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From Smart Borders to Perimeter Security: The Expansion of Digital Surveillance at the Canadian Borders

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Since 2001, border security policy between Canada and the US has morphed from “smart borders” to the present “beyond the border” (perimeter security) agreement resulting in the expansion of new techniques of border surveillance including pre-emptive profiling of travellers and biometric data sharing. In this paper, we argue that these border agreements have increasingly resulted in a changing experience of sovereign power for those crossing the border. This is demonstrated through a discussion of: the major border policies between Canada and the US since 11 September 2001, developed under the influence of US hegemony; how these policies perpetrate a generalised state of exception; and how these policies affect refugees, migrants, and citizens. Reading Agamben’s insights from a sociological perspective, we argue that the presumption of security-through-surveillance erodes border crossers’ human rights, and that some people – those from disadvantaged race/class backgrounds – are more affected than others by the implementation of the evolving border regime. We also emphasise the contingencies and unintended consequences of the ongoing projects. The conclusion offers brief comments on the consequences of these developments on Canadian identity and points out the directions for future research in this domain.

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Although the idea of creating a “smart border” emerged before 9/11, it was the attacks on New York and Washington that entrenched the idea in Canada in 2001. Various versions of the “smartened” border have appeared since, culminating most recently in the “perimeter security” agreement between Canada and the US in 2012. The evolution of border security during this time has been characterised by a steadily increasing dependence on new forms of border surveillance, including pre-emptive profiling of all categories of travellers (visitors, workers, migrants, refugees, permanent residents, and citizens) and biometric data sharing between Canadian and US authorities. The form that security-by-surveillance takes frequently falls into the category that might be called “rule by risk” (or “governing by risk”¹). The objective is to make all travellers more knowable to authorities through increased surveillance in order to assess their supposed risk levels. However, the outcome is that the safety of the people wishing to cross the border and the recognition of their rights becomes subordinate to the desire to reduce ‘risk.’ Thus, we argue, security measures subtly undermine the rights of travellers in systematic ways such that the former now substitutes for the latter.

The *Beyond the Border: A Shared Vision for Perimeter Security and Economic Competitiveness* (BTB) agreement between Canada and the US was made public in June 2012. The border, rather than being a fixed line marked on the ground at crossing points, is now an expandable category. As many others have suggested,² the border is no longer located at the edges of states; it extends well beyond and within state territories. The BTB agreement expands the border through the collection and sharing of data of third-country nationals between US and Canadian security agencies remote from the territorial border. But we should be careful to not overstate the deterritorialisation of borders.³ As a result of Canada’s geographical distance from countries of the Global East and South (unlike the European Union), Canadian and US authorities prioritise diffuse border practices over territorial ones. Yet, still, territorial surveillance between the US and Canada is also expanding. At one time, a fence like the one on the southern (Mexican) border of the US was also planned for Canada. While the fence project is now unlikely to be implemented, the “Mexicanization of the US-Canadian border”⁴ is not fully abandoned. Similar to the US-Mexico border, US authorities have established radars, sensors, pole-mounted cameras, vehicle scanners between entry ports and drones overhead to intensify the level of territorial surveillance at the US-Canada borders.⁵

For the BTB agreement, “interoperability” between security agencies is key.⁶ This entails joint land and water operations, shared traveller records and shared biometric information collected through each country’s immigration and asylum systems. Canada started collecting biometrics from temporary resident visa applicants in 2013.⁷ Canadian and US authorities are able to query each other’s visa database for conducting risk assessments.⁸ The point of screening technologies is to filter new arrivals, creating categories of

relative risk and managing these categories based on their supposed level of riskiness.⁹

It is clear, then, that the idea of going “beyond borders” speaks of new developments, new ways of managing risk. These rely less on conventional border encounters between officials and travellers, in which physical documents are checked and brief interviews take place, and more so on digital data, gathered from diverse and discrete sources for the purpose of determining entry eligibility and potential risk. It should be noted, however, that it is unclear how reliable these digital data are – biometrics, for example, have an uneven track record in their capacity to capture and accurately verify fingerprint information of border crossers.¹⁰ But, even if we assume that digital technologies can perfectly identify individuals, we have to emphasise the tendency of these systems to discriminate against individuals whose identities represent disadvantaged intersections of class and race backgrounds. While the proposed systems aim to cover all categories of individuals, those from disadvantaged backgrounds are subjected to the most intense scrutiny and discrimination. Behind the supposed technological neutrality of these systems, there is the age-old rationale of surveillance: social sorting.¹¹

In what follows, we argue that the BTB agreement not only goes “beyond borders,” it also goes “beyond human rights.” Although official Canadian government statements claim that counter-terrorism policy is “guided by the principles of respect for human rights”¹² this claim is questionable when one examines the actual practices associated with border controls. Dimensions of human rights, including the presumption of innocence and due process as well as the right to privacy, the right to claim asylum and the right to leave one’s country, are undermined by security techniques such as the division of populations into high and low risk prior to or instead of obtaining evidence of wrongdoing. At the same time, the emerging security-through-surveillance techniques are the functional equivalent of law. They stand in place of law with potentially negative consequences for “suspect” sectors of the travelling population.

