The Resilience of Borders:

Law and Migration in Contemporary Performances

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Legal philosopher Hans Lindahl argues that the regulation of immigration is, above all moral considerations, a political issue. When one tries to assess the problem of territorial boundaries – and their transgression – as a question of distributive justice, political philosophers easily mix, not even surreptitiously, *moral* arguments with political and legal considerations. Lindahl refers to Michael Walzer, who asserts the primacy of the community and consequently bounded justice, and to Jürgen Habermas, who's idea of boundless justice makes the notion of a nation-state irrelevant: one world polity has, by definition, no boundaries and thus no immigration issues. But Lindahl replies that law, and immigration law in particular, is forced to create boundaries by its very nature. After all, law structurally defines diverse groups of interest, and the actions of individuals – belonging or not belonging to one group or another – are always placed or misplaced, i.e. situated inside or outside the realm of the law. Even a world legislature and a universal jurisdiction would have to decide who can claim her/his rights, or who cannot. But since law is also, by definition, contingent – it can be changed in any direction –

the claim of distributive justice, as a form of *moral* pressure, cannot be discarded easily. It shouldn't be discarded, to be sure, it should be politicized. In recent performances about immigration, the moral indignation has clearly had the upper hand, sometimes with a touch of cynicism. In *Necropolis,* Arkadi Zaides creates a fictitious city of the dead, where only those who died in their attempt to reach Europe are allowed. From a massive collection of data about the victims of Fortress Europe, his performance transforms into a horrifying portrait of their 'human remains'. *Het Salomonsoordeel,* a documentary, participatory monologue by Ilay den Boer involves the audience in the moral dilemmas of the 'decider' of the Dutch immigration and asylum agency, where den Boer worked as an intern. In *The Voice of Fingers,* Thomas Bellinck confronts his friendship with asylum seeker Said Reza Adib with the harsh reality of migrants as 'data subjects', identified by their fingerprints. The question arises of whether artistic representations of immigration issues sufficiently tackle the political challenges of global mobility – in this collapsing world of (civil) wars, climate disasters, and economical inequalities – and the challenges it poses for the affluent societies we are living in. Is it possible, or even meaningful, for theater-makers to try to relate their compassion – as a moral sentiment – to the frameworks of contingent policies and, subsequently, to the strict taxonomies of legislation?

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In her video installation *Guided Tour of a Spill (CAPS Interlude)* (2021), Moroccan artist Meriem Bennani invents a story about a new kind of transatlantic migration, from Morocco to the USA: no stowaways on cargo ships, no forged passports, but teleportation, à la *Star Trek*. The response of U.S. Customs and Border Protection is drastic. They build an island in the middle of the Atlantic that plucks the capsules of teleporting Moroccans out of the sky. But many migrant trekkies escape this maneuver and succeed in crossing. Bennani's video is a mixture of digital animation and edited found footage of violence at hyper-secure borders. The symbol of this fictional project is a crocodile from a children's movie, but that doesn't immediately brighten the tenor of the video. It is an indictment of a global (anti)migration policy that forces absurd solutions. The tactics of people smugglers on the Mediterranean – 750 people in a fishing boat – or of Tunisian border authorities – dumping West Africans in the desert – are no less absurd, but they are real.

It results in moral outrage in news reporting and analysis, as well as in artistic satire. But do the two have anything to do with each other? How does this moral disgust, in artistic guise, provoked by an artistic gesture, relate to thorough criticism of a deadly migration policy? Is this policy the result of democratic politics, and how does the artist respond to the supposed consensus (at least among a large majority in parliaments) that designs this policy and allows it to be applied? What about the law that draws borders and makes migration a cross-border phenomenon, in more ways than one? That is what I want to find out in this article, using some recent and representative theatrical performances, which attempt to give explicit shape to the moral as well as political indignation about the ever-higher walls around Fortress Europe. Three productions will be analyzed in more detail in the process: *Necropolis* by Arkadi Zaides (2020), *Het Salomonsoordeel* (*The Solomon's Judgment*) by Ilay den Boer (2020), and *Simple as ABC #7: The Voice of Fingers* by Thomas Bellinck (2023). All three address the tension between bureaucratic procedures and migrants' human rights: assessing narratives (den Boer), establishing identity (Bellinck), counting the dead (Zaides). All three refer, one more directly than the other, to a basic, always unanswered question of Hannah Arendt: who guarantees the right to have rights? (Arendt, 1973, 343) It is therefore obvious to turn to the legal-political context of migration, and its development in recent decades, to inform these analyses. From an abstract, legal-theoretical approach, this framework evolves into more concrete dilemmas: this is how I arrive at representations about concrete people.

