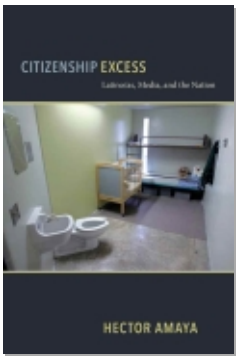
3. Hutto: Staging Transnational Justice Claims in the Time of Coloniality



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Hutto: Staging Transnational Justice Claims in the Time of Coloniality

> The genesis of a system of works or practices generated by the same *habitus* . . . cannot be described either as the autonomous development of a unique and always self-identical essence, or as a continuous creation of novelty, because it arises from the necessary yet unpredictable confrontation between the *habitus* and an event that can exercise a pertinent incitement on the *habitus* only if the latter snatches it from the contingency of the accidental and constitutes it as a problem by applying to it the very principles of its solution; and also because the *habitus*, like every "art of inventing," is what makes it possible to produce an infinite number of practices that are relatively unpredictable . . . but also limited in their diversity.
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> —Pierre Bourdieu, *The Logic of Practice* (1990, 55)

In the aftermath of the pro-immigration reform rallies of 2006, we witnessed an array of measures taken by city, state, and federal officials aimed at curtailing the immigration problem. The Sensenbrenner Act, which further criminalized behavior associated with undocumented labor, remained in the Republican agenda, and versions of it were voted on until late in 2006, when it was finally defeated. The *habitus*, which Bourdieu defines as "systems of durable, transposable dispositions" that "function as structuring structures," was "inventing" new political ways of reconstituting difference (1990, 53). Other successful legal provisions invented by the *habitus* allowed for workplace raids, the building of fences along the U.S.-Mexico border, and the indefinite detention of undocumented immigrants in centers that have been locations for legal exceptions and that exist beyond the reach of citizen or human rights. So, if up to this point I have been critical of law and the nation-state as the sole arbiter of justice, that does not mean that I wish to be in the absence of law, because to be in

this absence is to be at risk of losing our very humanity, which is a type of juridical subjectivity much more tenuous than citizenship. *Homo nationalis*, the playful term used by Etienne Balibar (1991), trumps *homo sapiens*.

This chapter reflects on one of those exceptions to justice. I use the term *exception* inspired by the work of Giorgio Agamben. To him, some features of contemporary governmental responses to crisis are quite troublesome because they border on the tyrannical. In particular, Agamben is interested in how a state of emergency allows for the displacement of legal precedent and the centering of exceptionalist law aimed at addressing the emergency with little or no regard for a nation-state's juridical tradition. "In every case, the state of exception marks a threshold at which logic and praxis blur with each other and a pure violence without logos claims to realize an enunciation without any real reference" (2005, 40). Agamben exaggerates to make a point. The *habitus* in the field of politics is engaged in the "art of inventing," as Bourdieu writes it, and of reacting to "pertinent incitement[s]" with the furnishing of creative practices that accommodate and contain the exception within the limited diversity of political traditions. Referring to discursive behaviors carried out by President George W. Bush to justify the indefinite detention of "enemy combatants," Agamben notes that the administration practically created a new legal entity, an unclassifiable being not protected by national or international laws but, I would note, respectful of the rules of racialization and in the tradition of coloniality (Hong 2006, 41; Lowe 1996). According to Anibal Quijano (2000), this tradition constitutes modern liberal governmentality and the knowledge practices that give it rational consistency. In the aftermath of 9/11, enemy combatants were not the only people treated in novel and tyrannical ways by the U.S. government. Examples of legal vacuums obedient of old racializations and coloniality were among us, and in the United States, the majority of these examples were created by the complex interrelations of immigration law, international law, and hegemonic media systems.

Starting in 2006, children, including toddlers, have been incarcerated in the T. Don Hutto Correctional Center in Taylor, Texas. Not since the detention of Japanese Americans during World War II has the U.S. government jailed children en masse, without criminal charges against them.[1] Reminiscent of World War II, these shameful policies and quasi-military actions against a civilian population came at a time of perceived state emergency, a post-9/11 of paranoid securitization during which it has been culturally acceptable to use mainstream media to express the most

xenophobic views about immigrants, in particular migrants from Latin America. To the credit of American society and as a testament to the potential ethical benefits of state liberalism, much of the legal community has opposed the federal government's use of immigration law and the clear overriding of human rights law in the case of Hutto and the many other detention centers that have sprouted up around the nation to detain undocumented immigrants. Regarding Hutto, the ACLU and the University of Texas School of Law sued the government in 2007 and won a settlement on August 27 of the same year that included the ability to monitor the facilities. Just as important, the results of the lawsuit mandated the release of twenty-six of the children. But others remained. The practice itself was not ruled illegal. The legal and political communities that controlled the state and federal congresses remained complicit. On August 11, 2009, the new executive branch under President Barack Obama forced the Department of Homeland Security (DHS), the government agency now in charge of safeguarding immigration law, to change detention practices. The DHS has since promised to close Hutto, but this has not yet happened at the time of this writing. Even in the wake of these positive developments, it is worth asking questions of justice, law, and media. Let us not forget that as President Obama ends the practice of jailing children, hundreds of thousands of undocumented immigrants will remain in detention centers without recourse to some of the most basic legal rights. Outside the purview of citizen law, outside the reach of human rights jurisdiction, they are desubjectified, living in spaces of exception.

This chapter analyzes the case of Hutto in terms of the historical, legal, and media traditions that constituted it. It argues that the root of this state of exception is the heavily ideological link between justice and citizenship, a link unlikely to be challenged by the hegemonic public sphere and the media field. A second argument is that successful analyses of media and citizenship and of media and Latinas/os cannot be performed without a framework that, like coloniality, understands the nation form as furthering the traditions of colonialism that gave it legal and economic power. The nation and its media are political organizations and in times of crises will revert to staunch polis-centrism. A state of exception is partly the result of mediated discourse, and its existence is dependent on the ability of the nation to narrowly define security, prosperity, and danger. Media systems join political and legal cultures to reproduce the *habitus* of the field of politics by participation in the production of some level of consensus and legitimization for states of exception, opening certain venues

for public discussion and closing others. As German Nazis demonstrated in the 1930s and 1940s, Spanish Nationalists proved from the 1930s to the 1970s, and liberal Americans showed in the 1940s, the nation and its media will not only partner to fight beastly war enemies; the nation and its media will use sheepish fear to criminalize innocent populations, be they Jews, Gypsies, Basques, or Japanese Americans.

The following sections function as a criticism of the nation form, the universalism of rights, and lastly, the media field. First, I examine the Hutto case in its historical and political contexts. I also include an overview of the news coverage of Hutto in relationship to the practice of journalism. Noticing the endemic weakness with which journalism engages on behalf of the rights of transnational populations, I follow by investigating the universalism of rights talk. I argue that the idea of universal rights rhetorically centers citizenship in the discourses of justice. Justice can be differently conceived, and Michael Walzer's (1983) approaches to justice are suited for a critical understanding of the link between citizenship and justice. For Walzer, justice depends on what he calls "complex equality"; however, this complex equality cannot be reached if a dominant good (e.g., citizenship, wealth) towers over different social fields. That is what happens with citizenship dominating the media field, a disciplinary effect that I illustrate with alternative media practices around Hutto. Each section locates administrative and legal practices within traditions initiated at times when colonial logic was central to imagining the social.