This is not to suggest that Canadian immigration laws operated without discrimination up until now. Historical evidence demonstrates that the exclusion of groups categorised as threats to the Canadian national identity – an identity which was formed on Canada’s colonial past as a white settler community and continued to operate under a neoliberal format – has been central to Canadian border policies and immigration laws.¹³ Yet, the digitisation of border controls has greatly extended the reach of surveillance of diverse populations, making practices of exclusion at the Canadian border diffuse and automatic.

In order to conceptualise these developments at the Canadian border, we draw on Agamben’s theory of sovereign exception.¹⁴ Agamben undertakes an ontological reading of sovereignty and points out that sovereignty always holds the potentiality to suspend human rights, or to declare the state of

exception, and that in our contemporary societies such potentiality has begun to actualise itself without any localised focus so that everywhere becomes subordinated to the logic of exception, and everybody becomes a “biopolitical body,” a form of body that exists only insofar as it can be excluded from the political community, the body of the *homo sacer*.¹⁵ These insights are highly relevant when thinking about the BTB agreement. Indeed, with the agreement, exceptional security practices are becoming the norm and diverse groups are being subjected to surveillance without any localised focus; including, before, at, and beyond the border.¹⁶ However, Agamben’s ontological insights should be read from a sociological perspective in order to capture the complexities of the BTB agreement. Agamben’s theory of sovereign exception, due to its non-localised focus and its ontological emphasis on the potentiality of the sovereignty to suspend human rights for all individuals, and turning them into biopolitical bodies, may imply that systems of control work perfectly at all times, individuals have no agency to resist those systems and that diverse groups face a single form of sovereign power in an undifferentiated manner.

Speaking of the BTB agreement, while it is true that all categories face the potentiality of sovereign exception, such potentiality is more likely to be differentially distributed across individuals. This is because structural inequalities are central to the ways in which sovereign exception operates over different groups. Migrants and refugees, particularly those coming from ‘suspect’ regions, such as the Middle East, are more likely to be targeted and discriminated at the Canadian border.¹⁷ While Agamben’s theory, unlike conventional interpretations of his work, is not necessarily about a single state or a sovereign agent with full powers declaring a state of exception,¹⁸ he does not dedicate sufficient attention to analysing the complex ways in which sovereign exception can be established via the interaction of multiple sovereign entities. There has not been sufficient emphasis on such complexities in the current literatures on digital Canadian borders either. The BTB agreement demonstrates that, similar to other fields of Canadian security policy, such as the war in Afghanistan, US sovereignty dominates Canadian sovereignty.¹⁹ Canada continues its role as the ‘natural’²⁰ supporter of US security policy in the global order and restructures its border security practices based on this role. However, this is not to suggest that there is a top-down mode of dependency established over the Canadian state by the US. As Klassen demonstrates, Canadian corporate elites have regarded the deep economic and military integration with the US as an opportunity to protect and expand their corporate interests in the neoliberal-globalised world order and redesigned Canada’s foreign policy based on these priorities.²¹ These processes, we argue, have certain implications for Canadian “border culture”-²² officially expressed through Canadian national identity of multiculturalism-²³ – which are also underemphasised themes in the literature on digital Canadian borders and surveillance. The BTB agreement demands that we

re-think Canadian multiculturalism and its limits, particularly towards groups from disadvantaged race-class backgrounds. We will return to these themes in the conclusion and provide some brief remarks, emphasising the need for further research in this domain.

Since the BTB surveillance systems have not been fully implemented yet, it is not possible to comment on the 'success' of these systems and the sort of resistance they might invoke by the groups who are subjected to them. But the example of the US-VISIT programme (the biometric entry/exit system of the US) demonstrates that technical failures are inherent in such complex systems.²⁴ On the other hand, while the biometric systems seriously undermine the agency of individuals, one should also be open to understand the complex ways in which individuals can resist these systems – beyond the analogy of Agamben's *homo sacer* and the romanticisation of resistance.²⁵ For instance, in the case of the EU, the establishment of 'smart' border projects such as the Visa Information System (VIS) has led large numbers of migrants and refugees to risk their lives at the territorial borderzones, often with the help of smugglers, rather than preventing their mobility.²⁶ While Canada is geographically remote from migrant/refugee producing regions, it is not unheard of for migrants and refugees to try to reach Canada via boats.²⁷ The increased limitations placed on legal ways of reaching Canada with the BTB agreement will likely push migrants and refugees to find other irregular ways of crossing.

