

## When Deterrence and Death Mitigation Fall Short: Fantasy and Fetishes as Gap-Fillers in Border Regulation

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Drawing on fieldwork and political theory with Lacanian psychoanalytic influences, this article analyzes how fantasy and fetishes help sustain strategies shown to be no solution to U.S. border control problems. More than a decade after the official launch of the border control paradigm of “prevention through deterrence,” predicated on the assumption that ramping up walls, barriers, policing, and the human costs of border crossing would deter, there has been scant evidence of deterrence and much evidence of diversion of migrants to more dangerous crossing points where death rates have soared. Attempts to mitigate the cost to life have also proved ineffective but have persisted alongside the policy of diversion. The article is based on research in a region where the reality of diversion and death instead of deterrence was lived but where people still pursue projects of barrier-building and death mitigation that they know to be ineffective. The article analyzes how fantasy fuels action despite knowledge and occludes a traumatic element around which the symbolic order of border law is structured: the foundation of “good life” with its bounty of rights, privileges, and opportunity on the exclusion of basic life denuded of the entitlements that make the good life sweet. The article also examines how fetishes are used to cope with unrealized hopes and to diffuse the impact of the traumatic knowledge that good life is undergirded by the exclusion and even death of basic life.

**A**t this edge of the United States adjoining Mexico, border control law and critiques of border policy are physically embodied. Some people describe the frailty of law here by driving across their property to show the “government fence” at the border—an aged livestock fence with cut and torn wire, run through in some places and falling down in others. For others, what is salient are the ravages of law, physically embodied for them in the bodies found in states of suffering and decay in the desert, rerouted from other

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regions where law looms large in metal border walls and uniformed patrols.

For years, this sparsely populated region of desert and rangeland was the site of a surge in human migration and border crossing deaths. In protest from different perspectives, some people build private border fences, while others service water tanks marked by high blue flags. The people who enact these objects speak in terms of their utility—the fences are meant to seal and secure the border, the water tanks are meant to save lives, goals the people think the government should accomplish but has failed. But the people also see their futility—the private fences cover only tiny slivers of the sprawling terrain and border crossers can just walk around; several of the water tanks remain full each week because border crossers dare not use them or are shifting farther away, to even more remote regions, and alarming numbers of border-crossing deaths continue.

Yet the volunteers continue to pour their efforts and passions into these things, doing despite knowing and hoping their actions will incite the government to deliver on promises of security and salvaging of life. The efforts and objects present an enigma, a metaphor, and an opportunity to examine the forces that sustain action despite knowledge of inefficacy—a question acutely posed by the course of border law and policy over the last decade.

In 1994, federal law enforcement officials embarked on a strategy for border control based on the assumption that raising the costs of entering the United States without official permission—the dangers, difficulty, and punitive consequences, or, in Bentham's term, the "pain" of prohibited conduct—and their probability would deter (Massey et al. 2002:9–11, 108–14; Cornelius 2001:662; Office of the Inspector General 1998:§ I.C; compare Bentham [1789] 1961:170). Millions of dollars were poured into diverting unauthorized migrant traffic to more remote, harsher deserts and mountains—called "more hostile terrain" in the strategic plan—by heavily fortifying and policing the customary crossing places in more temperate environs closer to urban centers, made security priority areas (see U.S. Border Patrol 1994:2, 7; Nevins 2002:4).

The raised cost that the strategy levied for unauthorized migration turned out to be denominated in life. Though the number of border-crossing deaths was on the decline between 1990 and 1994, after the launch of the strategy's first phase, dubbed Operation Gatekeeper, yearly deaths more than doubled between 1994 and 2005, reaching 472 deaths in just 2005 alone (U.S. General Accounting Office 2006:6–9, 15–16; 2001:5–6). But the fundamental assumption behind the strategy—that raising costs would deter—proved wrong. Soaring death rates and unabated migrant

traffic showed that people were paying the ultimate price rather than being deterred (see Massey et al. 2002:108–14).

Trying to abate the numbers of deaths, the Border Patrol in 1998 added rescue services to its roles, providing food, water, and medical services to lost or injured migrants and establishing rescue beacons (U.S. General Accounting Office 2006:9). A death mitigation strategy thus unfolded alongside the prevention-through-deterrence paradigm. But the alarming numbers of deaths persisted (see, e.g., McCombs 2006a:A1).

The consequences are no secret—they are broadcast by journalists and migration scholars and discussed by officials (see, e.g., Archibold 2007; Ellingwood 2004; Massey et al. 2002; Cornelius 2001; Eschbach et al. 1999). Congress even commissioned a lengthy report on border deaths and diversion of migrant traffic (U.S. General Accounting Office 2006). But despite knowledge of the reality beyond the rhetoric of deterrence, the failed policy paradigm persists and has even been embodied in more muscular form in formal legislation (see, e.g., Secure Fence Act of 2006; Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005; Illegal Immigration Reform and Immigrant Responsibility Act of 1996, discussed below in “Why Diversion Persists After Its Discrediting”).

In short, we “‘know very well what [we] are doing, but still, [we] are doing it’” (Žižek 1989:33, quoting Sloterdijk [1983] 1988). This article analyzes the forces that lead people to keep doing despite knowing, based on fieldwork in a region where the reality of diversion instead of deterrence was lived. Navaro-Yashin has argued for moving beyond the traditional focus on institutional sites in studies of the political and examining instead the practices of everyday people where power regenerates (Navaro-Yashin 2002:3). As with the political, so with the legal. In studies of law, the proper sites are often conceived of as institutions and their prescribed forms, the laws in textbooks and documents, the decisions of jurists, the outcome of disputes. But important information about what sustains and regenerates law, policy, and the political through malfunction and disillusionment can be gained by studying the people who live that malfunction and disillusionment.

This article is therefore based on 53 interviews and numerous other conversations and interactions during seven weeks of fieldwork in one of the areas that bore the brunt of the policy of diversion. People in this border region experienced firsthand how Operation Gatekeeper simply rerouted migrant traffic from formerly popular crossing points in California and Texas. They lived the emotional and material effects of mass human movement suddenly routed through their lives and environs. They continue to live in the shadow of deaths from migrants crossing through the

sun-scorched deserts or over precarious, cold mountains. Even teenage high school freshmen talk and know of death.

The ethnographic details gathered resonate with insights about fantasy and fetishism by political theorists influenced by Lacanian psychoanalytic theory. People know the reality behind the rhetoric and paradigms but continue acting in accord with the illusion (Žižek 1989:32–3). This illusion that structures behavior is fantasy, a “psychic symptom that survives analysis, critique or deconstruction” and “generates unconscious psychic attachments” to the very thing criticized (Navaro-Yashin 2002:4; Žižek 1989:33). People from divergent perspectives vigorously critique the state and its policies, see and live the gap between law and policy’s promises and reality, but the very critique regenerates desire for the omniscient power of the government and the law to fix things somehow, if only.

The concept of law and political forms as symbols that supply comfort and reassurance has long roots in the works of writers such as Arnold and Edelman (e.g., Edelman 1964:2, 32, 38, 40, 42; Arnold 1935:34–5). Arnold noted that what we revere as “Law” when we talk generally of government is a way of thinking about government in terms of ideals; its function is to comfort society and develop “the structure of an elaborate dream world where logic creates justice” (Arnold 1935:33). Law provides “a great reservoir of emotionally important social symbols,” creating a realm “where all our dreams of justice in an unjust world come true” (Arnold 1935:34–5).

Fantasy allows the subject to deal with a traumatic kernel at the core of the symbolic order; a Real that resists harmonization in the symbolic order (Žižek 1989:123, 133, 169). This article analyzes how fantasy helps occlude a traumatic element around which the symbolic order of border law is structured—the foundation of the “good life” with its bounty of rights, privileges, status, and opportunity on the exclusion of basic life denuded of the entitlements that make the good life sweet (see “Why Fantasy?”; compare Agamben 1998:7–8, 83).