Hutto

The legal and political moves that allow for anti-human-rights policies to become legal and somehow normal must be understood as part of the process of securitization that followed the 9/11 attacks. Continuing the metaphor of the pastoral that Foucault so evocatively uses to illustrate liberalism, the sheep were in danger, and the beasts had to be pushed back (see chapter 2). President Bush's executive branch, Congress, and loud media voices succeeded in linking the immigration problem to terrorism, justifying the disbanding of the Immigration and Naturalization Services (INS) and placing the U.S. Citizenship and Immigration Services (USCIS) under the jurisdiction and extraordinary powers of the DHS. So it was in the spirit of security and a benevolent government (benevolence toward the citizen, not benevolence per se) that the detention centers were created. In following our legal and traditional political processes (though not

without heavy dissention), President Bush succeeded in gaining enough legitimization for the new laws and institutions (USCIS; Hutto). He connected with the juridical subjectivities of Americans who accepted the new state of securitization that immigrants were placed in and who implicitly consented to the state's unusual exercise of anti-human-rights powers. *Unsurprisingly, benevolence to some became tyranny to others*. This pastoral paradox is the heart of liberalism that Foucault so astutely identifies and the reason governmentality must remain one of the theoretical instruments used to dissect the nation.

Administering the detention of undocumented immigrant families has traditionally been a difficult task for the U.S. government. The current system, in which Hutto has played a strategic role, is a type of procedural escalation that began in the aftermath of 9/11. Prior to 2001, the INS would release, pending hearing, the great majority of families detained without documentation. Beginning in 2001, already under the aegis of securitization, the INS began using the Berks Facility in Leesport, Pennsylvania, to detain undocumented immigrant families. A former nursing home, the Berks Facility provided a relatively adequate setting for the custody of families who tended to stay only short periods of time, often less than sixty days. In 2002, the Homeland Security Act broke the INS into three discrete agencies, and the care and custody of unaccompanied alien children (UAC) was entrusted to the director of the Department of Health and Human Services' Office of Refugee Resettlement (ORR), the organization also in charge of assisting refugees, asylees, and victims of human trafficking. The Homeland Security Act also created the DHS, which became the administrative and policy agency overseeing immigration. In 2003, the DHS created Immigration and Customs Enforcement (ICE), an organization substituting the already problematic INS, and intensified the central goal of securitization to the mission of administering immigration. Also in 2003, the DHS released ICE's first strategic long-term plan for illegal immigration. Stupidly called *Endgame*, this national "Final Solution" to illegal migration amped up the role of expedited removal and downplayed the complex administration of undocumented immigrants and refugees vis-à-vis U.S. immigration legal traditions and international law (Bureau of Immigration and Customs Enforcement 2003). Mindful of the state of exception authorized by the *Endgame*, in 2004, ICE began the practice of separating arrested families, "holding the parents in adult facilities and their children at ORR facilities pending removal" (Nugent 2006, 230). Responding to Congress's investigation in 2005, the DHS claimed that the

separation of children from parents was necessary because the agency had found undocumented migrants who, aware that the DHS tended to release families, would rent children in order to cross the border with them. In a bizarre turn of logic, the DHS decided that all detained families were somehow guilty of this practice and treated the children as if they were unaccompanied minors, making them proper subjects of ORR administration (Women's Commission 2007, 5–6).[2] This practice, which trampled over U.S. law pertaining to the welfare of children and over international human rights law (see Article 5 of the United Nations' *Convention on the Rights of the Child*), came under Congress's scrutiny in 2005, when new policies on the matter were levied:

> The Committee is concerned about reports that children apprehended by DHS, even as young as nursing infants, are being separated from their parents and placed in shelters operated by the Office of Refugee Resettlement (ORR) while their parents are in separate adult facilities. Children who are apprehended by DHS while in the company of their parents are not in fact "unaccompanied"; and if their welfare is not at issue, they should not be placed in ORR custody. The Committee expects DHS to release families or use alternatives to detention such as the Intensive Supervised Appearance Program whenever possible. When detention of family units is necessary, the Committee directs DHS to use appropriate detention space to house them together.[3]

It is within this context of detaining whole "family units" that the DHS and ICE responded to the need for creating new detention facilities, besides Berks, that could accommodate families with children.

In January 2006, ICE reached an agreement with Corrections Corporations of America (CCA) to house up to six hundred undocumented immigrants, including children, in the underused T. Don Hutto Corrections Facility. Hutto became only the second such facility in the nation, after Berks. This contract was just another step in the ongoing process of privatizing the institutional arrangements required to deal with undocumented immigrants. CCA has detention centers in nineteen other states including California, New Mexico, and Colorado (Corrections Corporation of America 2007). The agreement with ICE paralleled an agreement with Williamson County, which was to receive one dollar per day per inmate. This could mean up to $200,000 of yearly revenue for the county if Hutto was at full capacity (Humphrey 2006). This money would become

part of the general revenues, which also benefited when CCA hired locals to administer and maintain the prison.

Prior to January 2006, Hutto was a medium-security prison, and its infrastructure showed it. After the agreement with ICE, CCA made minimal changes to the facility, including adding extra padding to beds and installing playpens and cribs where necessary. CCA also committed to providing space appropriate for instruction and personnel capable of teaching the "inmates," the term that these procedural realities forced on children (Humphrey 2006). Cheaply done, the changes to the infrastructure did not change the physical sense that this was a prison, something that would later be harshly criticized by activists and human rights advocates. Regardless of the commonality of the term "illegal" (see chapter 2), being in the United States without documents is not a criminal offense. It is an administrative offense that merits different standards of detention, according to U.S. legal traditions and to international law. But lowering these standards was expedient at the time, particularly as CCA was overseen by a government agency, ICE, set on reducing undocumented immigration to a security issue. The economic benefits to CCA have been substantial and immediate, with its net income jumping from $20.8 million in the third quarter of 2005 to $26.1 million in 2006, an increase of more than 25 percent over the course of a year, due greatly to CCA's ability to secure contracts with ICE (Corrections Corporation of America 2007; Talbot 2008). According to Simona Colón, ICE's officer in Hutto, from January 2006 to February 2007, roughly two thousand people were detained in the 512-bed facility, more than half of them children (Castillo 2007b). To make matters worse, roughly 40 percent of those detained in Hutto were asylum seekers who had already passed the first screening test that would qualify them as deserving of asylum status.