In what follows, we contextualise the BTB agreement by examining the increasing security cooperation between US and Canada since 9/11. We observe the trend towards pre-emption and screening technologies. We then place the emergent situation in the context of sovereign exception and biopolitical borders, emphasising how the BTB agreement wields substantially negative implications for persons belonging to populations from the Global East and South, particularly those with Muslim affiliations. Finally, we briefly discuss the broader implications of these developments on Canadian identity and point out directions for further research

FROM SMART BORDERS TO PERIMETER SECURITY

Security cooperation between the US and Canada started in the early to mid-twentieth century with a common continental defence policy, and continued through the Cold War with Canada's participation in a number of NATO missions led by the US.²⁸ During this period, Canada's image as the international peacekeeper, promoted mostly by the liberal governments of Canada, functioned more as an ideological construction than a reality. While Canada did significantly contribute to some UN peacekeeping missions, such missions constituted only a part of Canada's military activities. The international peacekeeper myth was mostly used by Canadian governments to ease the public's

concerns about Canada's military activities abroad and to internally promote the Canadian identity as a multicultural society.²⁹

The terrorist attacks on 9/11 marked a new era for Canada-US security cooperation. Canada 'naturally' joined the 'global war against terror' led by the US President George W. Bush without any public debate.³⁰ Since then, Canada redesigned its security policies to fully integrate with US military interests. Canada abandoned (albeit limited) peacekeeping efforts, significantly increased military spending, directly supported the war in Afghanistan, and indirectly assisted the war in Iraq.³¹ Integrated security systems formed the backbone of this cooperation and made Canada an automatic ally of US military operations.³² Internally, Canada also introduced new national security measures to harmonise its legislation with that of the US, such as the new counter-terrorism and immigration laws.³³

The BTB agreement emerged within this context. The agreement, officially unveiled in December 2011, is the third major attempt to strengthen border cooperation between the US and Canada since September 2001, following the *Smart Border Declaration* of 2001 and the *Security and Prosperity Partnership* of 2005. While these earlier agreements played important roles in strengthening the cooperation between US and Canadian border authorities, it is only with the *Beyond the Border* agreement that the wholesale adoption of US standards by Canadian authorities has become a dominant feature of cross-border relations. The BTB agreement positions Canada as the 'natural' ally of the US, sharing the same security concerns. The official declaration document, signed by President Obama and Prime Minister Harper, states:

The United States and Canada are staunch allies, vital economic partners, and steadfast friends. We share common values, deep links among our citizens, and deeply rooted ties To preserve and extend the benefits our close relationship has helped bring to Americans and Canadians alike, we intend to pursue a perimeter approach to security, working together within, at, and away from the borders of our two countries to enhance our security.³⁴

This is not to suggest that the BTB agreement introduced entirely new projects and practices. A closer look at security initiatives developed since 9/11, starting with the *Smart Border Declaration* of 2001, demonstrates that, despite some drawbacks, many of the surveillance initiatives were already planned and partially implemented.³⁵ For instance, the exchange of specific types of information such as passenger data and data about travellers, migrants, asylum seekers and citizens between Canada and US authorities was already in place.³⁶ However, the BTB agreement expands the scope and amount of information that is collected and shared, as well as making the process more systematic. Moreover, for the first time the agreement allows the

deployment of US Customs and Border Protection (CBP) agents in Canadian territories to conduct security pre-clearance checks before they cross the border. As of March 2015, CBP officers are conducting these checks at eight Canadian airports and they can be posted to any airport, ferry terminal, land crossing point or rail station in the future.³⁷

Pre-emptive surveillance is a key characteristic of the BTB agreement, which is intended to “address threats at the earliest point possible – within, at, and away from our borders.”³⁸ While the agreement also claims to facilitate the mobility of people,³⁹ this claim is questionable. Apart from extending programmes such as NEXUS, which was developed to facilitate the mobility of business class travellers⁴⁰ as a result of the border initiatives developed since 9/11, mobility has gradually become slower and more cumbersome for ordinary citizens of both states. For instance, whereas a driver’s licence was previously an acceptable form of identification to cross land borders, as of 2009 a valid passport has been required.⁴¹ Border crossing for ordinary citizens or permanent residents with Muslim or Middle Eastern backgrounds has become ever more of a burden, as these groups are often subjected to further inspection at the borders.⁴² For non-citizens, such as visitors, migrants and refugees, mobility is even more restricted. Practices such as biometric data sharing and the routine exchange of information on asylum seekers and refugees, all result in further scrutinising of the mobility of non-citizens and, thus, slow down their passage. This outcome is not surprising, given that Canada’s security policies since 9/11 are largely directed by Canadian corporate elites under a neoliberal climate.⁴³ The BTB aims only to facilitate the mobility of an elite group of citizens and their business transactions through extended NEXUS lanes and harmonised cargo security systems.⁴⁴ While there seems to be a contradiction between “post-9/11 values of secure border and economically open border under NAFTA,”⁴⁵ at first glance, a broader look at how neoliberalism operates globally demonstrates that, both in Western and non-Western contexts, neoliberalism smoothly couples with authoritarian surveillance, which is particularly directed towards groups who do not possess neoliberal values or those who are broadly and often arbitrarily labelled as security threats.⁴⁶

