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ESSAYS

SOVEREIGN IDENTITY CRISIS: WHAT DOES A DECOLONIAL APPROACH TO DIGITAL TECHNOLOGY REVEAL ABOUT THE SOVEREIGN IDENTITY CRISIS?

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INTRODUCTION

The idea of a “sovereign identity crisis in the digital age” contains many contested ideas—sovereignty, identity, and even the digital age.¹ Yet it is evident that some form of crisis uniting all of these themes is underway. There are several challenges to the presumed holder of sovereign power—the state—in the form of protest, conflict, and population movements, many of which are coordinated on and amplified by digital technologies. The demands on multilateral systems to resolve interstate contestation around digital technologies, including through taxation, manufacturing, nationalization, and more are pervasive. All forms of identity are made through the application of digital identity systems, including citizenship, gender, and ethnicity. There is certainly a great deal of transformation underway, and the task is to define the crisis in such a way that illuminates a meaningful program of action and forward momentum for humanity.

The fundamental promise of the digital age was that improvements to transportation and communication could bring individuals and societies closer together. Instead, the twenty-first century represents a heightened moment of fragmentation that is at tension with the equally evident signs of progress across all levels of social organization. People,

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1. This Essay has been adapted from the keynote speech delivered at the Sovereign Identity Crisis: State, Self, and Collective in a Digital Age Symposium at Temple University on November 17, 2022. Some of the ideas expressed in this Essay appear in Nanjala Nyabola, *Digital Identities and Border Cultures: The Limits of Technosolutionism in the Management of Human Mobility*, at Atlantic Council (2023).

societies, and systems are connected more than ever, but many are experiencing a fragmented digital space. For instance, the vast majority of people in the world experience the internet in translation and abstraction. This is because the internet assumes its average user is an English-speaking, well-educated man with so much political power in the offline world that the circumscription of their digital rights online is only a minor violation of their general rights context. The assumption is evident in the sheer volume of digital technology that is exclusively available in English, the ways in which the rights of women are routinely undermined online, and the failure by major technology companies to prioritize a rights-forward approach to building technology. Couldry and Mejias argue that extractivism is at the core of the current model of technological innovation and development, and that it legitimizes claims of digital colonialism.² The point of colonialism, after all, was to turn certain parts of the world, and the people who lived or were from there, into sites for the extraction of raw materials for the benefit of other parts of the world. It is not just about the appropriation of data but the external appropriation of data “on terms that are partly or wholly beyond the control of the person to whom the data relates.”³

As such, this Essay argues that the most suitable theoretical framework for engaging with the sovereign identity crisis without compounding the alienation that the digital age already engenders in broad swathes of the world is a decolonial one. Looking beyond the flattened ideas of sovereignty that inadequately acknowledge the disparities of power between various data subjects in various societies, the Essay examines a site at which power disparities are at their widest and starkest—the border. It argues that carceral border politics are a manifestation of expanding sovereign power over particularly vulnerable populations, but also sets the state practicing them on a collision course with entrenched ideas of statehood and international cooperation. In this way, by using the border as both an example and the key site for understanding the sovereign identity crisis, this Essay argues that a decolonial approach to understanding digital technology is necessary to address the ongoing and impending harms triggered by the crisis.

I. MAPPING THE TERRITORY

Colonization is not a metaphor. In its simplest form, colonization is to lose sovereignty of your nation and yourself for the economic and social benefit of another society—to colonize is to impose one sovereignty over another. The process of colonization of the Global South persists today in the reluctance to release territories like the Chagos Islands or Martinique,⁴ Moreover, the violence and legacy of colonization are still evident not just through the continued profiteering of colonial nations in what Kwame Nkrumah called “neo-colonialism,”⁵ but also in the generational scars born by descendants of colonized nations, including in language, population movements, and

2 NICK COULDRY & ULISES ALI MEJIAS, *THE COSTS OF CONNECTION: HOW DATA IS COLONIZING HUMAN LIFE AND APPROPRIATING IT FOR CAPITALISM* 5 (2019).