Discourse, Media, and Hutto

To justify Hutto, the DHS and ICE have used a discursive stage whereby their legal and procedural behaviors seem reasonable performances of civitas. In this stage, social actors such as Michael Chertoff, then secretary of the DHS; John Torres, ICE's director at the time; and David Aguilar, chief of the Border Patrol, speak of how their actions are in strict obedience of President Bush (disciplinarity) and in response to the nation's need for heightened security (pastoralism). In addition to using disciplinary and pastoral language, their speeches are invested in a sort of

coloniality of political discourse, evidenced in the systematic use of dehumanizing language, including the widely mediated animalistic metaphor of "catch-and-release." In an extensively distributed report on DHS practices, Chertoff used this metaphor to refer to the practice of detaining undocumented immigrants and immediately releasing them on bond. In this report, Chertoff explains that Hutto was part of the plan by the DHS to stop "catch-and-release" and part of the implementation of the new policy of "catch-and-remove." He continues by explaining that non-Mexicans could not be "removed" immediately, nor could they be held in custody (Remarks by Secretary of Homeland Security Michael Chertoff 2006). To "remove" these non-Mexicans, the DHS was increasing the number of detention facilities that could allow ICE to detain noncitizens until legal proceedings were carried out and logistic processes were put in place for their deportation. Hutto was one of these facilities. In using animalistic metaphors, Chertoff and others associated with the DHS and ICE continued on the tradition noticed by Otto Santa Ana (2002), who observed that the metaphoric system used in California in the 1990s to pass the highly xenophobic referenda for Proposition 187 included animal metaphors. Santa Ana argues that these metaphors invite listeners to use a knowledge system based on animals that reduces immigrant activities to thoughtless, violent disturbances to the social order, enacted outside a shared ethical system (86). In addition to inviting a hierarchical and racist relation to immigrants, something Santa Ana observes, these metaphors reduce the rational scope used to evaluate proposals about immigrants, inviting solutions to the problem that immigrants represent that are legally questionable and weak.

News coverage of Hutto was relatively scant, and the majority came from print news. (In the following sections, I expand on radio and television coverage.) From 2006 to the end of the Bush administration in January 2009, Hutto was written about only 110 times. Sixty-nine of these news items came from Texas; forty-two were published in the *Austin American-Statesman*; twenty-eight were written by Juan Castillo; twenty-seven reports and wires were by AP, mostly written by two reporters, Anabelle Garay (Dallas bureau) and Suzanne Gamboa (Washington bureau). These AP reports and wires were reprinted in a variety of news outlets, including *ABC News*, *USA Today*, and smaller print and online sources such as the Dallas Peace Center website. A mere fourteen times did newspapers outside of Texas dedicate their shrinking resources and use one of their reporters to write on Hutto. These fourteen reports were a warning sign

about hegemonic institutional commitments of the time, painting a predictable picture of a liberal-left news media, represented by the four pieces written for the *New York Times*, which was still reeling from the political challenges brought about by two Bush administrations (Valdivia 2010, 40). The only newspaper located in a state that voted Republican in the 2004 presidential elections that sent a reporter to write on Hutto was the *Mobile Register* in Alabama. All the other papers were in states that voted Democratic. This gives us a glimpse into a set of media institutional practices all too concerned with political ideology in the newsroom and in the readership. What was written is also informative, for it gives us a glimpse into the repertory of arguments, narratives, and knowledges available to journalists and editors with regard to undocumented immigration.

On December 15, 2006, Castillo wrote his first news piece on Hutto when he reported about a protest march that would go from Austin to Taylor, Texas. He used the expert voice of activists and legal professionals interested in ending the practice of incarcerating undocumented children and commented that the incarcerated children were losing weight, getting ill, and experiencing psychological trauma. In addition, he wrote, the only instruction the children were receiving was one hour of English. A relative rarity, Castillo left in the text several quotes referring to ICE's practices as violations of human rights, and he wrote with a relatively high level of specificity about things that had to be interpreted as legal infractions ("psychological trauma," lack of education, improper health services). In the following two years, Castillo continued his reporting on Hutto, publishing more than two dozen stories that often referred to specific legal issues and detention practices that violated human rights or U.S. law. Central in these reports was the American legal precedent of *Flores v. Reno* (also known as the *Flores* settlement), which had given the INS the legal rules by which to detain minors. In the great majority of the news reports that followed, roughly three-quarters of the writers avoided specific legal claims in favor of listing vague complaints about inhuman or immoral treatment. This is evidenced in Suzanne Gamboa's piece for AP (February 22, 2007), which serves to illustrate her point of view and her power as a journalist to select, from among the possible quotes available to her, those that fit her views:

> Immigrant families, many with small children, are being kept in jail-like conditions in Texas and Pennsylvania, according to advocacy groups that say the Texas facility *is inhumane* and should be shut down.

> In a report being released Thursday, the groups seek the immediate closure of the T. Don Hutto Residential Center north of Austin, the Texas capital. The center, which opened in May, used to be a jail.
>
> The groups, Women's Commission for Refugee Women and Children and Lutheran Immigration and Refugee Services, based their findings on their members' visits and interviews with detainees. At the Hutto site, a child secretly passed a visitor a note that read: "Help us and ask us questions," the report said. *The groups reported that many of the detainees cried during interviews.*
>
> "What hits you the hardest in there is that it's a prison. In Hutto, it's a prison," said Michelle Brane, detention and asylum project director for Women's Commission for Refugee Women and Children. . . .
>
> The groups suggested that immigration officials release families who are not found to be a security risk, and said the federal government should consider less punitive alternatives to the detention centers, such as parole, electronic bracelets and shelters run by nonprofit groups.
>
> "Unless there's some crime or some danger, families don't belong in detention," said Ralston H. Deffenbaugh, president of the Lutheran Immigration and Refugee Service. "This whole idea of trying to throw kids and their parents in a penal-like situation is destructive of all the normal family relationships we take for granted."
>
> The Homeland Security Department defended the centers as a workable solution to *the problem of illegal immigrants being released, only to disappear while awaiting hearings*. Also, *they deter smugglers who endanger children*, said Mark Raimondi, spokesman for Immigration and Customs Enforcement, the DHS division that oversees detention facilities.
>
> "ICE's detention facilities maintain safe, secure and humane conditions and invest heavily in the welfare of the detained alien population," Raimondi said.
>
> White House press secretary Tony Snow said last week that finding facilities for families is difficult, and "you have to do the best with what you've got." (emphasis added)

Gamboa's piece is a typical way of presenting the issues by the majority of the news reports. The two sides that she is presenting to us are represented, first, by the findings of the Women's Commission for Refugee Women, which seems to argue, if we only rely on Gamboa, that the Texas facility is inhumane. To give weight to these findings, Gamboa mentions

that many of the interviewees cried. On the other side, Gamboa uses quotes from ICE's officers and from White House press secretary Snow, which seem to present in better detail the positions of the administration. Snow sums it up: "you have to do the best with what you got." The Women's Commission report that Gamboa is referring to is a compelling legal document and a scathing criticism of the government; it lists specifically what national and international laws are being broken, and though it briefly uses the word "inhumane," it mostly argues against practices that are illegal. Gamboa erases the report's legal specificity in favor of a dramatization that pits the well-being of the families against the reasonably worded position of the government represented by ICE's officers and Snow. In so doing, she reproduces news practices that normalize a political world where governmental power is traditionally accepted.