A programme of such scale constitutes a major shift in the dynamics of Canada’s current data-sharing regime with regards to the extent of information shared and the use of biometric identification systems. Although Canada and the US already cooperate on the Advanced Passenger Information (API) and Passenger Name Record (PNR), traveller screening measures (which include both citizens’ and non-citizens’ information),⁴⁷ and share information about immigrants and asylum seekers through the Statement of Mutual Understanding on Information Sharing and the Safe Third Country Agreement, the extent of this information is limited and shared on case-by-case basis. The information sharing is enhanced and becomes systematic with the BTB and through the implementation of Immigration Information Sharing Treaty, Entry/Exit

System, the Electronic Travel Authorization Program (ETA) and the Interactive Advance Passenger Information (IAPI) system. Below we examine these initiatives and point out how they extend digital surveillance over diverse categories of people and potentially bring negative consequences for people from structurally disadvantaged backgrounds.

EXPANSION OF DIGITAL SURVEILLANCE AT THE CANADIAN BORDERS

Set in a broad context, the BTB agreement demonstrates how diverse categories of individuals, including citizens, visa-required travellers, visa-exempt travellers, migrants, asylum seekers, and irregular migrants, are regarded as 'security threats' by US and Canadian authorities. The agreement permits US and Canadian authorities to collect and share substantial amounts of personal data from these individuals without clearly justifying why these populations constitute security threats to either country. Such developments, we argue, extend the scope of digital surveillance and undermine travellers' human rights, including the presumption of innocence, the right to privacy, the right to claim asylum, and the right to leave one's country.

Establishing pre-emptive and de-localised controls are the driving rationales behind the BTB agreement. These strategies aim not only to deny or authorise access before travellers reach national borders, but also aim to control the movements of travellers after they successfully cross the border. These pre-emptive and de-localised techniques constitute part of a broader shift in the rationalities of control in Western states following 9/11. The last decade has witnessed the expansion of both strategies. While pre-emptive intervention has extended to include practices such as the transmission of passenger data prior to flight departure and extensive profiling of airplane passengers,⁴⁸ de-localised controls have become common by way of biometric data collection and information sharing.⁴⁹

Following Foucault's reasoning, these practices can be understood as practices exemplifying *dispositifs of security*. According to Foucault, dispositifs of security aim to manage risks before they actualise and without any localised focus.⁵⁰ Indeed, in line with Foucault's insights, many researchers note that borders can no longer be understood as physical lines separating 'inside' from 'outside;' instead, they are 'vacillating,'⁵¹ becoming 'portable,'⁵² 'diffuse'⁵³ and 'generalised.'⁵⁴ However, our interpretation runs contrary to Foucault's contentions that dispositifs of security are replacing territorial techniques of surveillance.⁵⁵ The simultaneous thickening of border controls through camera surveillance and biometric systems at airports⁵⁶ and through radars, drones, walls and fences at territorial land and sea borders⁵⁷ suggests

that diffuse practices of dispositifs of security are expanding simultaneously with territorial surveillance techniques, rather than replacing them.

Travellers who require visas first encounter the border at the embassies where they submit claims and biometric information. In order to complement the US-VISIT Program, a new system in Canada is being implemented to facilitate both countries' coordination on visa policy and to improve between-state visa authorities' communications. The Immigration Information Sharing Treaty, signed between Canada and the US in 2012, forms the legal basis of cooperation. Since 2014 the Treaty has allowed biographical information sharing of third country nationals who have applied for visa or asylum.⁵⁸ Biometric information sharing is planned for the following years.⁵⁹ In addition to enforcing visa policies that discriminate against individuals from the Global South and East,⁶⁰ the integration of Canada/US databases may amount to visa bans. Individuals who are rejected from one country may be discriminated from visa consideration in the other. Previous reports already demonstrate how visa watch lists are based on unreliable and inconsistent information regarding visa applicants.⁶¹ With the BTB agreement, biometric and identity information attached to traveller profiles would be stored in the shared visa systems, allowing both Canadian and US border agents to access and make life-altering decisions based on information that has largely not been vetted. Moreover, even the legal endorsement of travel through visa obtainment does not guarantee the migrant's ability to cross the Canadian border.⁶² For instance, the International Civil Liberties Monitoring Group (ICLMG) report presents a number of specific accounts of perceived racial and religious discrimination at the Canadian border. These accounts emphasise the length of detainment for questioning (often exceeding several hours), a focus on questions that appear largely irrelevant to one's travel plans (e.g., religious orientation), and perceptions of "othering" whereby the perceived primary rationale for secondary screening has been one's skin colour and/or birth country.⁶³