3 *Id.*

4 See Daniel Boffey, *Negotiations on Chagos Islands' Sovereignty Face Legal Challenge*, THE GUARDIAN (Jan. 9, 2023, 9:40 AM), <https://www.theguardian.com/world/2023/jan/09/negotiations-chagos-islands-sovereignty-legal-challenge-talks-uk-mauritius> [<https://perma.cc/F2ZB-3WNR>].

5 KWAME NKUMAH, *NEO-COLONIALISM: THE LAST STAGE OF IMPERIALISM* 6 (1965).

more.⁶ Decolonization is therefore the process of both removing the praxis of colonization from the way individuals view and experience the world and the ways societies are organized, as well as addressing the harms caused by the violence of colonization.

Frantz Fanon, a leading scholar of decolonization, emphasized that decolonization is an inherently disruptive process.⁷ Using decolonization as a methodology is an equally disruptive approach because it involves the deployment of tools that are not necessarily well-known or advanced within traditional academia. It involves working across differences of language and culture, which by extension implicates processes like translation or transliteration that are rooted in contexts with which many might not be familiar. For researchers, this perhaps involves working at a lower level of abstraction that allows us to unite inputs from seemingly disparate domains. It involves simplifying questions into forms that can be easily made intelligible or malleable across disciplines. In my research practice, I make the case that to truly decolonize the internet, we must begin with a different frame of reference and start with a different central referent subject. For this analysis, a decolonial method breaks the question of the sovereign identity crisis down to the simple questions: what it means for a state to have sovereignty, and how to reconstruct the idea of sovereignty in a way that does not compound harm.

I share two strands of research that I have been pursuing over the last three years. One strand of research has to do with the relationship between decolonization and the internet. It attempts to interrogate the implicit and overt power structures that shape the way we experience the internet. The second strand of research has to do with refugees and migration. Both of these strands coexist in my mind because the border, and refugees specifically, are increasingly subjected to the worst excesses of the digital surveillance and carceral state. And yet, because refugees and migrants as subjects are abstracted from the power of the states they have fled, those who encounter the worst of the excesses of sovereignty at the border are the least likely to complain about it. This phenomenon is evident in the mass death occurring in increasingly digital and securitized borders and their projections into neighboring states—in the Mediterranean Sea or the Darien Gap, at the Mexican border, or around Somalia in East Africa.

What does the status of the contemporary border reveal about the concept of sovereignty in the digital age? Perhaps the easiest way to answer the question is to begin with the fundamental construct of sovereignty. Hobbes, Locke, Rousseau, and more put forward the simple idea that individuals cede some of their rights to an entity. That entity is then empowered to govern: to order our relationships to each other and to the entity itself.⁸ We do this because we believe that we are fundamentally better off within an organized system or structure than we are outside it. Outside the system we are prone to crudely colliding with each other in various ways, but within it we create a form of predictability that makes it possible for us to pursue second level aspirations or projects.

6. See Nanjala Nyabola, *Uraia, Lugha Na Haki Za Kidijitali: Umuhimu Wa Lugha Katika Harakati Za Kuondoa Ukoloni Katika Teknolojia*, FORESIGHT (Oct. 13, 2022), <https://doi.org/10.1108/FS-11-2021-0222>.

7. FRANTZ FANON, *THE WRETCHED OF THE EARTH* 35 (Constance Farrington trans, Grove Weidenfeld, 1963) (1961).

8. See generally JOHN LOCKE, *SECOND TREATISE OF GOVERNMENT* (SMK Books, 2018) (1690); THOMAS HOBBS, *LEVIATHAN* (Penguin Books, 2017) (1651).

So the sovereign in this formulation is the entity to which people confer part of their individual rights in order to ensure the greater good. This is the social contract.

The form of the sovereign varies across societies, from monarchs, presidents, legislatures, politburos, and more. These forms are united by the idea that sovereignty is inherently a characteristic of a state, or at the very least, a political entity that can claim to act on behalf of more than one person. A sovereign is more than the form it takes—it is perhaps more defined by its capacity and scope for action. Indeed, one core lesson from former colonies is that focusing on the form of the sovereign at the expense of its action can obscure where real power lies in a society. For example, undue emphasis on presidential elections instead of the informal networks of power that shape a society's political outcomes can obscure the locus of the sovereign. Sovereignty is perhaps a more generative concept than the idea of a sovereign. Sovereignty is the fundamental character of a sovereign that gives it authority to order the social, political, and economic relationships within a political unit. Sovereignty is a characteristic and a projection of power.