In stating this, I am not trying to replicate functionalist arguments such as those by Edward Herman and Noam Chomsky (1988), who argue that the role of the press in the United States is eminently propagandistic and functions to "mobilize support for the special interests that dominate the state and private activity" (xi). Rather, I am siding here with Michael Schudson (2002), who points out that the political role of journalism is partly defined by journalism's systemic reliance on government sources as one of the main wellsprings of information (255). This means that, over time, journalists' language and ethical commitment are shaped by interactions with government officials. Schudson correctly notes that the "reliance on government officials does not guarantee pro-government news" (257), but on this point, his argument is weak. He supports his argument by citing research that shows that government officials also serve as sources for journalism that is critical of the government. Here, Schudson insinuates that independent journalism is evidenced in negative government reporting. But negative coverage of the government does not equal a journalism that freely argues against government wrongdoing in the same way that journalists freely argue against other kinds of wrongdoing. Consider the quotation from Gamboa, a phrasing that was highly typical of the coverage that Hutto got. In what other social and/or legal context would the mistreatment of children not be followed by a call for immediate legal action and the jailing of those responsible? Why is Gamboa avoiding the specific legal language used by the Women's Commission report?

The journalistic practices of Gamboa and Castillo are the result of a *habitus* that Rodney Benson (2006) calls the "journalistic field." The field is a methodological and theoretical shortcut that characterizes broad

institutional settings as social systems with structural properties. In Bourdieu's work, which Benson reflects on, the journalistic field occupies a subordinating position to the field of power (the system of power relations or the "ruling classes") (1993, 15). The intellectual class that constitutes this field lacks economic and political power, and for that reason Bourdieu refers to it as a dominated segment of the dominant class. Benson notes, echoing Schudson, that the journalistic field also is closely linked to the political field, an observation fully supported by the coverage of Hutto, which consistently printed the points of view of ICE's and the DHS's officers (2006, 106). Holding the field together, Bourdieu continues, is the field's *habitus*, which structures dispositions and practices within the field. In the case of Hutto's coverage, journalistic practices and institutional arrangements predetermined the type of reporting that Hutto would get, including the type of sourcing that would be common (for instance, government officials and recognized activist organizations such as the ACLU) and the type of frame that would help constitute it as a specific news narrative. For instance, the call for mild remedies, such as the closing of Hutto instead of the jailing of Chertoff, belong to a frame where the activities and life pursuits of immigrants are reduced to the immigrants' relation to American legal structures. These journalistic traditions include a general agreement that U.S. government officials are not prosecuted for human rights, an awareness that human rights law is not a framework typically associated with the legal procedures that Americans uphold, a recognition that government wrongdoing toward marginalized populations is not punished severely, and central to my claims, an assumption that undocumented people do not have the rights that we typically associate with citizenship.

Like any evidence of a social practice, Gamboa's writing sits at the intersection of institutional and discursive histories that she does not control and that she cannot simply disregard. Her professionalism was at stake, and she behaved professionally. In so doing, she, like almost every other journalist covering Hutto, replicated an American style of nationalism that is conservative, parochial, unwilling to engage fully with international law, committed to emphasizing the legal difference between citizens and noncitizens, and incapable of entertaining the possibility that the justice claims of undocumented people rest firmly on a legal basis.

The idea of the *habitus* allows Bourdieu to circumvent the dichotomy of subject versus agent, for it assumes that some actions within the *habitus* are experienced not as subjection or obedience but as agency. Agents

exist in positions from which they are constantly enacting and modifying the *habitus*; they are always structuring and restructuring it from sites of regulated freedom. Agency does not fully explain why certain choices are more viable to some agents than to others. One possible way to explain how choices follow from "dispositions," a term Bourdieu uses, is to consider that all individuals are formed by a multiplicity of identities and, potentially, can engage with their *habitus* in multiple ways depending on the aspects of identity activated in the agent (Isin 2002, 25). For instance, Gamboa's style of writing was not the only expression of professionalism. Castillo represents another one, but one that was not very popular. In my interview with Castillo (2010), it became clear that his style of professionalism had been crafted alongside identity markers that were not primary for Gamboa. As a senior Latino journalist born on the border of Texas and Mexico, Castillo's identity was formed by a multiplicity of ethnic and national allegiances. Castillo's Latinidad was central to his style of professionalism. But this is not the only factor to explain his disposition. After all, Gamboa is also a Latina journalist who wrote with enough empathy to make that fact clear. But Gamboa's empathy was discursively produced through journalistic writing that followed a larger set of journalistic traditions, including embracing language more submissive to the political field. Castillo's language, though hardly revolutionary, required the use of more professional capital, and this was partly the result of seniority and education. Two decades of working as a journalist, mostly in Texas, had given him some accumulated professional capital that he used to further separate himself from his peers. In 2001, Castillo got a grant to study for one year at Stanford University, on border issues and immigration. Working under the guidance of Professor Luis Fraga, he came back with a new knowledge set that included the history of immigration law and its repercussions on border life. Upon his return to Austin, Castillo negotiated with the *Austin American-Statesman* the creation of the immigration beat, one of the first of its kind in the nation. From that beat, and with the historical and theoretical background he received at Stanford, Castillo was able to delineate a way of being professional that included a more direct engagement with legal issues about immigration.

In outlining the creation of Hutto and its news coverage, I am taking a step toward the delinking of citizenship from justice, making sure that I can glimpse the political act of jailing children en masse in its bare significance. To do this delinking, I have to contrast two styles of news writing that are only slightly different. Both are empathetic to the children of

Hutto, but their empathy is manifested differently. Gamboa emphasizes moral issues; Castillo places law more at the center of his writings. To different degrees, they both follow journalistic traditions about human rights, undocumented immigrants, and citizenship (Hong 2006, 50). A nation-centric social practice, Gamboa's writing sits at the intersection of institutional and discursive histories that she does not control and that she cannot simply disregard. In upholding professionalism, she normalizes hegemonic discourses and practices that place the justice claims of the undocumented immigrants outside national law. Is it really so absurd to think that the children of Hutto should have had inalienable rights? And even if they do not, could they not still suffer injustices?

Rights

With few exceptions, the coverage of Hutto failed to mention rights, and when rights were mentioned, there was a lack of specificity as to what specific rights Hutto had infringed on. For sure, the legal transgressions that Hutto represented stood in contrast to the commonly held tradition of speaking about rights in terms of universalism. If children's rights are universal, what were these children doing in prison? This question highlights how important it is to understand the pastoral character of liberal governmentality as political performance. When political and legal hegemonic voices speak of universal rights, they are performing the care required by pastoralism. These performances are rhetorical and, often, simply strategic. We tend to rhetorically argue that universal rights are species rights (humans have them), but we only selectively believe that. More precisely, universalism is a rhetorical tool that legitimizes the nation-state episteme's constrictive definitions of justice by linking the figure of the citizen to universalizing ideas of rights and political agency. Under coloniality, universalism is both the ground for citizenship excess and the reason for the peaceful reproduction of the state.