This article studies how people draw on the reservoir of law’s symbols as both comfort and protest and erect fetishes that embody unrealized hopes and diffuse the impact of the traumatic knowledge that the good life is founded on the exclusion and even death of basic life. *Fetish* is used here in Žižek’s sense, meaning the embodiment of a false appearance that allows us to cope with, and disavow, harsh reality (Žižek 2006a:253).

The first part of the article, “Query and Approach,” frames the question at the heart of the study and delineates the approach taken to examine the issue. Finding instructive Žižek’s insight that objects enacted by people can materialize and disclose a deeper “truth” that people and ideology cannot afford to acknowledge,

the article's analytical narrative is organized around the enactment of two forms of objects: private border fences and water tanks. These objects and projects of civil society engaged in political action mirror in miniature the larger projects and objects of the state and its border law and are entryways for analysis. The second part of the article, "Fantasy and the Law," analyzes the incidents and interviews during fieldwork that show the work of fantasy in sustaining and regenerating policy, law, and political action that people know to be dysfunctional. The third part of the article, "Why Fantasy?" analyzes how people use fetishes to cope with the traumatic knowledge that the good life is undergirded by the exclusion of basic life.

### Query and Approach

A number of works depicting migrant movement, resettlement, and continuing ties to sending communities have theorized the transcending of borders, translocality, and transnationality (e.g., Santamaría Gómez 2003:82–3; Schiller 1999:95–6, 113; Smith 1994:15–16; Rouse 1991:16–17). Migration may sometimes be depicted as signifying "transnationalism," "hyperspace," "borderless people," and "postmodern citizens," but in the lived world there are real and increasingly bleak and remote paths that many undocumented migrants must take between places and to cross borders. These paths are not just etched by migrant feet; they are channeled and emplaced by law and policy and the practices and perspectives of nonmigrants.

The term *emplacement* highlights the confined spaces of migration and the blockages that limit in lived reality the globalist imagination of transnational flows (Englund 2002:265). Migrants may indeed move—but the flow is far from free; it is channeled and confined to particular places and spaces by poverty, identity, danger, and hardship. Many writers have powerfully portrayed migrant stories and the hardships and death that migrants undergo (see, e.g., Nazario 2007; Urrea 2004; Annerino 2003; compare Ellingwood 2004; Conover 1987). This is a study of what sustains the practices that shape the routes and conditions of the journey.

### Query: Why Diversion Persists After Its Discrediting

In 1989, most undocumented migrants crossed the U.S.–Mexico border near the large urban centers of San Diego–Tijuana and El Paso–Juárez, in California and Texas (Massey et al. 2002:106; Massey 2006:A23). Temperate California had by far the greatest number of undocumented migrants—by the mid-1990s, nearly two-thirds of undocumented traffic came through California (Massey et al.

2002:107). The popular crossing area was near the bustling city of San Diego, along a 14-mile stretch from oceanfront Imperial Beach to the base of the Otay Mountains, where crossings took only about 10 or 15 minutes across “easy terrain and gentle climbs” to a pickup point (Hing 2001:127). Every afternoon, crowds of migrants and smugglers collected to await nightfall and cross into the United States (Nevins 2000:100). Undocumented migrants also made “banzai runs” through the port of entry, running past traffic on the highway and jumping over cars lined up at the port of entry (Massey 2006:A23).

In early 1993, the federal government commissioned a study of new methods of border control from Sandia National Laboratories, a military research facility (Cornelius 2001:662). The Sandia study recommended a strategy of “prevention through deterrence” by increasing the difficulty of illegal entry through such methods as installing multiple physical barriers using sophisticated electronic surveillance equipment (Cornelius 2001:662).

At around the same time, the Border Patrol’s El Paso sector supervisor, Silvestre Reyes, came up with a plan (Cornelius 2001:662). On a Sunday morning in September 1993, he launched a surprise border patrol maneuver dubbed Operation Blockade.<sup>1</sup> He stationed 400 agents and dozens of patrol vehicles and helicopters on the 20 miles of border between El Paso and Ciudad Juárez (Vila 2000:167–8). Reyes’s strategy had dramatic short-term results—apprehensions of undocumented migrants in El Paso dropped by 76 percent in fiscal year 1994 (Cornelius 2001:662). Apprehension rates are a widely used, albeit highly imperfect, proxy for undocumented migration volume (Cornelius 2001:664).

Though a study found that the people deterred were generally “commuter migrants” who used to walk across the border to work at service jobs in El Paso, and even by the government’s account, “smugglers and illegal immigrants heading for cities beyond the border circumvented” the Border Patrol blockade “by shifting to areas where more traditional apprehension tactics were in use,” El Pasoans were jubilant (Vila 2000:2, 170–1; Cornelius 2001:662–3; Office of the Inspector General 1998:§ I.C). At least for the urban area of El Paso, undocumented immigration was now away from sight (see Office of the Inspector General 1998:§ I.C).

Political pressure to replicate the perceived success of Operation Blockade was intense (Cornelius 2001:663; Office of the Inspector General 1998:§ I.C). The result was Operation Gatekeeper, the first phase of the Southwest Border Strategy (U.S. General Accounting Office 1997:13). Operation Gatekeeper marked a shift

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<sup>1</sup> Operation Blockade was later renamed Operation Hold-the-Line after Mexican government officials protested (Cornelius 2001:663).

from “the traditional strategy of allowing aliens to enter, then apprehending them” to “a strategy that emphasized deterrence” (Office of the Inspector General 1998:§ I.C). Resources would be concentrated in popular crossing spots near urban areas. Government strategists “assumed that as the urban areas were controlled, the migrant traffic would shift to more remote areas where the Border Patrol would be able to more easily detect and apprehend migrants” and that “natural barriers including rivers, such as the Rio Grande in Texas, the mountains east of San Diego, and the desert in Arizona would act as deterrents to illegal entry” (U.S. General Accounting Office 2006:6–7).

Operation Gatekeeper was launched on October 1, 1994, and poured resources into deflecting traffic away from San Diego (Massey et al. 2002:106). Before Operation Gatekeeper, the San Diego Sector of the Border Patrol had 980 agents; by June 1994, the sector had 2,264 agents (Nevins 2000:104). Fencing extended from 19 miles to 49 miles (Nevins 2000:104). Triple fences now stretch along the 14 miles from the Pacific Ocean to the Otay Mountains (Hing 2001:129). By 1998, a region that formerly experienced nearly half of all apprehensions of undocumented migrants had 16 percent (Nevins 2000:104). The Chief Patrol Agent for the San Diego Border Patrol Sector testified to Congress about what he termed the success of the strategy:

We have shut down traditional illegal entry routes, forcing alien smugglers to lead illegal crossers to remote and rural regions. Illegal aliens and smugglers are now exposed to longer and more arduous entry routes and are subjecting themselves to greater risk of apprehension. In short, the Border Patrol has successfully raised the cost and difficulty of entering the United States illegally.

(Statement of William Veal 2001:11)

But raising the costs and difficulty of border-crossing diverted rather than deterred. As Border Patrol union president T. J. Bonner explained: “Imagine the border as a big, long, skinny balloon. When you squeeze in one part, it comes out in another. It doesn’t disappear” (McCombs 2006b:10). In just the brief period from 1996 to 1998, non-California crossings jumped from 30 percent to 58 percent (Massey et al. 2002:108). In sparsely populated areas that had no significant migration since the 1920s, cross-border traffic suddenly surged, appearing like an “invasion” in its suddenness, “albeit one manufactured by U.S. border policy” (Massey et al. 2002:108–9).