Those travellers who succeed in reaching Canadian soil would continue to be under surveillance in Canada. Biometric information serves to extend the reach of the border, creating a 'mobile border'⁶⁴ to which individuals would be subject throughout their visit. For instance, those who have overstayed their visas can be identified and expelled.⁶⁵ This will be maintained through the Entry/Exit System. The system logs each individual as they transit ports of entry in either Canada or the US. The system was first piloted at four land borders,⁶⁶ but as of 30 June 2013 it has been expanded to all land border ports of entry and is applicable to third country nationals as well as Canadian and US permanent residents. In future phases, the system will also be applicable to all individuals, citizens and non-citizens alike.⁶⁷

The implications of information sharing between the US and Canada for asylum seekers would also be drastic. The existence of carrier sanctions and the transmission of passenger information have already made it very difficult

for asylum seekers to reach Canadian soil. In addition, Canada and the US were already sharing information on refugee claimants since 2004 with the Safe Third Country Agreement, which was a part of the *Smart Border Action Plan*. However, information sharing was occurring on a case-by-case basis. Now, with the BTB agreement, and through the implementation of the Immigration Information Sharing Treaty, information sharing is regularised and systematised.⁶⁸ As with the EU's *Dublin Regulation* and Eurodac Database, the BTB agreement and the corresponding asylum databases will permit asylum seekers to submit only one application to the first country (either Canada or the US) in which they arrive. Hence, a rejection from either country would mean permanent exclusion from humanitarian protection from both countries. This policy suggests negative consequences for refugee rights. International regulations on refugees' rights, namely the United Nations 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees, grant all individuals the right to seek asylum in other countries. Yet, the BTB agreement, just as the EU's *Dublin Regulation* and Eurodac Database do, undermines this right by means of effectively obliging asylum seekers to submit only one claim to a single state.⁶⁹

While no biometric data collection is currently planned for visa-exempt travellers the effects of diffuse borders are evident. Mirroring the Electronic System for Travel Authorization (ESTA) programme of the US, Canada is developing the Electronic Travel Authorization Program (ETA). While these two systems are not planned to be harmonised at this point, they are being built on similar infrastructures to pre-emptively screen visa-exempt travellers. ETA infrastructure is established in August 2015 and by 2016 it will become mandatory for all visa-exempt travellers, except US citizens. Once in full operation, visa-exempt travellers will enter their biographic, passport and background information to the ETA website and this information will be assessed by the Canadian border authorities before these travellers board flights.⁷⁰

ETA is planned to work in combination with the Interactive Advance Passenger Information (IAPI) system. IAPI builds on the existing Advance Passenger Information/Passenger Name Record (API/PNR) programme to pre-screen all travellers, including Canadian citizens and permanent residents. While the Canadian border authorities were already using the API/PNR programme to screen travellers, with the IAPI, they will be able to convey a 'board' or 'no-board' decision to air carriers prior to the flight. API is expected to begin its operations in 2015.⁷¹

While even white Canadian citizens have expressed concern over the post 9/11 border crossing experience,⁷² the most substantive implications on mobility have been felt by racialised "others," particularly those with Muslim and Arabic community ties.⁷³ The experiences recounted by Canadian citizens in the ICLMG report emphasise the extent to which certain communities perceive racial profiling as a common practice at Canadian borders:

“Repeatedly stopped, questioned and subjected to secondary screening, a number of respondents told the Clearinghouse that they do not travel outside of Canada as much as they did 10 years ago, and they avoid as much as possible visiting the U.S.”⁷⁴ These incidents continue to occur frequently and sometimes make their way to mainstream media.⁷⁵ It is likely that information sharing between the US and Canadian authorities with the BTB agreement would result in further scrutinisation of the mobility of these groups of Canadian citizens.

The widely known case of Maher Arar creates further concerns about the outcomes of information sharing between Canadian and US authorities. Arar, a dual citizen of Canada and Syria, was intercepted by US border officers upon arrival in the US while on his way to Canada, coming from Switzerland.⁷⁶ After experiencing a series of due process violations (e.g., interviewing in excess of two days, failure to be provided with a lawyer, and inadequate preparation time for legal proceedings), Arar was deported to Syria despite his expressed concerns that he would be tortured if deported. Although Arar was never charged criminally in either nation, he was detained in Syria for a year, during which time he endured torture, before he was ultimately permitted to return to Canada. While this incident did not occur at a Canadian border, US authorities maintain that their actions were based on Canadian intelligence. Arar’s deplorable treatment serves as a clear example of the potentially negative consequences of intelligence sharing and database integration.