Part I: Law, Politics and Theory

Boundaries are inevitable

The regulation of (im)migration is primarily a political issue, which does not necessarily coincide with a moral problem, argues Hans Lindahl. When trying to assess the problem of territorial borders – and their crossing – as a question of distributive justice[1], political philosophers easily (and often openly) mix moral arguments with political and legal reasoning. This is problematic because politics implies an asymmetrical relationship between citizens and aliens: the former set the rules, and the latter are merely subject to them. Morality, however, assumes a principle of reciprocity and, by extension, pursues distributive justice. Migration is first and foremost a political problem because it always violates seclusion from the political community – in the form of the nation-state – and forces it to redefine 'inside' and 'outside' with respect to the (legal) subjects who challenge it, and who therefore qualify as 'aliens' (as opposed to 'citizens'). The question of distributive justice – the principle of 'to each his own' – follows only afterwards (Lindahl, 2009, 137-138).

Incidentally, Hannah Arendt is also aware of this logic when she speaks of the 'right to rights,' and notes that the nation-state as the source of those rights seems inescapable, no matter how subjectively one conceives of those (human) rights (van Roermund, 2009, 169). Lindahl compares two approaches to migration, as a political-philosophical problem. While Michael Walzer emphasizes the primacy of community and thus of bounded justice, Jürgen Habermas posits an idea of boundless justice that makes the concept of the nation-state irrelevant. After all, a political community on a global scale has no borders and thus no migration problems in a legal-political sense. Walzer argues that the collective identity of a nation honors the bond between population and territory. That community becomes politically active from the consciousness of shared values. Thus arises, for the members of that community, the privilege of determining which aliens can be admitted and on what terms. Moreover, the term 'naturalization,' as the end result of integration, suggests that citizenship is considered a natural attribute, an identity that is not the result of the nation-state – that would simply be membership, as of an association – but rather a premise for the cohesion of that nation-state (Stolcke, 1997, 72).

Lindahl responds to Walzer that the emphasis on collective identity – shared values, i.e., a moral attribute – threatens to remove the contingency of the political decision of inclusion/exclusion from politics itself. The closure of the nation-state is a very political decision, and thus always subject to change (Lindahl, 2009, 140). But even with a world government, as Habermas suggests, inclusion/exclusion will every time be a concrete issue for a legal and political order, because a space will always have to be determined that is 'inside', which is dependent on defining this 'inside' from an 'outside.' Moreover, this must be done in a temporal perspective: the space of the law is constantly changing. 'Each his own' also means 'each his place,' even if that place is not definitively fixed, as the reality of migration demonstrates again and again (Lindahl, 2009, 147-155). Underlying this political need to define inclusion/exclusion is an even more fundamental fact, namely the impossibility of making an individual a subject of law without taking into account the institutional environment – the political community, to begin with – in which this individual comes into the world.