Outside the Western philosophical tradition, there are many theoretical entry points for thinking about sovereignty in this broad way. In Islamic thought the Medina charter of 622 provides that the authority of the leader that takes up the mantle of sovereignty flows from the obligation upon the sovereign to be morally perfect. Sovereignty is a function of moral clarity.⁹ This has similarities with the Confucian “mandate of heaven,” which also argues that a ruler has an obligation to work towards the material well-being of the people over whom sovereignty is exercised.¹⁰ The point uniting all of these perspectives is the idea that sovereignty is a function of political consent. Where sovereignty is the supreme authority of the state vested in the leader of that state, it is made available to the leader by consent that can be withdrawn once the leader in question acts in ways that are against the material and communal benefit of those who are governed. Thus, notions of sovereignty and where sovereign power rests are constantly being challenged and reformulated. How are the transformations triggered by the digital age shifting ideas of what it means to have sovereignty?

Within legal scholarship the concept of the state is often presented as a settled question, but in practice it is not. Is government synonymous with state? Is the state an entity or an institution? Where is the state? French sociologist Pierre Bourdieu argues that the state is not so much an institution but a network of relationships that are constantly in flux in relation to each other, where different types of power and capital interact with each other to produce certain outcomes.¹¹ Therefore, the state is not just the institutions, but it is also the cultures that characterize these institutions. The state produces and is a product of the relationships between the various institutions that exist

9. See generally HAMID DABASHI, *AUTHORITY IN ISLAM: FROM THE RISE OF MOHAMMAD TO THE ESTABLISHMENT OF THE Umayyads* (Routledge 2017); Yetkin Yildirim, *The Medina Charter: A Historical Case of Conflict Resolution*, 20 *ISLAM & CHRISTIAN–MUSLIM RELS.* 439 (2009), <https://doi.org/10.1080/09596410903194894>.

10. See generally YONGLIN JIANG, *THE MANDATE OF HEAVEN AND THE GREAT MING CODE* (2013).

11. PIERRE BOURDIEU, *ON THE STATE: LECTURES AT THE COLLEGE DE FRANCE, 1989 – 1992*, at 11. (Patrick Champagne, Remi Lenoir, Franck Poupeau, & Marie-Christine Rivière eds., David Fernbach trans., 2014).

in a given geographical entity. Thinking about the state in this way allows us to expand our idea or perception of where state action happens.

Statehood is therefore not solely the province of the national government. The rise of regional institutions has challenged the idea that sovereign power rests solely within a national government. In Europe, for example, the European Union (EU) is a supranational entity that is producing a new kind of sovereignty that cannot be solely defined by national borders. Frontex, the European border agency, has developed its own politics and perspective on border politics that are sometimes unresponsive to national political agendas.¹² When Frontex develops rules on the use of artificial intelligence (AI) in border control that are far beyond the scope of the national practices of the countries that make up the EU, it is ordering social, political, and economic relationships. It is deciding who belongs and who does not, who can work and who cannot. This is an act of sovereignty on behalf of the EU, not individual European states.

II. SOVEREIGNTY AT THE BORDER

The border is perhaps the main site at which sovereignty is asserted in the contemporary era. To be sovereign is for the relationships that govern the political, social, and economic spheres of a society to operate independently of the influences that lie outside the matrix of relationships within that society. Thus, even states classified as “failed states” or “fragile states” according to the Fragile States Index will routinely establish elaborate border policing mechanisms.¹³ These mechanisms are designed to define who belongs and thus to exclude outsiders, as well as to extract revenue from those who are allowed to enter, and project power over neighbors and hostile states. Ruben Zaiotti, a scholar of European border politics offers the term “border cultures” to define how relationships and power dynamics between various entities, particularly in Europe, create a new dynamic of sovereignty at the border.¹⁴ Border cultures are not solely the product of national politics but also of the power dynamics between different states within a union, different political parties, the allegiances states form among themselves, and even the counter-politics or countercultures that resist these formations.