In fact, the above outlined initiatives and systems, which allow automatic and systematic sharing of data on all individuals, can be accessed by the security agencies of Canada and the US to investigate ‘terrorism’ related activities.⁷⁷ Existing research in this field demonstrates that Canadian security agencies define ‘terrorism’ in broad and ambiguous ways to expand surveillance over groups such as young Muslims, Palestinian human rights activists, Indigenous rights activists and environmentalists.⁷⁸ The Bill C-51 (Anti-Terrorism Act 2015) aims to further increase the scope of surveillance on these groups.⁷⁹

These developments are demonstrative of Agamben’s assertion that surveillance expansions of this nature constitute a form of ‘bio-political tattooing’ of the population.⁸⁰ This argument is tied to Agamben’s conception of “*homo sacers*” – people whose lives are abandoned so that any sovereign practice on their bodies is possible. For Agamben, this potentiality of the sovereign exception puts the life of the whole population under radical uncertainty to the extent where we all become “virtually *homines sacri*.”⁸¹ The sovereign exception has been the ontological foundation of human communities for Agamben; but such reality manifests its effects in our everyday lives without any localised focus, in spaces as diverse as “*zones d’attentes* of airports and certain outskirts of our cities.”⁸²

Agamben’s insights are highly useful for understanding how human rights of large segments of the population are undermined through increased

surveillance in contemporary societies. But these insights have to be read from a sociological perspective, for they may wrongly imply that the systems of control are omnipotent and that all individuals face a single sovereign power equally. Indeed, Agamben's state of exception often implies "a counsel of despair,"⁸³ leaving little room for understanding differential experience of sovereign power, discontinuities and failed sovereign acts in governmental projects, as well as unintended consequences and political contestations.

In the context of the BTB, we should maintain a Foucauldian genealogical⁸⁴ suspicion towards teleological narratives and perfect culminations, for governmental projects always bear a potential for (partial or full) failure.⁸⁵ Since the systems are not fully implemented yet, it is too early to comment on their "successes," but evidence from other surveillance systems, such as the US-VISIT, suggests that such systems bear a high risk of technical failure.⁸⁶ We should also recall the story of the abandoned Security and Prosperity Partnership (SPP), signed by Canada, Mexico and United States in 2005 and cancelled in 2009. The SPP could not fulfil its aim of harmonising "border security policies and regulations in food, health, energy and trade"; and it was able to achieve only "small and technocratic" outcomes.⁸⁷ Despite this failure, some key themes of the SPP, particularly trade facilitation and information exchange and the underlying themes of "neoliberal citizenship" and "hierarchization of citizens"⁸⁸ found their way into the BTB, even though their future remains uncertain. Yet, while the future of the BTB is uncertain, we should also maintain that contingency often occurs within a certain structural pattern rather than transforming the pattern. The developments in relation to expansion of surveillance at Canadian borders since 2001 reveal a structural pattern. Without a radical political opposition such pattern is unlikely to get transformed.

This ties with our second revision to Agamben: moving beyond the analogy of the *homo sacer*, we have to take into account how diverse groups may resist the expansion of BTB surveillance.⁸⁹ This is not to claim that Agamben's theory completely excludes politics. His opposition to biopolitics and sovereign hierarchisation of different forms of life (political and non-political) bears a radical potential for politics.⁹⁰ But he does not put emphasis on theorising how this politics could articulate itself in practice, through modest or radical political acts. In the context of the BTB, there has not been much opposition directly targeted at the BTB so far, except the critique of secrecy of the agreement, a critique that has been articulated by the opposition MPs.⁹¹ However, political contestations aimed at protecting the rights of indigenous people, migrants and refugees across Canada⁹² and the ongoing opposition to Bill C-51,⁹³ might have an impact on the future of the BTB, because these political activities oppose the same underlying structural processes in Canada: expansion of surveillance and erosion of human rights. Despite the apparent effects of these systems for undermining their agency, migrants and refugees might also resist the new surveillance practices of the

BTB, even though such resistance might further endanger their lives. Here the European Union's Visa Information System can be cited as an example. VIS and complementary techniques (such as carrier sanctions and deployment of liaison officers) produced deterrent effects on migrants and refugees, forcing them to embark on dangerous journeys towards the EU rather than preventing their mobility. As an unintended consequence of the BTB, irregular crossings from sea borderzones might also increase in Canada. But the analogy of the *homo sacer* should be corrected for a more fundamental reason: while it is true that the planned technologies cover the whole population, this does not mean that all groups will experience sovereign power equally. Given that the agreement also aims to promote the mobility of 'trusted' travellers through the expansion of the NEXUS scheme, one could argue that certain groups would benefit from such exceptional practices.⁹⁴ Finally, it is important to take into account the complex relationships among multiple sovereigns in establishing the state of exception. While Agamben's insights are not necessarily state-centric, he does not emphasise sufficiently the need to examine such complexities. As we argued earlier, the BTB agreement demonstrates the hegemony of US sovereignty over Canadian sovereignty and the strategic acceptance of such hegemony by Canadian corporate elites to advance their interests.

CONCLUSION

The cumulative series of new border policies affecting Canada-US points of entry since 9/11 serve well to demonstrate the direction of trends, which together mean more pre-emptive strategies aimed at certain groups, achieved through surveillance screening. This social sorting process demonstrates that the border is becoming increasingly biopolitical – it aims to manage individuals merely as biological bodies rather than as political subjects with political rights. It is through utilisation of the mechanism of a state of exception that the bodies of the border crossers have been rendered as objects of biopolitical interventions. The passage of these bodies through the border is allowed to the extent that these bodies can be excluded at any point. It is the diversification and dissemination of the digital surveillance technologies that has made such exceptional practices become the norm. Digital systems allow continuous and automatic sharing of information among authorities, turning everywhere into a border, or a space of exception.