Rhetorically powerful, universalism convinces most people that the laws, rights, and justice provided by the nation-state are beyond reproach. Yet even the universalisms that are at the root of our modern nation-states, such as founding documents, are contradictory and ambivalent. Let me cite three quick and clear instances found in arguably the three most cited nation-founding documents. The most grandiose and universalizing American text is the Declaration of Independence (1776), which famously reads, "We hold these truths to be self-evident, that all men are

created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just power from the consent of the governed." Here, the expansiveness of "all men are created equal" is given limits by the size, power, and jurisdiction of government to secure these rights. Unlike the Declaration, the U.S. Bill of Rights (1786) is much more modest, technocratic, and administrative in tone and nature. But even this document goes back and forth between expansive universalisms and particularisms. The Fourth Amendment starts with "The right of the people"; the Fifth Amendment begins with "No person"; and so on. The second article of the Declaration of the Rights of Man (1789), the document that signaled France's arrival to the new club of nation-states, reads, "The principle of all sovereignty resides essentially in the nation. No body nor individual may exercise any authority which does not proceed directly from the nation." The French use very expansive language to define the rights and privileges of citizens and the state, but even in this declaration, rights are not universal. If anything, there is an inherent ambivalence between its claim to define "mankind" and its provincial jurisdiction. In each of these cases, the documents establish that what they refer to as "man" and "people" is actually the more modest and much more troubling figure of the citizen, the actual bearer of rights who mutually constitutes the legitimacy of government and law. The semiotic slippage between people and citizens, which confuses even the smartest readers, is evidence of a colonial legal ontology that defines personhood based on subjection to the monarch and the colonial epicenter. This slippage is also an important element of liberalism as a political technology, for it helps to normalize the discursive and social practices that allow for citizenship excess as political capital accumulation and disavowal of noncitizens. If the nation is the grantor of justice, should not then the good of the nation take precedence over everything else? This is the logic used by President George W. Bush in support of extraordinary rendition and torture, and it is the same logic used by the Minuteman Project in its vigilante practices at the U.S.-Mexico border.

If we consider that these three political documents are seminal to our understanding of rights, we must then also assume that our legal and political understanding of *citizen* is the product of the same ambivalence, caught between expansiveness and exclusivity. Typically, universalism rests on one form or another of naturalized inequality, adjudicating race,

sex, gender, or other as the sufficient legal standing to grant citizenship to the bearer (Calabrese and Burgelman 1999, 2). Always sitting atop an abstraction, as Wendy Brown comments, universalism "is ideologically achieved by turning away from and thus depoliticizing, yet at the same time *presupposing* our collective particulars, not by embracing them, let alone emancipating us from them" (1993, 392; emphasis in original). Our individual particulars, our difference, be it race, age, gender, or place of birth, are only recognized as political if they have been presupposed and codified in our political and legal imaginaries.

According to Brown, the inability of liberalism to account for uncodified or uncodifiable particulars dissipates with the increasing influence of capitalism and disciplinarity in contemporary forms of governance. In today's liberal governance, universalism recedes in the background, like the ghost in the shell, and other bureaucratized and commercialized processes step up to give it legitimacy.[4] This does not mean that universalism is gone. Its phantom survives in at least two variants. Universalism is present in the language of rights, which continues giving energy to the justice claims of much identity politics, including a notable section of Latina/o politics. Brown (1993, 2004) has theorized extensively on this style of justice claim, noting that rights produce the paradox of opening avenues for equality as they force their claimants to normalize their difference. She writes, "rights secure our standing as individuals even as they obscure the treacherous ways that standing is achieved and regulated" (2004, 430). With "treacherous ways," Brown implies the second way in which universalism is present in today's liberalism. *Universalism is resemanticized under bureaucratic and legal language that uses administrative logic to produce the same or similar results as traditional, essentialist universalisms*. Our standing as individuals is made law when the legal apparatus is able to fashion the governmental specificities that constitute personhood, such as universalizing birth certificates, passports, driver's licenses, and Social Security numbers. This way of seeing rights, universalism, and the bureaucratization of the juridical imaginary means that coloniality will have some of its most surreptitious and, perhaps, dangerous manifestations in administration and policy frameworks, not only in cases that, for instance, have the legal weight to reach the Supreme Court.

The bureaucratization of rights impinges on cases such as Hutto by greatly reducing the scope of legal problems and remedies that Hutto may represent to the legal system. This is evident in the legal framework used by the ACLU and the University of Texas School of Law during

the lawsuit against Chertoff et al. In the specific legal complaint filed by the ACLU on behalf of the nine-year-old Saule Bunikyte (one of several dozen plaintiffs) versus Chertoff et al., the ACLU's Vanita Gupta argued for the reinstatement of Saule's legal rights, drawing on everything from the expectation of her release under conditions of supervision to her violated right of privacy (Civil Action No. 1:07-cv-164-SS, Western District of Texas, March 19, 2007). Ms. Gupta's strong and precise lawsuit was filed in the court of Judge Sam Sparks, who originally expressed sympathy for the plaintiffs and declared, "This is detention. This isn't the penitentiary. . . . [Detainees] have less rights than the people I send to the penitentiary" (Castillo 2007a). Judge Sparks proceeded to immediately remove restrictions on attorney visits and set an expedited trial. His decision came on April 10, and in the two weeks that had passed, his tone had already changed. By then, the rights of the children had been weighted against the rights of ICE to pursue its work of securing the borders. In a decision that did not order the release of the children but did order the improvement of detention conditions, Judge Sparks stated that "the court cannot say that [the Department of Homeland Security] has abused its mandate by exploring family detention," thereby foreclosing the possibility of punitive charges against the defendants. Based on this ruling, ICE's spokesperson Marc Raimondi could rightfully state that Judge Sparks had recognized that "detention of families is an important part of ICE's work to remove illegal aliens from the U.S." Sparks's decision performed several roles on behalf of the U.S. government. First, it reduced the legal scope of the argument on behalf of the detained children by citing only one precedent (*Flores v. Reno*) that could be used to argue for the plaintiffs. The *Flores* settlement established detention parameters for minors detained by the INS, and though it eventually meant an improvement in the conditions in which Saule and other children lived in detention, the *Flores* settlement also served to frame the legal issues away from international human rights law, specifically provisions within the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Convention on the Rights of the Child.[5] Second, Judge Sparks's decision bureaucratized the already reduced rights of the detained children, calling for administrative solutions (for instance, more education) without recognizing that CCA and ICE administrators were breaking laws every time that the children were denied their rights. Not a single bureaucrat, official, or CCA employee was further prosecuted, fired, or even officially reprehended. The impunity with which the state and its corporations can

break laws contrasts starkly with the harsh detention of the children due to the minor administrative infractions committed by their parents. Third and last, by not ordering the immediate release of the children and by siding with ICE's overall political goals, Judge Sparks produced a broad legal framework for the state of exception, and instead of ending it, he gave legal precedent to its reproduction.[6]