The rise of the digital age has contributed significantly to the development of new border cultures, particularly those predicated on carcerality¹⁵ (the logic of imprisonment), and extraterritorial projections of power (the projection of the border into other states’ territories). Many of these developments are made possible by digital technology. Surveillance technology is inherent to border carcerality, while biometrics and digital identity systems make it possible for the border to follow the individual wherever they are in the territory. These developments necessarily collide with the

12. See *EU Has Spent over €340 Million on Border AI Technology That New Law Fails to Regulate*, STATEWATCH (May 12, 2022), <https://www.statewatch.org/news/2022/may/eu-has-spent-over-340-million-on-border-ai-technology-that-new-law-fails-to-regulate/> [https://perma.cc/RPJ8-LN52].

13. FRAGILE STATES INDEX (2022), <https://fragilestatesindex.org/> [https://perma.cc/C9SJ-57YD].

14. See generally RUBEN ZAIOTTI, *CULTURES OF BORDER CONTROL: SCHENGEN AND THE EVOLUTION OF EUROPEAN FRONTIERS* (2011).

15. See generally Genevieve LeBaron & Adrienne Roberts, *Toward a Feminist Political Economy of Capitalism and Carcerality*, 36 SIGNS: J. WOMEN IN CULTURE & SOC’Y 19 (2010), <https://doi.org/10.1086/652915>.

traditional view that the border is the limit of certain state power—particularly state power overseas. For instance, a projection of the Western border into African countries can be seen in Western government’s ability to demand proof of visas and return tickets from African travelers in African airports before allowing them to board their flights. The African government’s response and citizen adaptations to these and other developments are part of the broader crisis of sovereignty experienced by the contemporary state—which government has sovereign authority over the African citizen in this case?

Today, a passport is not merely a document that is stamped at the border. It is also data that is created, generated, and disseminated throughout various institutions within the national and indeed international territory. For instance, attendance records of international students in countries like the United States are often used as part of broader surveillance and policing of these groups.¹⁶ The threat of immediate expulsion from the country follows international students even into the classroom, and lecturers and university staff are drawn into policing these borders.

At the same time, Marx’s concept of fetish is useful to understanding why digital technology is particularly seductive to governments looking to assert sovereignty at the border. Marx reminds us that the value of objects is often greater than the absolute value that goes into making or consuming them; it is also connected to the value that those who use the objects project onto them.¹⁷ In many ways, the *perceived* utility of digital technology to deepening border cultures is often greater than the actual utility delivered. The idea that AI can greatly enhance border policing in Europe is currently championed by Frontex and other border agencies.¹⁸ Yet significant volumes of research have demonstrated the significant limitations of AI in this regard, not least because of the way AI codifies bias and violence against specific groups that are already the targets of systemic marginalization in European border politics.¹⁹

The border is not a physical thing. The border represents a fragile consensus on underlying political issues and conflicts. In premodern times, boundaries were fluid and depended on the relationships between communities that saw themselves as distinct. They often roughly corresponded to geographical features like rivers or hills but could easily be changed by incursion or migration. In Europe, the Treaty of Westphalia of 1648 is often cited as both the moment in which many European borders became settled and as the birth of the modern state. It is considered the best example of why borders are a

16. Ryan Allen & Krishna Bista, *Talented, Yet Seen with Suspicion: Surveillance of International Students and Scholars in the United States*, 12 J. INT’L STUDENTS 175, 183 (2021).

17. See Alf Hornborg, *Technology as Fetish: Marx, Latour, and the Cultural Foundations of Capitalism*, 31 THEORY, CULTURE & SOC’Y 119, 121 (2014) <https://doi.org/10.1177/0263276413488960>.

18. *Artificial Intelligence - Based Capabilities for European Border and Coast Guard*, FRONTEx (Mar. 26, 2023), <https://frontex.europa.eu/media-centre/news/news-release/artificial-intelligence-based-capabilities-for-european-border-and-coast-guard-IDczge>; see also *New Research Study: Technology Foresight on Biometrics for the Future of Travel*, FRONTEx (Feb. 18, 2021), <https://frontex.europa.eu/media-centre/news/news-release/new-research-study-technology-foresight-on-biometrics-for-the-future-of-travel-ugObkJ> [<https://perma.cc/RP7D-GLZF>].