Migrants were crossing the scorching deserts and arid cold mountains that policy strategists thought would deter (U.S. General Accounting Office 2006:9). Deaths from extreme heat and cold climbed (U.S. General Accounting Office 2006:9, 15–16). Accord-

ing to government figures, the number of migrant deaths increased from less than 200 in 1994 to 472 deaths in 2005 alone (U.S. General Accounting Office 2006:16). In zones of diversion where migrants now flowed, residents not only experienced a wave of live bodies—death also descended. In Arizona border regions, winter, spring, and summer became a kind of death watch, with upward-ticking body counts from migrants dying of heat and thirst in the desert or exposure and freezing in the high mountains. In conversations, border-area residents recall coming across migrants with feet swollen into oozing black lumps and skin scorched blue-black by the sun.

In an attempt to abate deaths, the Border Patrol began its “Border Safety Initiative” in June 1998, adding rescue services to its policing power and roles (U.S. General Accounting Office 2006:9). The Border Patrol installed rescue beacons in desert regions considered especially dangerous and deployed special search and rescue teams, dubbed BORSTAR units, short for Border Patrol Search, Trauma, and Rescue (U.S. General Accounting Office 2006:9). Alongside the paradigm of prevention through deterrence, there was now a paradigm of death mitigation. Despite these efforts at death mitigation, however, high numbers of deaths in zones of diversion persisted (McCombs 2006a:A1).

As for the prevention-through-deterrence strategy, “the primary discernible effect” was to shift traffic of undocumented migrants (U.S. General Accounting Office 2001:1–2, 28; see also Carnegie Endowment for International Peace 2001:5). The policy of diversion also proved a business boon to smuggling groups (Andreas 2001:116). Migrants now need smugglers to navigate the border gauntlet (Cornelius 2001:666; Andreas 2001:116). According to a Border Patrol spokesman during a 2007 interview, the rates for a guide across the desert have increased from between \$250 and \$500 to more than \$3,000. As prices soar, narcotics-trafficking organizations are muscling into the now-lucrative people-smuggling trade (see also Cornelius 2001:668). And perversely, the policy disrupted a formerly cyclical process of migration, causing migrants to remain in the United States and send for their families rather than risk the costly and dangerous journey back and forth across the border (Massey et al. 2002:9). Even former Immigration and Naturalization Service Commissioner Doris Meissner, who oversaw the implementation of Operation Gatekeeper, observed, “The huge paradox now is that the unintended consequences far overshadow the positive” (Cooper 2003: n.p.).

But the features of prevention through deterrence—fortified fences and walls, tougher penalties and an influx of more Border Patrol agents—not only persist, they are also being formalized in legislation. Policy has proved to be law on the make. In 1996, the



Illegal Immigration Reform and Immigrant Responsibility Act levied tougher penalties for immigration-related offenses such as illegal entry; funded an additional 1,000 Border Patrol agents to increase the force to 10,000; and provided for two more layers of fencing in the San Diego area and military technology such as remote sensor units and aircraft (Illegal Immigration Reform and Immigrant Responsibility Act 1996:§§101(a), 102(b)(1), 211, 334). In 2005, the House of Representatives passed a controversial bill making illegal presence in the United States a felony crime instead of a civil violation and imposing mandatory minimum sentences for offenses involving illegal entry or re-entry after deportation (Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005:§§203(2)(C), 204(2)(A), 204(1)(B)). In 2006, Congress enacted the Secure Fence Act, which ordered the Secretary of Homeland Security to “take all actions” deemed “necessary and appropriate to achieve and maintain operational control over the entire border” using technology such as unmanned aerial vehicles, ground-based sensors, satellites, radar and at least two layers of reinforced fencing in priority regions (Secure Fence Act 2006:§§2–3). These barriers and penalties are all sophisticated ways of raising the costs of unauthorized entry, reflecting the continuing force of the paradigm of prevention through deterrence. The “misery strategy,” as the *New York Times* calls the paradigm of raising the costs of unauthorized entry, has not only survived—it is taking a more muscular form (“Editorial: The Misery Strategy,” *New York Times*, 9 Aug. 2007, p. A23).

This history of the present frames the paradox and query at the heart of this article: why does action persist despite knowledge of inefficacy and take even more muscular physical form?

### **Approach: Landmarks of the Social Life of the Law**

The place to study the paradox is the point at which the reality of diversion instead of deterrence becomes undeniable, and is forcefully experienced, in the zones of diversion where migrants flowed after Operation Gatekeeper. After Operation Gatekeeper, the proxy for migration volume, apprehensions, skyrocketed by 351 percent along the Arizona-Sonora border (Cornelius 2001:667). Migrant deaths in Arizona’s Tucson sector also soared, increasing at least threefold between 1998 and 2003, accounting for the majority of deaths along the entire southwestern border and 94 percent of the overall increase in migrant deaths (U.S. General Accounting Office 2006:17–18).

This research focuses on a sparsely populated region along the Arizona-Sonora border that experienced a surge in migrant flows after Operation Gatekeeper. People in the region have lived

through the policy defect, at the point at which the practice of diversion rather than deterrence is revealed.

The study is based on 53 interviews during seven weeks of fieldwork and additional informal conversations and interactions. Interviewees were identified by observing border activism-related activities, such as fence-building, border-watching “musters,” water tank servicing trips, and a meeting between a migrant rights activist and the mayor of a nearby Mexican town. I also talked to ranchers and other residents who lived close to the border, contacted people referred to me by others, and met people at community venues. Much of the fieldwork consisted of observation rather than participation, so as to remain open to studying people from different perspectives. Participation was limited to filling water tanks and checking water levels while riding along on water tank-refill trips. While interviewees relied upon for this article graciously gave their names and backgrounds along with their perspectives, I have decided to omit names for purposes of this article.

The study is oriented by a “methodological fetishism” that views the objects that people enact to critique and reify the law and policy as revelatory about the social life of law and policy (compare Appadurai 1986:5). I follow Žižek’s insight that external materiality can disclose “inherent antagonisms” that “the explicit formulation of ideology”—and people generally—cannot afford to acknowledge (Žižek 1997:3–4). The objects into which people pour their passions, unmet hopes, and conflicts may be an entryway into exploring these emotions and their force in sustaining action. The two objects that organize this study are water tanks and private border fences built on ranchland. As discussed in the next sections, these objects are ways for people to emote their fantasies for the state and the law and are miniature mirrors and metaphors for the policy and law of diversion and death-mitigation.

## **Fantasy and the Law**

Fantasy is the illusion that structures behavior despite knowledge, persisting past analysis, critique, and deconstruction (Žižek 1989:32–3; 74–5; Navaro-Yashin 2002:4). To take Žižek’s example, a person may know that Roman and German law are just two kinds of law but in practice still act as if the Law itself, the abstract entity, is realized in Roman and German law (Žižek 1989:32). Or, to draw on a classic Realist critique of law, people may know that the law is a package of inconsistencies accommodating a range of perspectives but they act as if behind the law, there is a realm of Law untarnished by the “sin” of “politics,” “ignorance,” or “human nature” where the operation of principles will harmoniously deliver all that

is desired, despite the plurality of desires (compare Arnold 1935: 8–10, 33–4). What is overlooked is not reality, but the illusion structuring reality (Žižek 1989:32–3).

Fantasy mediates between objects in reality and formal symbolic structure and proffers a “scheme” that makes certain objects in reality a repository for desire, filling in the empty spaces in the formal symbolic structure (Žižek 2006b:40). This insight can be extrapolated to the symbolic order of law. Law lies in the realm of the symbolic in Lacanian theory (Schroeder 2007:118, 126). There is a venerable literature that has long theorized law and policy as symbols or vehicles for symbolic assurances (e.g., Edelman 1964:37–41, 48–50; Arnold 1935:10, 17, 34–5). Arnold explained that what we reverently call Law is a way of thinking of human institutions in terms of ideals and a “great reservoir of emotionally important social symbols” that create a realm somewhere where the harmonious operation of principles makes “all our dreams of justice in an unjust world come true” (Arnold 1935:34–5). Arnold also observed our reluctance to acknowledge that no human institution can possibly follow any systemically consistent set of principles and our demand that institutions simultaneously symbolize the array of inconsistent notions to which people are emotionally responsive while appearing to be logically consistent (Arnold 1935:9–10). Fantasy’s function is to conceal the inconsistency of the symbolic order; it is “the frame through which we experience the world as consistent and meaningful” (Žižek 1989:123).