Although the rights of citizenship have been expanded (e.g., now citizens have civil rights and some economic rights) and are now given to more people (most liberal nations have some version or another of the Fourteenth Amendment to the U.S. Constitution, which grants citizenship based on birth, disqualifying the excluding power of race), the equation of citizenship and political franchise, central to liberal governmentality and coloniality, has remained constant. Today, as during the time of ancient Greece, the French Revolution, and Marx, an individual's ability to participate in the politics of the state is typically understood as dependent on citizenship, which becomes the primary repository of abstractions that the state recognizes as the political in the individual. Such abstractions have included being propertied (central to political agency in the beginning of our union), white (ibid.), male (1920; should I say more?), mature (children cannot enter into contracts, nor can they behave as political agents), law-abiding (most prisoners lose political rights), and in possession of the "proper" mental faculties to exercise politics. These abstractions can activate political agency only in cases where the mother of all abstractions is present, citizenship. The likeliness that the equation of citizenship and political agency will remain central to our political discourses is directly related to the ability of states to use the language of liberalism and justice to self-adjudicate legitimacy.[7] Hence, the government's rationale to jail children need not be questioned once the state and hegemonic mediated discourses have proven that undocumented immigrants represent a threat to the well-being of the populace. The important question that the citizens opposing the government (including the ACLU and the lawyers involved in the suit, the many legal scholars using their academic status to advocate on behalf of immigrants, and the many activists who day in and day out protested in front of the front gate at Hutto) could ask was "how?"

Although the contemporary application of liberalism is increasingly the bureaucratization of the juridical imaginary, liberalism's appeal remains its universal calls to freedom and emancipation (Dussel 2006, 498; Marx 1975, 212–241). On this, liberalism is in consort with the language of modernity, which defines progress as a teleology toward Western

definitions of the good life and the good society (Quijano 2000). At this level, the citizen is the actor of modernity, for only through the juridical-legal position of the citizen can the universalist claim of emancipation come alive. This is a central reason why it is so hard to dislodge our hopes for political betterment from the figure of the citizen and to imagine a justice outside state laws. Reflecting on similar problems of ethnicity, nationality, and the state, Marx proposed the following: "Only the critique of political emancipation itself would constitute a definitive critique of the Jewish question itself and its true resolution into the 'general question of the age' " (1975, 215). Most people fail to query emancipation, and the result is that insofar as the state is conceived as the forum for distributive justice, as in the case in Foucault's work on governmentality, one is forced to trust in the ethics of the state or, at the very least, in the state's ethical potential (Walzer 1992, 281). And trust we do. So from Marx's time to today, the best theoretical tools to distribute justice and national political betterment have been citizenship reform and the expansion of rights. But if the politics of betterment depends on trusting the state, as the Hutto case illustrates, then undocumented immigrants and their supporters live in the age of tragedy.

Lodged in the figure of the citizen, our hopes for political betterment have given way to a set of extremely dangerous and, I suggest, tragic dispositions, including those that structure our willingness to believe that the citizen is, and should remain, the only arbiter of rights. These dispositions, popularized in the field of politics and reconstituted in popular culture, constrain the imagining of political progress to one social organization: the nation-state. The citizen, objectified political history, mutually reconstitutes the legitimacy of the large institution that is the nation-state. Like Marx, Foucault, and many media scholars, those who trust the politics of the state, state revolution, democracy, liberalism, emancipation, or political reform are also implicitly trusting of citizenship, citizenship's political power, citizenship's potential, and/or citizenship's ability to improve and transform the community of nationals. This closes the system to radical critique, for it creates conditions of immanence. The nation, the citizen, law, and justice legitimize each other from within the system of nation, the national episteme, and only claims launched from within are recognized as proper political parley. This functionalist haven is, of course, a discursive construction. And predictably, as Nicholas De Genova (2005) notes, the discourse of citizenship is produced and disseminated from the subject position of the citizen. From this position, which is almost exclusively

occupied by natives (Tocqueville notwithstanding, naturalized citizens rarely occupy this position; noncitizens are basically excluded), the citizen authorizes her- or himself to talk about citizenship, "illegal" migration, and the law and is authorized to frame all of these issues in terms of "what is good for 'the nation'" (7). The citizen as the juridical subject narrowly defines the political actor, helping constitute a politics of recognition that makes political agency a "good" unevenly distributed among citizenship populations and often absent from noncitizen populations.

Media and the Dominant Good

There are universalisms that inspire ("life, liberty, and the pursuit of happiness") and others meant to be whispered. In 1792, James Madison published in the *National Gazette* a now famous essay titled "Property," which reinterprets the role of government as the management of property and expands and redefines the very notion of property. He wrote,

> In its larger and juster meaning, [property] embraces every thing to which a man may attach a value and have a right; and *which leaves to every one else the like advantage*.
>
> In the former sense, a man's hand, or merchandise, or money is called his property.
>
> In the latter sense, a man has property in his opinions and the free communication of them.
>
> He has a property of peculiar value in his religious opinions, and in the profession and practice dictated to them.
>
> He has property very dear to him in the safety and liberty of his person.
>
> He has equal property in the free use of his faculties and free choice of the objects on which to employ them.
>
> In a word, as a man is said to have a right to his property, he may be equally said to have a property in his rights. (Madison 1997, 83)

So, if in chapter 1, I reference the idea that citizenship is a tradable good, I am simply following the logical thread of one of the central features of American legal and political thought (see also my use of Cheryl Harris's work on whiteness as property and my argument on political capital accumulation in the following chapters). Moreover, if by universalism we mean to say that some essence should be or is shared by everybody, then

the alchemic transformation of life essence into property easily qualifies as the most universalizing feature of the nation-state (Hong 2006, 4, 41; Marx 1975, 229). We are property, and our political valence is ultimately measured, paraphrasing Madison, by the very quantity of things and rights that constitute our citizenship.[8]

That citizenship is a good does not mean that citizenship has to be a dominant good. According to Walzer (1983), citizenship becomes a dominant good when it is capable of structuring other social fields. Echoing Bourdieu's ideas on interconvertibility explored in chapter 2, Walzer's concern is that while all goods exist in specific exchange structures governed by discrete distributive processes, dominant goods transcend their particular structures, creating a chain reaction of power that can end up producing tyranny. This significantly reduces the egalitarian possibilities of any political system. In theory, egalitarianism is better served by having checks and balances, hence by having strongly independent exchange structures. If not for coloniality and liberalism, politics (the purview of the citizen) should be different from justice, and both should be different from media. But if the citizen is at the center of these three systems, equality is hardly possible. Walzer observes that most societies are empirically organized around a sort of gold standard: "One good or set of goods is dominant and determinative of value in all spheres of distribution. And that good or set of goods is commonly monopolized, its value upheld by the strength and cohesion of its owners" (1983, 10). Our society is organized around the gold standards of wealth and citizenship, the goods central to the economic and political fields. Having citizenship gives you the right to trade in other social markets and thus an a priori condition of capital, cultural, and political accumulation. The absence of that good, as the Hutto captives exemplify, displaces you from the relative comfort of being legally read as a juridical subject and transforms you into a legal cipher impenetrable to discourse, someone who is, to reference Madison, nonproperty and nonpropertied.