While Canadian immigration laws historically discriminated against groups who were deemed unfit for Canada's body-politic, new surveillance mechanisms intensify and automate the social sorting process. Human rights of border crossers become ever more questionable today as we are confronted with cases in which certain groups of people – especially people

with non-marketable skills from the Global South and people with Muslim affiliations – are experiencing border crossings in which assumptions about due process, presumption of innocence, rights to privacy, asylum and leaving any country are replaced by discriminatory screening procedures.

Those human rights articles are stipulated in a number of human rights treaties, including Universal Declaration on Human Rights and United Nations Refugee Convention. However the fact that they can be so easily undermined proves Agamben's point that these treaties function as humanitarian regulations.⁹⁵ Not only do these regulations have certain ambiguities (for instance there are rights to asylum and leaving any country, but there is no corresponding right to enter any country), they also in the end rely on the mercy of the states for their enactment. Yet, such reality should not prevent those who are affected by sovereign power to articulate human rights discourses to limit sovereignty – after all, human rights, rather than having a fixed meaning, is a site of struggle for equality.⁹⁶ Precisely for this reason, it is important to underline that the BTB agreement not only goes beyond borders but it also goes beyond human rights – for it advances new forms of discrimination that are powered up by pre-emptive and delocalised border control technologies.

If the above points are relatively clear, though underdeveloped in research as yet, they raise further important questions, particularly in relation to Canadian identity of multiculturalism and its limits. Below we offer some preliminary remarks on this complex theme and point out the need for further research.

In her historical study, Radhika Mongia shows how, at the beginning of the twentieth century, the movement of people from India to Canada was restricted through the imposition of passports, despite the fact that both India and Canada were parts of the British Empire at that time.⁹⁷ According to Mongia, this form of exclusion tells much about the understanding of race, nation/nationality, and state in Canada historically, and demonstrates the 'truth' about Canada as a white settler colonial state. The advancement of multiculturalism rhetoric since the early 1970s by Canadian authorities has done little to challenge this core identity of the Canadian state. While the transformation of capitalism under globalisation facilitated the migration of non-White professional groups to Canada and represented the end of overtly racist migration and border policies,⁹⁸ it created what Balibar terms "racism without races:" "a racism which, at first sight, does not postulate the superiority of certain groups or peoples in relation to others but 'only' the harmfulness of abolishing frontiers [and] the incompatibility of life-styles and traditions."⁹⁹ Understood within this context, Canadian multiculturalism serves to sustain the myths of 'freedom' and 'equality,' while sustaining unfreedom and inequality.

The policies at the Canadian border that are examined in this paper point out a structural pattern that is in line with the above summarised

characteristics of Canadian multiculturalism. It is mostly migrants and refugees from the Global South with few marketable skills and persons with affiliations to the Muslim community (citizens and non-citizens of Canada), who are suspected of being unfit for the 'Canadian way of life', that are excluded at the Canadian borders. These groups are either treated as 'human waste' – the outcasts of global neoliberalism who are forced to remain local and immobile (in opposition to elites who enjoy globalisation with extended mobility rights) – ¹⁰⁰ or members of a backward and inherently violent culture who threaten the peaceful existence of white Canadians.¹⁰¹ Further research is needed to understand the specific effects of digital surveillance policies and practices on these groups and how such policies and practices shape Canadian identity. Another future research theme within this context is the consequences of the US hegemony-driven security policies and practices over Canadian identity. Considering the restructuration of Canada's security policies based on US priorities since 9/11 and the level of security cooperation between Canada and the US with the BTB, it is almost ironic that the Canadian governments have historically put considerable effort into differentiating Canadian identity from American identity in order to make "Canadians take pride in their identity and belonging to a state that was well respected internationally as 'selfless,' making both state and community different from the 'self-interested' American state."¹⁰² While the image of Canada as a benevolent international actor and the promoter of universal multiculturalism were largely myths, the developments with the BTB make these myths ever more questionable. Further research is required to understand if and how the US hegemony driven expansion of digital surveillance at the Canadian borders complicate the official narrative on Canadian identity vis-à-vis US identity.

Finally, and perhaps most importantly, future research should also investigate further the ways in which social movements in Canada – from No One is Illegal to Idle No More – oppose the ongoing securitisation of borders and criminalisation of migrants and refugees, and provide an alternative vision for Canadian identity, one that is not based on the false universality of Canadian multiculturalism and its racial hierarchies of citizenship, but on the true universality of equality.