Drawing on Lacanian psychoanalytic theory, Žižek has analyzed how we use objects to believe or express emotions for us, regardless of our inner state of turmoil or even outright disbelief (Žižek 1989:34). For example, in a spin on Marx, Žižek noted the shift from feudalism, when humanly held beliefs and superstitions mediated relations, to an age where emancipated people turned rational utilitarians no longer believe but use commodities to “believe” and mediate relations in their place (Žižek 1989:33–34). Or to take an example from border law, the more the prevention-through-deterrence paradigm has become strained by proof of its inefficacy, the more object-oriented it has become: more layers of triple fencing, more sophisticated military equipment such as remote sensors and unmanned aircraft. Žižek draws on the notion in Lacanian psychoanalytic theory that belief is exterior rather than interior (1989:34). We use external things to “objectively” perform internal duties (Žižek 1989:34). For example, a Tibetan prayer wheel signifies objectively that one is praying regardless of what one believes internally (Žižek 1989:34–5).

To understand the role of fantasy in sustaining and regenerating border control law, we must move past the imaginary divide of “state-versus-society” and examine the practices of people in

what is often designated as “civil society,” where the projects of state are normalized and regenerated (compare Navaro-Yashin 2002:2–3, 134–6). When we look to the projects in the public domain, where state and people intertwine, we see, strikingly, at the Arizona-Sonora border, an inscription of belief in objects similar to the techniques of border control law. Studying the people who inscribe the objects with their beliefs and continue acting past disillusionment is revelatory about the forces behind the social life of the law.

### **The Metaphor of the Minutemen Fence**

On a sunny winter day on a border-front ranch, a volunteer for the Minutemen Fence Project sweats with the strain of tugging coils of barbed wire. The man had retired to the border-front region. After the surge in border crossers, he joined the Minutemen Civil Defense Corps, which drew local and international attention for private patrols of the border. Stringing fence-wire, the man says of the fence-building project:

I wasn't interested in it all. I thought it was a hot dog thing that got started because [the Minutemen leader] wanted to make a splash. And it was. Nothing happened for six to eight months since the two miles.

He refers to the two miles of fencing laid at a groundbreaking ceremony for the fence-building project. A fence is not a solution, he says, explaining:

It's more complicated than just that. I don't know if we need guest workers, but if we have them it should be legal workers, some wages, some taxes . . . . They're doing the jobs Americans won't do for \$3.50 an hour. No human being should have to do that.

He says he got involved with the project after seeing it stall because someone had to carry through on the promised fence-building.

Despite his clear-eyed view of the project, and his deconstruction of rhetoric, he performs the actions like one who believes. Belief follows action and becomes embedded in the growing physicality of the fence (compare Žižek 1989:34, 39). Later, as more meters of fencing take form, he says that he looked at the fence as “symbolic” but “it also helps.” He says of the fence:

To me, it symbolizes what Americans can do when they get their dander up and get going. It should be a symbol of shame . . . . A government should protect its citizens from a foreign power. I think we are being invaded. I think they [referring to government officials] have their heads in the sand.

Here, he talks much like the Minutemen leader, who has said the Minutemen fence is aimed at shaming the government into doing its job of “sealing the border” and has critiqued the government for not doing enough, for enacting show legislation rather than effective border control policy.

The Minutemen who I interviewed, both local-dwellers and visitors from afar, conceive of themselves as the purer conscience or will of the nation, unsullied by what they perceive as politicians pandering to special interests and corporations. They see themselves as champions of laws that are at once forceful and frail—laws strong enough to defend the nation and cure its ills, but only if they are enforced, something that the government, in their view, is failing to do. In short, the Minutemen are “more statist than the state” (compare Navaro-Yashin 2002:119).

I use the term *state* in the anthropological sense, signifying that “imagery of power” and “screen for political desire” increasingly intertwined with the notion of *nation* so that the terms “are often used interchangeably in scholarly discourse” (Arextaga 2003: 394–6; Sharma & Gupta 2006:7). The state *appears* to be a framework or apparatus set apart from society because of modern techniques of governing, such as the specification of functions and systems of surveillance and supervision, which creates the *effect* of a structure that stands apart (Mitchell 1991:93–5). Despite this manufactured effect, people and state are not in opposition, but in the same domain (Navaro-Yashin 2002:2).

Though the Minutemen deplore the government for its inefficiencies and projects that turn out to be staged shows rather than solutions, they also fervently desire it to descend at the border in all its imagined omniscient power. But when the government seems to respond to the calls for walls and military, the action is never seen as enough, never the awesome power demanded. For example, after the Minutemen announced in April 2006 that they would start building the Minutemen fence if the military was not sent to “secure” the border, the government deployed 6,000 members of the National Guard in May 2006 to stud the border with barriers such as railroad ties and concrete posts—but the Minutemen denounced the deployment as an insufficient “charade” and “big political stunt” and still started their own fence (Clark 2006).

What is striking is how the Minutemen’s fence-building has become a metaphor in miniature for the government action critiqued. About six months after the Minutemen announced the fence project as their latest government-shaming and goading project, Congress enacted the Secure Fence Act of 2006. The act was widely perceived by people across the political spectrum to be a piece of show to garner headlines in an election year and was critiqued by the Minutemen as such. The Minutemen pointed to the

insufficient money available to back the fence-building mandate and the fact that even if fully funded, the legislation provides for fencing of less than half — about 700 miles — of the nearly 2,000-mile-long U.S.-Mexico border, using primarily “virtual” fencing, cameras, sensors, and the like rather than “real” physical barriers.

Compare the disparity between ambition and reality of the Minutemen fence. As originally envisioned, the Minutemen fence was modeled after the Israeli fence in Gaza and the West Bank, with two layers of fencing interlaced with cameras and flanked by razor wire and trenches. The largest length of the Minutemen fence, however, is not the foreboding fantasy fence—it is a much more down-to-earth traditional livestock fence. Moreover, though the Minutemen dream of building several stretches of fences across private land along the border and ultimately linking them, Minutemen fences are actually rising on two ranches covering less than 12 miles of the 362-mile Arizona–Sonora border (McCombs 2006c: n.p.).

The first ranchers to accept the Minutemen’s offer of a free fence had initially contemplated building a fence to keep the Minutemen off their ranch. The ranchers explained that it was initially hard to understand why people from outside the community, who did not seem to have a personal stake in what was happening, were coming to patrol the border. From a lifetime of experience in the borderlands, the ranchers were used to the cyclical comings and goings of border crossers, usually men coming to work for a season and then returning home to families in Mexico. Before Operation Gatekeeper, the ranchers would see less than 50 border crossers a *year* coming individually or in twos and threes.

In the 1990s, however, the pattern dramatically shifted—large groups of people lead by guides would cut across their ranch instead of one or two men at a time. They would see around 100 or more people *a day* coming across their ranch. Not only migrants were cutting across their property: narcotics traffickers also shifted their patterns because of border fortification in prioritized areas and would do “run-throughs,” tearing across the ranch in vehicles, displaying an AK-47 to keep the ranchers quiescent. The ranchers usually worked alone and unarmed—for what good would a firearm do against an AK-47? With the increasing cross-border traffic came law enforcement chases, also tearing through the ranch, and killing cattle, the ranch’s lifeblood.

The ranchers warmed to the Minutemen after volunteer patrols in 2005 on their property seemed to reduce the traffic of people and vehicles, at least across their land. They came to accept the Minutemen as people who may not have a personal stake in the issue but nonetheless feel strongly. They agreed to a Minutemen fence—but not the looming razor wire and trench-flanked

Minuteman design. They allowed the Minutemen to erect tall shiny metallic poles to show what the fantasy fence might look like for the press, but their actual Minutemen fence was to be a traditional livestock fence.