19. See generally F. ZUIDERVEEN BORGESIU, DIRECTORATE GEN. OF DEMOCRACY, COUNCIL OF EUR., DISCRIMINATION, ARTIFICIAL INTELLIGENCE, AND ALGORITHMIC DECISION-MAKING (2018); SAFIYA UMOJA NOBLE, ALGORITHMS OF OPPRESSION: HOW SEARCH ENGINES REINFORCE RACISM (2018).

positive political development given the long history of territorial conflict on the continent.²⁰

There is broad recognition that a sovereignty crisis is underway and that the border is a major site, but many states fail to identify its correct locus. Some states do not recognize the crisis as a collision between the classical formulation of the rights and responsibilities of the sovereign with the projections of power made possible by the rise of the digital. Instead, many states assert that the crisis at the border is the massive numbers of people from the Global South gearing up to move north. The data suggests that this is simply not true. According to the International Organization for Migration (IOM), between 1970 and 2020 the total global number of migrants grew from 2.3% of the world's population to the current 3.6%.²¹ This misrepresentation of the crisis fuels the demand for increasingly elaborate policing and control at the border.

III. THE REAL SITE OF CRISIS

Human beings are *collectively* more prosperous today than they have ever been in history. But there is a crisis of fairness in the distribution: the biggest challenge when it comes to resources in the modern world is not *availability*, but rather *inequality*. Certainly, every displaced person represents a form of crisis, but as a percentage of the global population, the number of migrants has remained steady. Significantly, the global share of migrants moving outside their region of origin remains especially low. In the *2020 Africa Migration Report* which I coedited, we tried to capture some of the tensions that arise from uncritically accepting the proposition that any crisis in border management arises from an absolute increase in the number of migrants.²² That report reinforced the fact that most people who are on the move do not leave their country or region of origin—that is, they do not challenge state sovereignty at the border. IOM notes twenty-five million migrants in Africa, but the majority of those who change their country of origin in Africa remain in their region or in their home country.²³ It is worth restating that with the exception of Germany, which has 1.2 million refugees and has pursued a more welcoming policy approach than other European Union countries, none of the world's largest refugee populations are in Western Europe or North America.²⁴ In 2022, Turkey has been hosting the largest refugee population, at 3.7 million people, followed by Colombia, Uganda, and Pakistan, at fewer than half that number each.²⁵ What has changed is not the *relative number* of people who are on the move, but the *willingness* to prevent the events or factors that cause population movements and to provide for those who move.

20. See Stephen Okhonmina, *States without Borders: Westphalia Territoriality Under Threat*, 24 J. SOC. SCIS. 177, 177–82 (2010), <https://doi.org/10.1080/09718923.2010.11892853>.

21. INT'L ORG. FOR MIGRATION, WORLD MIGRATION REPORT 2022, at 23 (Marie McAuliffe & Anna Triandafyllidou eds., 2021).

22. INT'L ORG. FOR MIGRATION, AFRICA MIGRATION REPORT: CHALLENGING THE NARRATIVE (Aderanti Adepoju with Corrado Fumagalli & Nanjala Nyabola eds., 2020), <https://publications.iom.int/system/files/pdf/africa-migration-report.pdf> [<https://perma.cc/CQR7-VHE7>].

23. WORLD MIGRATION REPORT 2022, *supra* note 21, at 61–67.

24. *Refugee Data Finder*, UN HIGH COMM'R FOR REFUGEES, <https://www.unhcr.org/refugee-statistics/> [<https://perma.cc/T2VD-K6GD>] (last visited Apr. 1, 2023).

25. *Id.*

Moreover, while climate crisis is often cited as leading to an unprecedented influx of refugees to the Global North, this again reflects an anxiety to frame collective challenges in a particular way in order to mobilize resources to address them. Simply, it reflects securitization of the climate threat. It is certainly true that climate change is triggering unprecedented displacement, but it is important to remember that climate change is an existential and not localized threat. The climate risk is not one that can be addressed through heightened border restrictions or carceral border cultures: if anything, it demands the dismantling of narrow framings and a truly global, supranational response.