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NOTES

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3. O. E. Topak, 'The Biopolitical Border in Practice: Surveillance and Death at the Greece-Turkey Borderzones', *Environment and Planning D: Society and Space* 32 (2014) pp. 815–833. See also É. Vallet and C. P. David, 'Introduction: The (Re)Building of the Wall in International Relations', *Journal of Borderlands Studies* 27 (2012) pp. 111–119; and S. Rosière and R. Jones, 'Teichopolitics: Re-Considering Globalisation through the Role of Walls and Fences', *Geopolitics* 17 (2012) pp. 217–234.
4. P. Andreas, 'The Mexicanization of the U.S.-Canada Border: Asymmetric Interdependence in a Changing Security Context', *International Journal* (Spring 2005) pp. 449–462.
5. See The Department of Homeland Security, 'Northern Border Strategy', June 2012, available at <www.hsdl.org/?view&did=710991>.
6. See D. Lyon, *Surveillance after September 11* (Cambridge: Polity 2003); and D. Lyon, *Identifying Citizens: ID Cards as Surveillance* (Cambridge: Polity 2009) ch. 4.
7. The biometric data collection has been contracted by the Canadian government to private companies that are running Canada's Visa Application Centres (VACs). The contractor for the majority of Canada's VACs is VFS Global. VFS Global is headquartered in Switzerland.
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12. See <<http://www.publicsafety.gc.ca/prg/ns/2012-cts-eng.aspx/>>.
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14. G. Agamben, *Homo Sacer: Sovereign Power and Bare Life*, trans. by Daniel Heller-Roazen (Stanford: Stanford University Press 1998); G. Agamben, *State of Exception*, trans. by K. Attell (Chicago: University of Chicago Press 2005).
15. Ibid.
16. See also: N. Vaughan-Williams, 'The Generalised Biopolitical Border? Re-Conceptualising the Limits of Sovereign Power', *Review of International Studies* 35 (2009) pp. 729–749.
17. See International Civil Liberties Monitoring Group, 'Report of the Information Clearinghouse on Border Controls and Infringements to Travellers' Rights', 2010, p. 15, available at <http://www.travelwatchlist.ca/updir/travelwatchlist/ICLMG_Watchlists_Report.pdf>.
18. According to Agamben sovereignty is the "undecidable nexus between violence and right" rather than being "an organ of the juridical system or of the state" (G. Agamben, *Means Without End*, trans. by V. Binetti and C. Casarino (Minneapolis: University of Minnesota Press 2000) p. 111). Elsewhere he adds that state of exception is not "fullness of powers" but "an emptiness and standstill of the law"

(G. Agamben, *State of Exception* (note 14) p. 48). See also M. Coleman and K. Grove, 'Biopolitics, Biopower, and the Return of Sovereignty', *Environment and Planning D: Society and Space* 27 (2009) p. 497. Cf. J. Barkan, *Corporate Sovereignty: Law and Government under Capitalism* (Minneapolis: University of Minnesota Press 2013) for a non-state centric utilisation of Agamben's theory.

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22. V. Konrad and H. N. Nicol, 'Border Culture, the Boundary between Canada and the United States of America, and the Advancement of Borderlands Theory', *Geopolitics* 16 (2011) pp. 70–90. We share Konrad and Nicol's observation that "border culture ... remains undervalued and under-represented in our burgeoning research on borders and borderlands", particularly in relation to Canadian digital borders. However, we follow a different path and engage, albeit briefly, with the literature that questions Canadian sovereignty vis-à-vis US hegemony and Canadian multiculturalism to fill this gap.

23. Multiculturalism was officially adopted by Trudeau's government in 1971 and since then it represented Canada's official national identity, even though its meaning was never fixed. In its initial phases the discourse of multiculturalism was used in mediating the claims of various European-origin ethnic groups in Canada, beyond the identity of 'two founding nations', but later it became the central reference point in all discussions about Canadian diversity, including migrations from the Global South and the rights of indigenous peoples (M. Chazan, L. Helps, A. Stanley, and S. Thakkar, 'Introduction: Labours, Lands, Bodies', in M. Chazan, L. Helps, A. Stanley, and S. Thakkar (eds.), *Home and Native Land: Unsettling Multiculturalism in Canada* (Toronto: Between the Lines 2011) pp. 1–2).

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30. Charbonneau and Cox, 'Global Order, US Hegemony' (note 20).

31. Ibid.; Klassen (note 19) pp. 4–5.

32. Charbonneau and Cox, 'Global Order, US Hegemony' (note 20); Charbonneau and Cox, *Locating Global Order* (note 19).

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37. Retrieved from <<http://canada.usembassy.gov/news-events/2015-news-and-events/march-2015/16-march-2015-united-states-and-canada-sign-preclearance-agreement.html>>.

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46. See, e.g., M. Dean, 'Liberal Government and Authoritarianism', *Economy and Society* 31 (2002) pp. 37–61; D. Harvey, *A Brief History of Neoliberalism* (Oxford: Oxford University Press); O. E. Topak, 'Governing Turkey's Information Society', *Current Sociology* 61 (2013) pp. 565–583.
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