While the Minutemen envisioned the Minutemen fence as keeping illegal aliens out, the ranchers' main concern was keeping out Mexican cattle, which have not been inoculated against the rancher's bane, hoof-and-mouth disease. When migrants cut holes into the international boundary fence between the ranch and their Mexican ranching neighbors, Mexican cattle would also cross. Whereas before the border-crosser surge, a Mexican cow wandering over the border was unusual, after the rerouting of traffic, the ranchers repatriated more than 450 head of wayward cattle.

The ranchers harbor no illusions about border walls. "A wall is ugly and it won't work," says one of the ranchers. He describes the reality he knows from a lifetime in Arizona:

A wall is just impossible to put on our southern border—any border. It will not work . . . . Only way it will work is if they go and put sanctions on the employers. The Israeli wall was backed by guns; that's why it worked in Israel, that's how it worked in Berlin. And I don't agree with shooting people.

He says of the Secure Fence Act of 2006: "That's a joke. It's not going to happen. That's a feel-good statement." He drives the rugged and rough terrain at the border behind his ranch, and explains how some areas simply cannot be walled because of deep ravines or steep ridges. Attempts to throw up barriers would trap wildlife and disrupt the natural environment. Border crossers will just climb right over the fence or go through it.

Both the mayor of a nearby small Mexican border town and a migrant shelter worker who has interviewed hundreds of migrants similarly say that walls can grow higher and uglier and migrants will still go over them, through them or around them, at increased risk to their lives. The shelter worker explains the migrants' perception of walls:

They think of it as money down the drain. The walls are not going to stop migrants. They think of it as a lot of politics. The suffering of people's families are [*sic*] always going to be more important than a wall. A lot of people see it as a very simplistic way of attempting to solve the problems of migration where a lot of the problems are a lot harder to solve.

The town in Mexico where the shelter is located swelled dramatically after it became a staging point for border-crossers venturing along Arizona desert routes; people waiting to make the trip at

nightfall gather at the town square, which is ringed by stalls selling supplies for the crossing.

A local Border Patrol spokesman concurred about the limited efficacy of walls, noting that as for the Minutemen's much-vaunted cut-proof fences, the Border Patrol installed a section of such fencing near one of the ports of entry. Within minutes, a surveillance video filmed a child successfully circumventing the fence.

What has drawn the most incredulity among the people I interviewed is not the livestock fence but the Israeli-style fence being erected on nine-tenths of a border-front mile on another ranch a few miles away. The rancher was also primarily concerned with protecting cows, but he allowed the Minutemen to build the Israeli-style barrier. The most oft-repeated comment about the Israeli-style fence from a diverse plethora of people, from supporters to critics, is that border crossers can simply walk around the fence. People can plainly see its limited efficacy—the fence flashes metallic in only a tiny stretch of a vast range along the border. A young resident living within view of the fence points out the plainly visible:

There are open spaces. It's not doing any good. I have seen people coming down the road. They have water on them. They thought California was right here.

Another incredulous commentator says:

It's such a joke. It's clear that it's nothing more than a shot opportunity so they can stand around it talking. You can stand at one end and see the other end of it.

What draws the commentary on the fence is its fantastic quality, the patent disparity between the rhetoric of “securing the border” and securing one's backyard—in short, the obviousness that a fence on a prioritized area is simply a diversion around which people can still flow.

The rancher knows that his fence is just a tiny stretch. But for him, the fence has had a deterrent effect because people walk around it. Several of his neighbors emphatically support the fence, telling of their traumatic experiences with the sudden spurt of border crossers, of the large groups of men pounding on their door in the dead of night demanding clothes and water, of home break-ins survived with young children huddled shaking and crying quietly in the house, of formerly compassionate feelings souring with the strain and stress. The intertwining of expressions of support with the accounts indicates that the fence may be viewed emotively, expressively.

Opponents of the fence also view it in expressive terms, describing it as broadcasting racism, unfriendliness, hostility. Though in person, the rancher is hospitable and friendly, and



appears enthusiastic about getting a fancy, free fence rather than motivated by animus, he is perceived as a bogeyman by some because of his fence, showing how the external becomes annexed to identity (compare Strathern 1979:249–51, 254).

Volunteers working on both stretches of the Minutemen fence can see, and many say, that the fence-building is far from “sealing the border,” the slogan-turned-goal around which they rally. At contemplative moments past recitations of pundits’ slogans, they show a sophisticated awareness that border control problems cannot be solved without addressing the root causes of migration—the lure of jobs, dire poverty and desperation, and entrenched political and economic problems.

Yet they pour their energies into building the fence. As one volunteer explains, “At least we’re doing something.”<sup>2</sup> He elaborates, while stringing barbed-wire for the simpler Minutemen fence:

This isn’t a people fence. Right now we can’t stop the illegals but we can stop the cows . . . . The fence symbolizes that citizens are doing something with this invasion, which is one, being the cows, and also slowing down the people invasion. It’s the most we can do with all the politics going on.

Another volunteer says that at least border crossers will not be cutting across this rancher’s backyard; they will go around the new fence. In this assessment, he has exactly captured how diversion is used as a proxy for deterrence. In this, the fence-building is a striking metaphor in miniature for the government actions so vehemently critiqued—recontextualizing and rendering strikingly apt what the Minutemen leader said to me about the group’s use of symbols such as flags and fences: “Symbols are symbols but what we are doing is real. But it is also in a way holding a mirror up to America and saying, ‘Look.’”

### Of Death and Water Tanks

Diversion was only part of the region’s traumatic experiences after Operation Gatekeeper. Border crossing deaths also intertwined with daily news and life, as eastern Arizona experienced nearly the entire surge in border crossing deaths in 1998 and 2005. Foucault famously wrote of the shift from the sovereign power to *take* life to the now-ascendant conception of the power to “*foster* life

<sup>2</sup> The Minutemen also oscillate between a pragmatic understanding of the fence’s limitations and a more muscular public rhetoric, seemingly incited by the object they are enacting and the media attention they draw. For example, a 2007 *National Geographic* feature that included a prominent photo of the Israeli-style Minutemen Fence reported that the Minutemen group “promises that if the government doesn’t seal the border, it will” (Bowden 2007:132).

or *disallow* it to the point of death” (Foucault [1978] 1990:138). When the deaths from diversion amassed until they became an accusation about the indistinction between *taking* life and *disallowing* life, people and the state were incited to action.<sup>3</sup> The rising deaths mobilized organs of government and members of the public around the issue of preserving life, reinforcing the modern association of power and government with fostering life—despite, or perhaps even because of, the apparently intimate linkage between government policies and death (compare Foucault [1978] 1990:138; 1991:100–2).

The Border Patrol began its “Border Safety Initiative” in June 1998, installing rescue beacons and offering assistance to migrants in the form of food, water, and medical care (U.S. General Accounting Office 2006:9). People in southeastern Arizona also mobilized. The larger region had a history of offering aid to undocumented migrants: In the early 1980s, the big city of the region, Tucson, was the birthplace of the “Sanctuary” movement, a network of generally religiously affiliated people who subverted Mexican immigration police and the U.S. Border Patrol to smuggle Central American refugees through Mexico and into the United States through a network of “safe houses” modeled after the Underground Railroad for slaves in the pre-Civil War era (Cunningham 2001:271; 1999:587). The Sanctuary movement arose out of concern over a U.S. refugee policy blinded to the danger and death that Central Americans faced because they were fleeing violence in countries with U.S.-backed anti-communist regimes (Cunningham 2001:271; 1999:586). Using undercover agents and informants wearing “body bugs,” U.S. law enforcement infiltrated and recorded Sanctuary-related meetings, resulting in the criminal indictment of 11 people and the conviction of eight people on various alien-smuggling charges (*Presbyterian Church (U.S.A.) v. United States* 1989:520; *United States v. Aguilar* 1989: 667–71, n. 1; Cunningham 1999:587; Coutin 1995:549).