Walzer proposes a theory of justice that can accommodate the complex distribution issues of contemporary societies.[9] He argues that in complex societies, "simple equality" is not possible. Even if ideal societies existed where all had access to every good, human difference would soon form distributive systems based on merit (different merits, different spheres) that would quickly challenge any simple distributive system (1983, 13–16). Instead, the challenge is to create a theory of justice befitting our complex societies. First, this theory should recognize the multiplicity

of distributive systems. For instance, there is such a thing as a distributive system for education (e.g., education field), where access to the good of education is granted on the basis of different principles, including educational merit and parents' financial success. One who recognizes the multiplicity of the distributive system would have to craft a notion of justice proper to each system. Walzer calls this notion "complex equality," which can only be achieved if the systems follow two principles: First, "personal qualities and social goods have their own spheres of operation, where they work their effects freely, spontaneously, and legitimately." Second, "disregard of these principles is tyranny. To convert one good into another, when there is no intrinsic connection between the two, is to invade the sphere where another company of men and women properly rules. Monopoly is not inappropriate within the spheres" (19). Returning to the educational field, the dominant goods of sex, race, citizenship, and money have been consistently used to distribute the good of education, and Walzer, like most observers, argues that this is a type of tyranny. How then do we think of citizenship as a dominant good? In light of the normalized theoretical inability to consider justice beyond the nation, should we not reevaluate citizenship as the most nefarious of all tyrannies? For centuries we have criticized the tyranny of wealth, the second most powerful dominant good in liberal democracies, but citizenship, for the most part, is simply immune to radical criticism, our hopes for justice too invested in a legal world dominated by politics and the nationals.

When citizenship dominates politics, law, and media, tyranny is not only possible; it is also predictable. Citizenship excess is its result. Immigrants are always in peril, because at any time they can become unworthy subjects in these important spheres. As Foucault has noted in his studies on prisons and mental hospitals, some people are simply subject to power, outside the purview of political agency, and incapable of engaging in the trade of political goods. In my way of seeing techniques of governance and distributive justice, the undocumented immigrant occupies a position similar to the mad person or the criminal sentenced to death; the constitution of their particularism (Brown 1993) makes these subjects legally, discursively, and politically unworthy of recognized social agency and power. Undocumented immigrants may have some power in the private sphere and within marginal national social and labor markets, but clearly they are not competing for goods in the markets that matter most. Hence, the children of Hutto cannot exist in legal discourse without the intervention of American citizens (think the ACLU, the Texas School of

Law, journalists, and the myriad protesters and video archivers who have made it possible to learn about this detention center), and their best hope for justice is to become proper objects of compassion.

The case of Hutto shows the dominance of citizenship outside the political field, in particular, the harmony between the political and legal fields and the media world. Consider this: in Hutto, reporters had a case involving the mistreatment of children and human rights violations that the government tried to keep secret for months (Castillo 2010). All the ingredients for a drama were there, but the story never became what in today's media world we call "viral." This was not for lack of opportunity. The *New York Times* reported on it four times; twice was Hutto in the *Washington Post*; the *New Yorker* published a compelling article on the matter. Although subtle ways of marginalizing the story were common even in Texas, where Castillo's work, for instance, was mostly published in the Metro/State section and not with the rest of the national or international news, the story was there for the networks to grab. Yet, from 2006 to end of the Bush administration in January 2009, Hutto was mentioned only forty-two times in television and radio news.[10] Of the forty-two mentions, thirty-two were in Texas or on Spanish-language television (Univision and Telemundo). Hutto was mentioned ten times on broadcast or cable news channels. NPR engaged with the issue three times. Dan Rather, at his post-CBS televisual outfit HDNet, produced a show on immigrants in which he briefly mentioned detention practices and Hutto. Most of these reports were brief, though some are poignant (listen to NPR's *All Things Considered* of February 9, 2007, or watch Univision's *Despierta America* of February 23, 2007). Given the huge amount of television and radio news in America, the result of these searches is evidence of a systemic absence of this issue in national media news organizations. Ironically, the only two private, English-language, national television media that addressed Hutto extensively were Fox and CNN, where Bill O'Reilly and Lou Dobbs, two of the nation's most xenophobic voices, talked about the detention center in their own powerful, ethnocentric, and racist voices. Dobbs dedicated three programs to Hutto on February 23, March 6, and March 8, 2007, and he alone produced more televisual text on Hutto than the rest of English-language television combined. The children, he noted in his February 23 program, are better off in this prison than at home, where abject poverty is the norm. The humanitarian and civic organizations speaking on behalf of the children, he continued, are colluding with pro-immigration forces to get amnesty for those whom he calls "illegals."

Unsympathetic and, arguably, vicious, Dobbs presented all issues of legality from the point of view of the ultraright. Supportive of Chertoff and ICE and self-congratulatory of the fact that these facilities were so much nicer than the places where these children would have to otherwise live, Dobbs was rabidly critical of all organizations and people involved in defending the children.

The overall effect of this media coverage was that for most Americans who were not on the right, Hutto never made it onto their radar. Mainstream media shape the majority's sense of ethics and justice. In this case, it did so through the repetition of nationalist and ethnocentric agendas and also, and perhaps more poignantly, through its silences: those aspects of life and reality that never made it onto the evening news. If we consider side by side the relative silence around Hutto at the national level and the timid way with which print journalists typically engaged with the story, it is possible to understand the state of exception as the product of a political culture of exceptionality fostered and produced by mainstream media.

Alterity and Alternative Media

In political theory and in politics, hegemony and tyranny are hardly the same thing, but the presence of one does not preclude the existence of the other. Here, they coexist. The hegemonic, agonistic aspect of American politics and American media found spaces to voice some discontent. A small number of people and organizations showed that they cared about Hutto and used small media and guerrilla tactics to challenge ICE and the government. Many of these activists were at the entrance of the prison daily protesting Hutto's detention practices. Others came on weekends, brought their cameras and banners, recorded footage, and posted it on sites such as YouTube. Most are local to central Texas. YouTube was one of the few relatively public, relatively general forums that allowed for events such as Hutto to be videoed and distributed. In the site's almost nihilistic way of structuring things, YouTube provided space for an array of different video genres, contrasting viewing traditions, and counterpublics. The range of videos on Hutto that are available on YouTube includes some in which the camera is used as the most simple recording device, in its rawest power, without editing or artifice, à la Lumière. Typically shot by people not heavily involved with media production, these videos were filmed outside the prison and record the protests themselves as well as the surrounding landscape. The makers, clearly, did not have access to

Hutto's interior or to officials involved with the detention center. A few other videos on YouTube were formal, traditional minidocumentaries that used documentary conventions to produce powerful narratives in an attempt to engage viewers' emotions and reason. In "Children Confined—Immigrant Detention Center at Hutto," the most viewed of the Hutto videos, the filmmakers interview a child and her mother to harness the emotional force that will make the listing of UN provisions rhetorically powerful (acluvideos, March 23, 2007, http://www.youtube.com/watch?v=HBCAgSCGM04). In two minutes, this video, sponsored by the ACLU, shows the perspective of immigrants and of the UN, and it casts the government's actions as violations of the basic principles of American justice.

