing through its “Remain in Mexico” policy that required asylum seekers to be vetted on the Mexican side of the border in a major breach of international refugee law and “expos(ing) migrants to rape, kidnapping, extortion, assault and psychological trauma” (HRW 2021). The cruelty of taking children and separating families has been part of larger policies aimed at terrorizing Central American migrants.

Conclusion

In patrimonial understandings of sovereignty, political authority is *sui generis* articulated in terms of distinction to “others,” some of which can become members of the “family” but, metaphorically speaking, only after appropriate bachelor vetting and approval by the family elders. In democracies, there is little room of maneuver for patrimonial sovereigns to practice such far-reaching fatherly authority over the politics of the community; however, it is the quintessential role of the modern state to prove its sovereignty over borders. Border and migration control are prime sites, and the kind of border controls that states such as the United States have established confirm the sovereign’s power to select who may receive protection or care by whom.

The 2018 zero-tolerance policy has, hence, not arbitrarily or accidentally aimed at families and children, and it is also no coincidence that Latin American families have been targeted. Rather, family separation was a clear consequence of the Trump administration’s amalgam of patrimonial sovereignty, an ethnic understanding of the nation and of their (patriarchal) vision of the family. The Trump administration, however, did not invent anything new with their zero-tolerance policy. They only had to mobilize the already existing legal regimes, institutional frameworks, and federal agency mandates to engage in such acts of cruelty. By distinguishing bureaucratic from patrimonial sovereignty and showing up its intersections with a patriarchal-authoritarian view of families and an ethnic view of nations, it becomes evident that the Trump administration has used cruelty against families and children as disciplining, as punishment, and as exclusion, all the way to annihilation, of people branded as nonmembers of the family and of not deserving the same rights, protections, and care as family members do.

While the cruelty against children was a specific consequence of this amalgam, the more general forms of institutional violence exercised against migrants is part of further back reaching processes of imposing US administrations’ patrimonial sovereignty on US–Mexican/Latin American borderlands and populations. Despite the current administration having rather a “nurturing family” image and a “demos” understanding of the nation, cruelty potentially continues. Both the United States’ highly restrictive border policies, which at the end of 2021 is projected to have caused the highest number of people dying of heat and thirst in the desert since deaths are recorded (Reznik 2021), and family separations are enduring under the presidency of Joe Biden.

Their inherent institutional and structural violence continues because it is not only foundational to the way US administrations define their power to admit new members to the dominium but also very specifically to determine their status within its social hierarchies. The metaphor of patrimonial sovereignty and shifting the analytical perspective toward the intersections between understandings of

sovereignty, imaginaries of the nation, and visions of “good” families offer a differentiated perspective to understand when, why, and how states’ institutional and structural violence may tip over into state-sanctioned cruelty.

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