In the early 1990s, Tucson’s Sanctuary Movement dwindled as political developments in Central America lead Sanctuary activists to believe that the tide of violence was turning (Cunningham 1999:594). Domestically, in 1990, a civil lawsuit by Guatemalan and

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<sup>3</sup> The accusation has been vocalized. For example, in February 1999, before the Inter-American Commission on Human Rights, human rights lawyers sued the United States in the name of Victor Nicholas Sanchez and 354 other migrants alleged to have perished because of Operation Gatekeeper (*Sanchez (“Operation Gatekeeper”) (United States)* 2005:¶¶ 1–2, 13–26). The petition contended that the United States violated Article 1 of the American Declaration of the Rights of Duties of Man, which declares that “[e]very human being has the right to life,” by knowingly funneling migrants toward death (*Sanchez (“Operation Gatekeeper”) (United States)* 2005:¶¶ 2, 13–14, 23–6). The commission dismissed the petition in 2005 for failure to exhaust domestic remedies (*Sanchez (“Operation Gatekeeper”) (United States)* 2005:¶¶ 73–5).

Salvadoran refugees resulted in a settlement in which the United States agreed to no longer let “foreign policy” considerations about U.S. support for a regime influence the assessment of asylum claims (*American Baptist Churches v. Thornburgh* 1991:799).

The surge in border deaths after Operation Gatekeeper, however, galvanized old activists and roused new community members, including many secular people shocked by the seemingly ceaseless deaths so close to their community. Numerous humanitarian organizations and projects were launched. Old Sanctuary members blended with new projects and groups. For example, the minister of Tucson’s Southside Presbyterian Church, who had publicly announced the Sanctuary movement’s aid to refugees—and was criminally convicted for his efforts—launched the group “No More Deaths” to give food, water, and medical aid to border crossers. The next year, two young No More Deaths volunteers found transporting three migrants were criminally indicted for alien-smuggling, though the volunteers argued they were taking the migrants to the hospital for treatment of severe dehydration and hunger. Criminal charges were later dismissed by a U.S. district judge, who ruled that the volunteers reasonably believed they had the approval of Border Patrol for their activities, based on a series of meetings between humanitarian workers and Border Patrol officials, who had appeared to clear the humanitarian aid protocol (*United States v. Strauss* 2006:1–5). The judge made clear, however, that the ruling was confined to the “unique circumstances” of the case and that in the future, volunteers “could be arrested and charged, at the least, with reckless disregard of the law” now that the Border Patrol had made clear that it did not sanction the transportation of undocumented migrants (*United States v. Strauss* 2006:7). A pall of uncertainty and worry hangs over activists, who in conversations sometimes seem torn by openness and passion for their work and suspicion conditioned by experience.

In this tense and uncertain domain, I focus on people erecting water tanks along migrant routes because of a remarkable aspect of their activities: they have succeeded in obtaining the support of government authorities and blurring the boundaries between government and private activity. The group, called Humane Borders, has obtained rights of entry and permits from a range of city, state, and federal officials to establish and maintain water tanks along migrant routes. Not only do they have permission—they even receive money from Pima County (Arizona) authorities to maintain water tanks on county land. Viewing the mounting deaths as a health emergency, Pima County officials authorized \$25,000 in funding for water tanks under their general authority to provide for public safety. An influential and long-serving local official recalls:

The first priority was sensitivity about human life. Humane Borders came in with a plan based on moralistic grounds—based on saving human life. Officials agreed on a moralistic level . . . . Pima County was the first county in the nation to offer financial assistance to offer water stations in the desert.

Elected officials had to face accusations of aiding and abetting illegal entry. But number one, it's about human life . . . . Humane Borders have permission from federal, state, and local governments to place water stations in the desert. The truth is that people are going to cross regardless of the walls and they need to do things to make things safer for people who travel through the corridors.

The water tanks also encapsulate a critique of the federal government's policy that pushes migrants to the most dangerous parts of the desert. The executive director for Humane Borders comes close to tears explaining, "We've designed a system that kills people." In defending against accusations by angered members of the public that they are illegally aiding and abetting migrants, however, Humane Borders workers point out that the Border Patrol are the biggest humanitarians of all, spending millions to mount migrant rescue operations. The executive director explains:

The Minutemen and the humanitarians are both supplementing the government. There are not enough agents for all the migrants. Both sides are engaged in the same thought—that it's too big for any government or entity.

From the perspective of the humanitarians, "the government cannot do enough to save lives."

It is all too apparent to Humane Borders workers that their efforts, like the Border Patrol's ameliorative efforts, are not abating the overall number of deaths. The number of border crossing deaths has not decreased appreciably from the alarming spike in 2000, when Humane Borders was founded. Since 2000, more than 1,000 bodies presumed to be perished migrants have been found (McCombs 2006a:A1). Humane Borders volunteers try to take heart in the finding that spatially, the distribution of migrant deaths appears nonrandomly distributed farther from water tanks along a corridor for crossings that they have lined with water tanks, suggesting that the water stations may have an effect (Chamblee et al. 2006:26–7). They also find comfort in the knowledge that on the Mexico side of the border, volunteers maintaining water stations report much migrant usage and encounters with migrants in need of water.

But volunteers also know that once across the border in the United States, migrants are moving away from some of the main corridors where water tanks have been established because of

border militarization. Migrant traffic and deaths are shifting to more remote areas on the Tohono O'odham Nation, where Humane Borders cannot establish water tanks because of the Tohono O'odham community's frustration over the problems with the surge of mass migration on their land and refusal to have anything perceived as potentially encouraging crossings.

Despite what they know, Humane Borders workers do what they can, driving more than 100 miles each week and sometimes biweekly or even daily, depending on the terms of their land-use permits, to check on water stations. Even where water tanks are full, showing no migrant usage, volunteers walk around the area, in search of elusive signs of migrant passage. Their actions manifest the hope of saving life, even when that hope has been strained by experience.

### Why Fantasy?

Fantasy, Žižek writes, “obfuscates the true horror of a situation” (Žižek 1997:6). What is the horror that drives people to persistently—passionately even—act despite what they know? For the Minutemen, the oft-stated horror is one of perceived invasion, of the porosity of the walls and doors of their nation-home that they desire sealed so that they can achieve security. For the Humane Borders activists, the horror is death. Humane Borders workers collect death data from morgues and from government agencies at various levels, trying to piece together names, ages, background, cause of death, even the body's posture at death, like an awful epitaph, from the ravaged and bloated bodies often found unidentifiable and anonymous in the desert. In the racialized faces and names of the migrant dead, there is a silent accusation that race plays a regulating role in the economy of biopower and the distribution of death (compare Mbembe 2003:17, citing Foucault 1997:214, 228; compare Rosas 2006:339).

But there is also another layer of horror, an existential one. Fantasy conceals an antagonistic split, a traumatic kernel in the symbolic order (Žižek 1989:123, 133). In the context of the symbolic order of border law and policy, the traumatic element is that the *good life*—with its bounteous material, physical, psychological, and political joys, its many rights and privileges, its tidiness and orderliness, its status as a thing of desire and aspiration—is founded on the exclusion of a multitude consigned to something less, a basic life without what makes the good life sweet.

An aspect of the horror is the radical contingency as to who is born to the good life and who is excluded. The human faces behind the arbitrariness are haunting and frequently encountered or

recollected by border-area residents: a man who in childhood was deported while studying at a U.S. high school when it was discovered that he was not authorized to be in the United States, now living in a drug-violence-beset Mexican border town and fearful for the future of his son.

Encounters occur across the political spectrum and divergences in views. A local resident—who became a volunteer coordinator for Minutemen fence-building—recollects:

We saw two by the highway. And one had his tennis shoe totally ripped off on the bottom and he'd been walking in the desert and he was bloody and crippled. They were laying by the road. All we had at the time was Starbucks, what we were drinking was a Starbucks, and we gave them our Starbucks.