The fact that countries embrace alarmist interpretations of migration data hints that the crisis of sovereignty lies elsewhere. This alarmist interpretation of migration data is used as a pretext for unnecessarily harsh clampdowns on refugees and migrants in certain regions of the world precisely because the governments of these countries are failing to address significant domestic challenges. Governments, anxious to appear strong in the face of complex social issues and growing convergence around economic policy especially, seek to distinguish themselves from each other by politicizing migration. It is an opportunity to reassert sovereignty.

The policy convergence around right-wing extremist talking points on migration in many Western nations, evidenced by the fact that even nominally progressive parties around the world increasingly repeat these policy proposals, underscores this development. For example, even nominally socially democratic parties like Italy's center-left Democratic Party embrace anti-immigration platforms to secure parliamentary majorities.²⁶ Similarly, while the Democratic Party in the United States promised to rescind many of the extreme policies of the Trump administration, several of the harsh border management structures put in place by Trump remain in place, including the Title 42 removals that allow U.S. Customs and Border Protection to extradite anyone arriving from a country where a communicable disease was present.²⁷ This regulation is routinely used to return asylum seekers and refugees transiting from countries in Central America and the Caribbean, including Haiti.

The most vulnerable migrants in greatest need for protection are often the easiest targets because they are the most visible. Refugees and migrants are the first targets of a state working through its crisis in sovereignty quite simply because they are there. The intensified use of technologies of surveillance and control at the border must be understood in the context of governments that are increasingly willing to implement national policies on refugees and migrants that would be unacceptable when used on other groups. In Europe, nominally liberal Danish administrations have passed laws requiring refugees to work,²⁸ confiscating assets from arriving refugees,²⁹ and forcing

26. *Europe and Right-Wing Nationalism: A Country-by-Country Guide*, BBC NEWS (Nov. 13, 2019), <https://www.bbc.com/news/world-europe-36130006> [<https://perma.cc/4C9A-78Q5>].

27. See 42 U.S.C. § 265; 42 C.F.R. § 71.63 (2022).

28. *Denmark Tells Some Migrants To Work for Benefits*, BBC NEWS, (Sept. 8, 2021), <https://www.bbc.com/news/world-europe-58484953> [<https://perma.cc/QCJ9-XK6C>].

29. *Denmark's 'Migrant Confiscation Law' Yields Little Cash*, BBC NEWS (Nov. 4, 2016), <https://www.bbc.com/news/world-europe-37871792> [<https://perma.cc/432H-AZUW>].

refugees to return to countries that are still in conflict.³⁰ Yet Denmark only received 489 new refugees in 2020.³¹ Compare these numbers with Lebanon which in 2020 hosted the largest refugee population per-capita with the government estimating 1.5 million refugees³² for a population of just under 6 million and despite myriad domestic challenges, although Lebanon admittedly has now also resorted to highly criticised “voluntary” returns to Syria.³³ Australia’s offshore processing centers exist specifically to evade domestic human rights protections.³⁴

In many cases, the technology used to manage migration is carceral technology (i.e., technology based on the logic of jails and prisons), designed to control the mobility and rights of migrants. Anthea Vogl and Methven point to the Australian government’s use of surveillance as part of its package of policies explicitly designed to deter migration.³⁵ Refugees and migrants across Western nations are increasingly required to wear ankle monitors and other technologies explicitly rooted in policing.³⁶ The American Civil Liberties Union (ACLU) reports that the U.S. border agency uses, among other data collection mechanisms, an automated tracking system (ATS) that assigns travelers “a computer-generated ‘risk assessment’ score that will be retained for forty years - and which is secret and unreviewable.”³⁷ And, as mentioned, the EU border, long referred to colloquially as “Fortress Europe” increasingly reflects a digital fortress featuring drones, thermal cameras, and heartbeat detectors designed to capture illegal immigration.³⁸

Governments—including those that can barely manage to feed their school children—are increasingly spending vast amounts of money at their borders to create the illusion of political strength. We are literally using refugee and migrant bodies to make a point about state sovereignty. But this is having a counterintuitive effect.

30. *Denmark: Hundreds of Refugees Must Not Be Illegally Forced Back to Syrian Warzone*, AMNESTY INT’L (Apr. 27, 2021), <https://www.amnesty.org/en/latest/news/2021/04/denmark-hundreds-of-refugees-must-not-be-illegally-forced-back-to-syrian-warzone/> [<https://perma.cc/CQ9H-TV8Z>].