As powerful as "Children Confined" is, I find "T. Don Hutto—Footage from ICE" to be the most eerie video of all. This is a strange documentary presented by Docubloggers, a video initiative sponsored by KLRU, Austin's public-television broadcasting station. According to text accompanying the video, Docubloggers requested footage from ICE, which Docubloggers presents without editing and without sound (May 17, 2007, http://www.youtube.com/watch?v=bF024cB6kHU). Although I am sure the footage was provided by ICE to address criticism and to show the world the quality facilities and positive living conditions of Hutto, the effect is quite the opposite. For four minutes, we are allowed to see inside Hutto; in silent images, children wearing prison garb play, eat, and color. The only faces shown are blurred or filmed at a distance, providing just enough visual information to communicate that these are brown bodies, brown families, and brown children.

Docubloggers decided to show ICE the footage as is, partly because they believed in the power of the visual image to communicate much more than ICE intended. They were right. There is something about the video that is excessive and that the images cannot seem to contain, information that is unruly and that subverts the makers' intentions. Let me give you two instances. There is a point (1:26) when the video shows a series of people walking in front of the camera on an extremely clean floor, dressed in extremely clean green prison garb, and wearing brand-new shoes. We only see them from the knees down, an adult followed by several small sets of feet. I found these seconds of footage quite unsettling and could not quite point to the reason. But then I realized that these images of disembodied feet were disturbing because they remind me of some prison movies set during World War II, in which prisoners are meant to be

rehabilitated through the rigors of fascist über-discipline, which is shown through rhythmic images, repetition, and obsessive cleanliness, just as in ICE's video. In a similarly excessive fashion, we later see the aseptic reality of a cell (2:21) that includes four items: a toilet, a sink, bunk beds, and a crib. This image, empty of life, is meant convey "humane" living conditions to viewers; instead, it reminds us of a morgue. Its emptiness becomes scary, its cleanliness absurd. The overall effect of the video is partly reached by an invitation to intertextually connect the footage of Hutto to fascist images and videos of criminals, which often blur the faces of criminal subjects or cover them with hoods. Intertextuality, however, has its weaknesses, for it necessitates a degree of viewer competency and ideological willingness. Some viewers, thus, may have interpreted the footage as simply indexing a high degree of cleanliness and, hence, as evidence of ICE's care for the children. But for those who read "T. Don Hutto—Footage from ICE" through the codes of fascism, the video is a reminder that a rhetoric of development, progress, and care through hygiene cannot legitimate the inhumanity inherent in jailing children.

Relying on these videos to make an impact on the public sphere is not advisable. As powerful as some of the videos are, they have been viewed only a few thousand times. The ICE video had been viewed twenty-three times at the time of this writing. These activists and their videos were and are marginal; they have little to no chance to impact our nation's mainstream culture. This is an example of how the agonistics of hegemonic processes in the national realm engender tragedy. These activists are on the fringes of our video culture, barely existing. They are marginal to the nation's political pursuits, their goals irrelevant, their voices dim. To the great majority of Americans, the children of Hutto remain safely absent.

Conclusion: Reimagining Hutto

If rights are property, as Madison suggests and Grace Hong (2006) theorizes, and the law and government are invested in the protection of rights, undocumented immigrants are always in danger of signifying the lawless but not as defined by the now popular, and still offensive, term "illegal." The lawless here exist in legal vacuums where tyranny is not only possible but the rule (Hong 2006, 41). What is justice in this transnational problematic? Justice, at least justice to the immigrants, is not part of the ethical repertoire implied in the social transactions between immigration law enforcement and undocumented immigrants. Justice, always implicitly

concerned with the relationship of law and the citizen, stands as the dark spot concealing the automatic dismissal of the other from the political. In securing, protecting, and franchising the citizen, justice depoliticizes the immigrant, producing a rightless, propertyless, and lawless individual, more closely resembling the archetypical legal object of the slave than of the human. Is it then surprising that the legal remediation of Hutto was so mild? The children have remained rightless, and though the ACLU tried to argue for their humanity (and used the Human Rights Chart as legal backing), the courts did not agree. The undocumented immigrants, like slaves, were inscribed in law and interpreted by legal discourses as things, not humans; they were seen as capable of entering the physical space of the nation but unable to enter the imagined space of the national community. Because it is possible to see connections between the undocumented immigrant and the slave, it is worth reconsidering the children of Hutto from the perspective of coloniality, legalscapes, and exceptional neoliberalism, all of which provide explanatory logics to the children's ethical quandaries.

The work of coloniality is partly to make transhistorical some specific solutions to the contingent problems of governing colonial subjects. Connecting past to present, the colonial residues found in bureaucracy, law, and epistemology carry on the dirty work of fragmenting, disenfranchising, and exploiting populations given legal character by the nation-state and, often, democratic processes dependent on consensus. As Quijano notes, racial discourses are the product of colonialism. Under coloniality, racial difference is subsumed under the national umbrella, and as I argue, it becomes part of modern governmental liberal techniques that produce supple and stealthy forms of racial exploitation while participating in the discourses of consensus and democracy. Undocumented immigrants, unlike other marginal populations, suffer the most severe forms of coloniality, for they are rightless and not needed for the legitimacy of national democratic processes. Their labor can thus be appropriated by the nation with impunity, and Lou Dobbs can exist as a legally protected voice of reason. To make matters worse, Latin American undocumented immigrants carry the double stigma of having also been colonial subjects of the United States; they are ingrained in U.S. history as the defeated subjects of the Mexican-American wars and the dozen coups d'état "sponsored" by the United States in Central and South America. Latin American undocumented subjects are subjects produced through the colonial administrative logics that governed the Southwest for a century and the economic

and cultural colonialisms that the United States imposes on Latin America still today.

Expanding Quijano's criticism of contemporary nation-states to citizenship produces troubling possibilities, for it means reevaluating law in relationship to coloniality. In Western and Westernized nation-states, the discursive and cultural construction of the citizen goes hand-in-hand with the social production of citizenship as a juridical subjectivity. Law, therefore, occupies a central role in constituting subjects, and unsurprisingly, law, as a national construct, becomes central to discussions of justice. As Thomas Streeter (1996) and Bernard Edelman (1979) have noted, law is the most effective technology for producing subjects. Even Althusser, when he attempted to illustrate the effectiveness of ideology, used the image of the police officer "hailing" a person. We are certainly hailed by ideology, but the hail of the law is powerful, effective, and constant. To disobey ideology may be dangerous to the hegemonic system; to disobey the law is physically dangerous to us. Law, which is manifested in myriad ways, brokers our relationship to others (by setting protocols of polite interaction), to the economy (by defining the rules of labor), to politics (by establishing political rights and defining political subjects), and to culture (by legally establishing the basis for media industries, cultural policies, and cultural franchise). Law, which subjects us from before we are born (through health policy, sexual policy, and educational policies that establish the field of medicine), is, however, not everybody's purview. In coloniality, law is a social and political field created by and for the citizen. Moreover, law expands and, I would argue, hides the logic of colonial administration behind the Taylorization of rights that Brown observes, producing the suppleness that Foucault notes is central to liberal governmentality. Coloniality facilitates the epistemological and social rationales at the base of the reproduction of law and legal structures, furnishing the social scripts that make unsustainable the justice claims of the children of Hutto.