Many writers have remarked on how the law is used to naturalize and obscure the colossal consequences of the arbitrariness. Writers have analyzed how the legal term *alien* supplants the individual human behind the legal prohibition with an ominous abstraction that signifies unbelonging (see Ngai 2003:77; Rodríguez 1997: 230–2). The words *alien* or *illegal* cover over the arbitrariness of a person's national identity even while generating the consequences of the identity (compare De Genova 2002:427; Navaro-Yashin 2003:86). The very criminalization of undocumented migration has been called a “tactic” to legitimize the plight of border crossers (Meneses 2003:268–9).

Law is a powerful device for the repression of unhappy realization because law has the power of circularity—law is obeyed tautologically because it is law: “law is law” (Žižek 1989:37; compare Hegel [1807] 1967:400, 445, 453). As the theorists of legal autopoiesis observe, the legal system reproduces normativity in a self-referential process (Nerhot 1988:313), and it reproduces itself and selects which information counts through normative self-reference (Luhmann 1985:114). Law proffers a symbolic order that helps obscure the founding of the good life on the exclusion of basic life and the radical contingency of who is born to the benefits and who is excluded.

### **Good Life, Bare Life, Basic Life**

A woman looking at the line of lights, barriers, and surveillance equipment near the port of entry tells me wistfully that she does not believe in borders, that she wishes people could just move freely. We would have to make adjustments to our ways of life, accept more crowding, more open poverty, a generally lower standard of life, she says, but we can learn to deal with it. This trade-off is part of what galvanizes supporters of tough border controls.

The fence-building volunteer coordinator's comments capture sentiments expressed by several others:

I do care about them, I do care, and especially the underdogs. I do care about them. But it's easy—I don't know how to put it—it's easy to be liberal. Very easy. Because all you have to do is go to that place in your stomach . . . . But we need to find real solutions so people don't suffer. My attitude is we need to get after Mexico to take care of their people. I really believe that. I think they're ethnic cleansing, I think there are some really horrific things that go on with the poverty down there and I know why these people want to come here. On the other hand, we can't solve the world's problems. We're in debt in this country.

Later she elaborates more on what troubles her: She has lived a good life as a middle-class American, as the first of the baby boomers, and worries whether her children and grandchildren will have the same quality of life:

I want my grandchildren to grow up and have a country to live in. I had that privilege. I've had a very nice life as a middle-class American. My bills are paid, I take in a movie, go to dinner once in a while. I don't have a lot of needs. I want my grandchildren, my children, to have the same opportunities. I already see it with my children, not having the same opportunities that I had after World War II. As I grew up, we had nothing but opportunities. We could do anything we wanted, we could go to any college we wanted. We could get scholarships, we didn't have to get Pell grants. So I had all these opportunities. And my children have to fight harder for these opportunities.

In myriad mundane ways, she sees how things have changed, like when she could not register for college classes when she decided to go back to school because the classes were too full. "As I see my grandchildren growing up, I see the opportunities going away," she says.

In an array of personal ways, residents near eastern Arizona, who formerly did not view themselves as "political," describe their perceptions of the Third World encroaching on their good life. A mining history buff who retired to a graceful house at the base of the Huachuca Mountains talks of how he is now fearful to tramp in the mountains, where he used to explore for artifacts, because of the large groups led by smugglers. He talks of finding the detritus of mass human crossing: plastic bags, diapers, bottles, cans, backpacks. Another local resident describes the shift in her views after the surge in migration brought large groups of border crossers to her yard and door:

A lot of people are coming for work but a lot of people demand food, demand money. I have had people ask for cigarettes, want

to use the phone. A lot of the time it's whole bunches of young people and one coyote [a border-crossing guide]. Now it's a lot of women and children coming; some groups are mixed with women and children . . . . I don't think that anybody that doesn't live on the border knows what we are going through. It's morning, day, and night, with no days off . . . . When I was growing up, it was not as much of an issue. They were not coming in the hundreds and thousands.

In the lush, more densely populated regions of San Diego, Rouse recorded more starkly the tension arising at the juncture between the First World's vision of the good life and the Third World. He described how million-dollar mansions are close to the "squalid, plywood-and-cardboard hooches" and "ramshackle encampments" of migrants and how "[e]xtreme poverty, homelessness, underground economies, new forms of domestic service, and sweatshops exist side by side with yuppie affluence, futuristic office blocks, and all the other accoutrements of high-tech postindustrialism" (Rouse 1991:17). Scholars of the U.S.–Mexico borderland frequently write of how nowhere else in the world is the gradient between rich nation abutting poor nation as sharp as that between the United States and Mexico (e.g., Martínez 1994:27; Alvarez Jr. 1995:451). Rouse explained that migrants are associated with the increasing prevalence of Third World ways of life "in a country often treated as the apogee of the First World" (Rouse 1991:16). Rouse quoted a suburban resident: "It's like we're living in the Third World here. It doesn't seem to me that this is part of the American Dream" (Rouse 1991:17).

Aristotle famously distinguished between the "simple fact of living" and the model community's goal of fostering "politically qualified life"—"born with regard to life but existing essentially with regard to the good life" (Agamben 1998:2). Agamben made two intriguing claims: (1) "In Western politics, bare life has the peculiar privilege of being that whose exclusion founds the city of men," and (2) "The fundamental categorical pair of Western politics is not that of friend/enemy but that of bare life/political existence, *zoē/bios*, exclusion/inclusion" (Agamben 1998:7–8; emphasis in original). The fears and experiences of the borderlands First Worlders, with their instinctive sense that their "good life" exists in separation from bare life, have a sharp resonance with these distinctions.

"Bare life" is the *zoē* of the Greeks, the basic biological fact of living common to all living beings (Agamben 1998:1, 4). Bare life is also "the bearer of the link between violence and law," the violence that installs law, and the violence that preserves law, for Walter Benjamin (Agamben 1998:63–5). Contra Foucault, Agamben conceived of power's concern with bare life not as a marker of



modernity, but as an ancient foundational phenomenon in Western politics (Agamben 1998:9). Agamben excavated an obscure figure of Roman law, *homo sacer*, as the originary figure of life in the sovereign ban, a bare life outside human jurisdiction that may be killed without committing homicide and yet also a sacred life outside of divine law that may not be sacrificed (Agamben 1998:82–3). *Homo sacer* “preserves the memory of the originary exclusion through which the political dimension was first constituted” (Agamben 1998:83).

The instinctual understanding of everyday people is a stark permutation of the philosopher’s elegant metaphysical point: The foundation for the good life of the *polis* is exclusion of life relegated to being basic, perhaps even bare. I use the term *basic life* to refer to an intermediate gradation between good life and bare life—basic life is denuded of the political and social entitlements that make the good life sweet, including the right of inclusion, but retains rights and protections that preserve a core of biological life, such as the right not to be killed or beaten.

Some commentators have called the U.S.–Mexico borderlands a state of exception, (Rosas 2006:339; Michaelson 2005:89), but the borderlands are not a state of exception in Agamben’s specific sense of a place where law is *suspended* (compare Agamben 1998:166–74). Agamben made clear that the state of exception “is not a special kind of law (like the law of war)”; rather it is “a suspension of the juridical order itself” (Agamben 2005:4). The law is not suspended at the borderlands and indeed intervenes against the reducing of the undocumented migrant to the analogue of *homo sacer*. One who treats the migrant as *homo sacer* is subject to civil and criminal sanctions, and private groups such as the Minutemen are acutely aware of this, talking heatedly about penalties. Migrants are thus not exactly bare life, denuded of all rights and protections, but theirs is a starkly *basic* life, denuded of the political and social entitlements that make the good life sweet.