31. Michala Clante Bendixen, *How Many Are Coming, and from Where?*, REFUGEES.DK (Mar. 7, 2023) <http://refugees.dk/en/facts/numbers-and-statistics/how-many-are-coming-and-from-where/> [<https://perma.cc/N3CS-6S5K>].

32. *UNHCR Lebanon at a Glance*, UNHCR LEBANON, <https://www.unhcr.org/lb/at-a-glance> [<https://perma.cc/FE6F-RX5U>] (last visited Apr. 1, 2023).

33. *Lebanon: Stop the So-Called Voluntary Returns of Syrian Refugees*, AMNESTY INT’L (Oct. 14, 2022), <https://www.amnesty.org/en/latest/news/2022/10/lebanon-stop-the-so-called-voluntary-returns-of-syrian-refugees/> [<https://perma.cc/UN34-KB74>].

34. Mary Crock & Daniel Ghezelbash, *Due Process and Rule of Law as Human Rights: the High Court and the “Offshore” Processing of Asylum Seekers*, 18 AUSTL. J. ADMIN. L. 101, 101–14 (2011).

35. Anthea Vogl & Elyse Methven, *Life in the Shadow Carceral State: Surveillance and Control of Refugees in Australia*, 9 INT’L J. FOR CRIME, JUST. & SOC. DEMOCRACY 61, 61–75 (2020), <https://doi.org/10.5204/ijcjsd.1690>.

36. Colleen Long, Frank Bajak & Will Weissert, *ICE Issuing More Immigrant Ankle Monitors. But Do They Work?*, AP NEWS (Aug. 25 2018), <https://apnews.com/article/dfcdc6302e154753a526c04706df45d6> [<https://perma.cc/P9JS-DD4W>].

37. *Border Security Technologies*, AM. CIV. LIBERTIES UNION, <https://www.aclu.org/other/border-security-technologies> [<https://perma.cc/9W22-X925>] (last visited Apr. 1, 2023).

38. Andrei Popoviciu, *‘They Can See Us in the Dark’: Migrants Grapple with Hi-Tech Fortress EU*, GUARDIAN, (Mar. 26, 2021), <https://www.theguardian.com/global-development/2021/mar/26/eu-borders-migrants-hitech-surveillance-asylum-seekers> [<https://perma.cc/SSV3-6DYM>].

IV. CÉSAIRE'S BOOMERANG

In his *Discourse on Colonialism*, Martinican scholar of decolonization Aimé Césaire argues against colonial myths that tolerate, encourage, and defend racist cruelty and violence.³⁹ Césaire notes that an appetite for cruelty against “the Other” increases the appetite for the cruelty within the society in question, and that it is only a matter of time before that cruelty is exacted domestically, effectively devouring the society from within.⁴⁰ Césaire’s warnings capture the impact that border cultures are having on domestic politics in Western countries, where domestic tolerance for cruelty practiced overseas is expanding room for increasingly extremist politics domestically.

Research has found that right-wing groups are not necessarily interested in capturing the state wholesale, only in normalizing and mainstreaming the rhetoric of cultural exclusion.⁴¹ In France, for example, the Front National, now called Rassemblement National (National Rally), found greater support in the mainstream once it shifted its main political rhetoric from antisemitism to anti-immigration.⁴² After this pivot, the party has reached the runoff stages (i.e., one of the two best performing parties) in three successive national elections. The same analysis would yield similar results in Australia, the United States, the United Kingdom, Canada, and many other countries where even nominally liberal political parties are normalizing right-wing rhetoric about immigration. This attempt to use the border to resolve the crisis of sovereignty therefore has the perverse effect of deepening it—whether it is the summer of many prime ministers in the United Kingdom or the January 6, 2021, attempted coup in the United States.

The arc of the crisis of statehood is that exclusionary border rhetoric does not strengthen the state, indeed it undermines the state by reinforcing ethnonationalist politics and using the border as a vector to operationalize these politics as policy within a context where it is least likely to be challenged. Refugees and migrants are particularly vulnerable to opaque policymaking, as well as inhumane policies, while experiencing the most cruel state practices.⁴³ Similarly, that technologies to manage migration are increasingly those that are still contested for ethical or welfare reasons or are prohibited for use on domestic constituencies underscores that refugees and migrants are at risk of specific digital rights violations. Thus, while Frontex has spent at least €340 million between 2007 and 2022 on using technology to police the border, it is doing so without adequate protections to ensure that such technologies will not be used against the European public.⁴⁴

39. AIMÉ CÉSAIRE, *DISCOURSE ON COLONIALISM* 41 (Monthly Review Press, 2000).

40. *Id.*

41. THOMAS GREVEN, FRIEDRICH EBERT FOUND., *THE RISE OF RIGHT-WING POPULISM IN EUROPE AND THE UNITED STATES: A COMPARATIVE PERSPECTIVE* 1 (2016), <https://library.fes.de/pdf-files/id/12892.pdf> [<https://perma.cc/YKW3-GQC4>].

42. *Id.* at 2.

43. *See Manus Island: Australia Abandons Refugees to a Life of Uncertainty and Peril*, AMNESTY INT’L (Feb. 1, 2018), <https://www.amnesty.org/en/latest/news/2018/02/manus-island-australia-abandons-refugees-to-a-life-of-uncertainty-and-peril/> [<https://perma.cc/2RVR-S2TG>].

44. *EU Has Spent over €340 Million on Border AI Technology That New Law Fails to Regulate*, *supra* note 12.

Contemporary border culture in the EU is increasingly rooted in practices of exclusion and indeed racism, and this manifests in increasingly violent responses to all forms of migration. “Fortress Europe” is a term embraced by many policymakers on the European continent referring to the overall desire to make external borders impenetrable, even while internal borders in Europe are among the most porous in the world.⁴⁵ The Mediterranean Sea has been a focal point for some of these policies, where the crossing is heavily policed and individuals are routinely allowed to die for the deterrent effect. Similarly, land borders in countries like Poland, Lithuania, and Hungary have emerged as another contested frontier. Deaths on European borders are not only normalized but are explained away by governments as geopolitical inconveniences rather than deeper moral policy failures, even while the number of these deaths increases.⁴⁶ IOM calls the Mediterranean Sea “the world’s deadliest border” because 33,761 people have died attempting to cross it, comprising forty percent of all border deaths in the world.⁴⁷ Ninety percent of those attempting to cross the Mediterranean Sea were from Afghanistan, Bangladesh, Eritrea, Iraq, Nigeria, Pakistan, Somalia, Sudan, Syria, and The Gambia.⁴⁸ Attempting to resolve the crisis of state sovereignty at the border, on the bodies of refugees and migrants, is leading to unspeakable cruelty and death; literally letting people die in order to make a point about sovereignty.

Moreover, these border cultures and this rhetoric travel across the world, faster than the policies of sovereign restraint. Developing countries are often compelled to accept policies that expand the reach of carceral border technologies as part of packages for development assistance. The lack of independent research and policy capacity in many countries makes it difficult to critique such policies effectively. It makes the crisis of sovereignty as manifested on the border a transnational challenge requiring significant transnational solidarity to resolve. For scholars engaging with the sovereign identity crisis and its consequences, there is an implicit demand to work outside both geographical and disciplinary boundaries. Critical scholarship in digital technology, migration studies, political science, and more can all enrich the legal understanding of the site and the implications of the crisis. It is heavy and uncertain work that requires a complete dismantling of many of the foundational theories of statehood and sovereignty that legal scholarship can sometimes present as uncontested truth, but ultimately contributes to a more holistic resolution.

45. Hans-Jorg Albrecht, *Fortress Europe? – Controlling Illegal Immigration*, 10 EUR. J. CRIME, CRIM. L. & CRIM. JUST. 1 (2002).

46. Renata Brito, *Thousands Protest Migrant Deaths at Spain-Morocco Border*, AP NEWS (July 1, 2022), <https://apnews.com/article/africa-migration-race-and-ethnicity-spain-5c69182b3d7bdaffc3418ecfe2ded1f9> [<https://perma.cc/Z2FS-P76Y>].

47. HARSHA WALIA, *BORDER AND RULE: GLOBAL MIGRATION, CAPITALISM, AND THE RISE OF RACIST NATIONALISM* (2021).

48. *Id.*