Agamben localized the problematic of the politics of life to Western metaphysics and politics, but is it really so cabined? Post-revolutionary, non-Western, nondemocratic spaces have also been the site of tight and intimate linkages between bare life, good life, and exclusion. In post-revolutionary Communist China, for example, officials quickly embarked on a strategy of migration control through the *hukou* system, which locked masses of people in the countryside, unable to access the relatively good life in the cities, where people had security and a wide range of social services—but only for a limited number (Cheng & Selden 1994:644, 650). China’s cities looked as if they were free of poverty, without squatters or beggars, but this was founded on the discarding of “surplus” people to the countryside to live bare lives, in misery and

famine and without social services (Cheng & Selden 1994:644, 650). In that post-revolutionary, non-Western space, the good life of the city was founded on the exclusion of bare life. The cruel logic about the foundation of the good life is certainly not limited to the West or democracies. The post-revolutionaries, despite all their promises and dreams, operated under the same cruel logic.

### Fetishes as Coping

People yearn for a cured world. Interviewees at the border speak passionately about enforcing the Law or fixing the Law, in a way resonant with Arnold's long-ago explanation that the Law is a way of conceiving of human institutions in terms of ideals and the mode for developing a beautiful dream of what could be, if "sin" in whatever form conceived—"politics" or "ignorance" or the cruelties of "human nature"—were expiated (see Arnold 1935:8, 33).

People may yearn and "demand that government institutions symbolize a beautiful dream" (see Arnold 1935:33), but they are also aware of the painful distance between desire and reality. The tandem moves of law and the public toward enacting objects studied here highlight a mechanism for coping: constructing fetishes of visions unrealized and fetishes that diffuse the impact of the traumatic knowledge that good life is founded on exclusion of basic life.

*Fetish* is a word that has survived its deconstruction, persisting productively despite critiques of its discursive promiscuousness and dubious pedigree (compare, e.g., Pietz 1985:5, 8, 10; 1987:24; 1988:105–6; MacGaffey 1994:124 with Taussig 1992:111–40; 1980:4–12). As Pietz analyzed in depth, *fetish* has come to have different theoretical and intellectual incarnations. The concept of fetish used here is that offered by Žižek, drawing on Lacanian psychoanalytic theory, signifying "a symptom *à l'envers*"—while a symptom is the point at which repressed truth erupts from false appearance, "a fetish is the embodiment of the lie which enables us to sustain the unbearable truth" (Žižek 2006a:253).<sup>4</sup> To take Žižek's example, a man knows his wife is dead but clings to some feature that disavows her death (Žižek 2006a:253). Fetishes help us "cope with harsh reality" by diffusing reality's full impact (Žižek 2006a:253–4). The person clinging to a fetish is fully aware of a traumatic truth, can discuss it rationally, but clings to the fetish as the embodiment of a disavowal of the traumatic reality (Žižek 2006a:253).

We have seen some of these objects constructed at the border, mimicking some of the emotionally salient symbols of law and

<sup>4</sup> As embodiments of a false appearance, fetishes share the metaphoric character of symptoms. Compare Redding (1997:1129), defining symptom as metaphor, with Caudill 1997:61, analyzing metaphoric features of law.

policy in unconscious or semi-conscious parody. Law incarnates itself in the Secure Fence Act of 2006 and other barrier-building legislation; people enact their own private border fences. Policy turns to putting the Border Patrol in a rescue role, bearing rescue beacons, water, and food; people dispense their own aid and set up high flags as beacons for the water tanks they erect.

The water tanks and security fences are both embodiments and disavowals. The water tanks and fences embody in metaphor the promises of the paradigms of prevention through deterrence and death mitigation. Though they are enacted as critiques of the unfulfilled promises of law, they also portray a disavowal of the knowledge of inefficacy: people still earnestly pour their efforts into these mirrors in miniature of the strategies of law and policy.

The objects diffuse the impact of the traumatic knowledge that good life is undergirded by the exclusion and even death of basic life. The water tanks at once dramatize and disavow the knowledge that death and exclusion undergird the order of the good life. They represent the need for rescue and the hope of rescue. As for the most salient fetish of border control law—walls and fences—there is a striking nuance to note: they are emblems of ownership. The fence at once embodies the exclusion but also disavows the traumatic contingency of exclusion by occluding and naturalizing it in the emblem of property, one of law's most powerful means for justifying the vagaries in the distribution of good fortune.

The racialized nature of exclusion is also obscured in the form of a fence. Minutemen volunteers often say that their opposition to illegal immigration is not about race and argue that they are unfairly painted as racists. Their opposition, they explain, is founded on law and against those who trespass and transgress against the law and territorial boundaries. The fence underscores the image of trespass and proffers an emblem of an ostensibly facially racially neutral defense of law.

The ultimate fetish in the borderlands is the figure of the “illegal” who becomes the sacrificial migrant because of the sovereign ban.<sup>5</sup> The “illegal” or sacrificial migrant—which characterization you choose depends on your perspective—is the form in which the underlying antagonism between good life and basic life erupts to the social surface as symptom. The “illegal” or sacrificial migrant is literally banned from the symbolic order of law's promise of benefits, security and succor, rights and entitlements. People variously conceive of the “illegal” as trespasser, potential terrorist,

<sup>5</sup> Compare Žižek's argument that the vilified construct of the “Jew” under Facism was a fetish that simultaneously denied and embodied the structural impossibility of a society as homogenous closed totality (Žižek 1989:127). What was excluded from the vision of society came back in the form of a paranoid construct, a social symptom in the sense of the point where the immanent social antagonism erupts to the surface (Žižek 1989:127–8).

violent criminal, even bearer of disease to be repelled—vesting in the construct of the “illegal” a warrant for exclusion and diffusing the traumatic arbitrariness of exclusion. Other people conceive of the sacrificial migrant as someone to be rescued by legal reform, activism, direct and indirect aid—dealing with the traumatic knowledge that the current mode of exclusion is linked with death by positing the possibility of rescue.

## **Conclusion**

Between utility and futility there is a zone of yearning for the fulfillment of law’s promise where fact and affect interact and grow indistinct, and symbols become particularly salient. This article has examined how the experience of living the unfulfilled promises of law and policy’s stratagems couched in terms of utility—prevention through deterrence at the border, coupled with intervention efforts aimed at averting death—has fueled fierce attachment to symbols and objects embodying unrealized promises.

Fantasy, a symptom that survives past the point of discrediting, sustains the material embodiments of the paradigms of prevention through deterrence and death mitigation. People turn to objects to believe for them; belief is externally manifest and broadcast regardless of inner states of knowledge and turmoil. The objects also serve another role, as fetishes in the sense of objects that embody a false appearance to help in coping with, and diffusing, the impact of the traumatic knowledge that the good life is undergirded by the exclusion of basic life.

Why does attachment persist beyond knowledge? Žižek, drawing on Lacan, posited that the symptom synthesized with fantasy becomes the support of our being, a way to “avoid madness” and “choose something” instead of nothing (Žižek 1989:75). As the fence-building volunteer says, “At least we’re doing something.” People bind themselves to a symbolic formation that “assures a minimum of consistency to [their] being-in-the-world” (Žižek 1989:75). People need that dream that Arnold described, the imagination of the possibility of a realm where the operation of principles freed of “sin” in whatever form can deliver the manifold promises demanded from law, policy, government, and society.

Objects do not just sustain fantasy—they can also critique with a sharper clarity and truth because they materialize understandings too bleak to be voiced aloud (see Žižek 1997:3). Beyond the critiques that the fence-builders and water tank supporters voice, the objects they enact offer a profound critique of the limits of border law and policy as currently conceived in satisfying the manifold desires of protecting life, security, and humanity. The

fetishes at the border crystallize and dramatize the structural impossibility of a law and policy that at once promise to salvage basic life and shut it out, relegating it to remote reaches. This unconscious or semi-conscious commentary may be the most profound critique of all—and facing it a form of therapy.<sup>6</sup>

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<sup>6</sup> Compare with Žižek (1989:133), explaining the Lacanian perspective that the final moment of the psychoanalytic cure is not in going through symbolic interpretation, but in experiencing “the fact that the fantasy-object, by its fascinating presence, is merely filling out a lack, a void in the Other” (1989:133).

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