Politics is necessary

So, if one were to re-politicize migration, from these legal-theoretical insights, what conceptual difficulties does one encounter? Seyla Benhabib observes that here, both in public policy and in jurisprudence, the paradox of democratic legitimacy emerges, namely that any right to inclusion, the human right to freedom of movement[2] can never be enshrined in a law made by those most directly affected, namely the migrants themselves (Benhabib, 2004, 206). In her view, legislation and policy on migration is indeed the crucible for the functioning of democracy, precisely because, as a matter of principle, no alignment is possible between the humanitarian (and therefore political) demand of those who may be subject to the law and the legal affirmation of those who enact it. In other words, popular sovereignty and democracy never coincide perfectly, because there will always be excluded subjects of law (Benhabib, 2004, 20). Benhabib also notes that in the reality of the globalized world, the sovereignty of states today is not only factually but also legally constrained. The Universal Declaration of Human Rights is the historical tipping point in this regard (Benhabib, 2004, 3, 10). That evolution, however, begins, philosophically speaking, as early as Immanuel Kant's Zum ewigen Frieden. Kant posits, as *Definitivartikel* (ground rule): "das

Weltbürgerrecht soll auf Bedingungen der allgemeinen Hospitalität eingeschränkt sein." (Kant, 1983 [1795], 213)[3]. This 'hospitality' is not an act of charity, but it is indeed a right, namely the right not to be met with hostility when visiting another country. Kant is not suggesting a right of residence, the criterion remains whether the foreigner would 'perish' if refused entry, but this norm is very similar to current asylum law, especially since its normative status – enforceable law or morally binding agreement? – is equally unclear (Benhabib, 2004, 29).

At the same time, this theoretical basis of freedom of movement exposes a new paradox. The more clearly that a political community assigns itself a political identity – political freedom in the antique sense[4] – the more the community ("we, the people") will also shut itself off, or as Benhabib puts it, "Empires have frontiers, while democracies have borders" (Benhabib, 2004, 45). Frontiers are centrifugal boundaries that open perspectives, for conquest but also for peaceful displacements, while borders only include and exclude. Arendt's question about the basic 'right to rights' stems from this democratic impasse. The refugee flows of the early twentieth century left the Tsarist Empire and arrived in the democratic West, which felt threatened. Those democracies, according to Arendt, were mentally prepared for that movement by colonial imperialism, which relegated humans to in-humans ('savages') (Arendt, 1973, 188-197, 296-297). The step toward disqualifying destitute refugees could thus be taken relatively easily. How then can a right to citizenship – as a potentially democratic extension of freedom of movement and (Kantian) hospitality – still be justified, after totalitarianism, after the illusion that the 'nature of humanity' is the source of human rights? Or, as Benhabib restates the question: how can the right (to rights), which is indeterminate and indeterminable, be reconciled with the rights (to which one would thus be entitled), which are fixed within a legal-institutional framework and thus in principle enforceable?

The determinacy of rights presupposes a form of membership, of a political community in the form of a nation-state, and thus depends on its recognition. But the right in 'right to rights' should precede that recognition: for Arendt, membership in humanity is the elementary justification and not, as with Kant, the limitations of the earth as a territory. Arendt rejects the idea that the circumstances

of one's birth establishes one's membership in the political community. She argues, on the contrary, that one's political and social actions should be determinative (Benhabib, 2004, 57-59). Because the super-diversity in twenty-first century society which, among other things, increasingly complicates the idea of a common history and because a strict territoriality also provokes more and more critical situations, Benhabib proposes to think about a different (post-national?) concept of sovereignty that knows how to deal with opposing historical narratives (Benhabib, 2004, 64-67). Now, while international law may, to some extent, honor refugees' freedom of movement – enforcing it is something else ... – admission to forms of citizenship remains a carefully cherished privilege of individual nation-states. A starting point might then be to link a potentially universal moral obligation (freedom of movement/hospitality) to the political observation that global economic interdependence is increasingly undermining sovereignty. There is a certain logic in this, since the current institutional architecture (such as the WTO) is partly responsible for this inequality and thereby causes, directly or indirectly, migration (Pogge, 2002, 117). Whether political will can accompany that, however, is highly questionable.

Elspeth Guild notes as early as 2001 that, both with member states and the EU as a whole, migration policy has been 'outsourced,' and thus removed from politics. Individual decisions are no longer taken from the center of power but often by private actors or extraterritorial bodies. These include consular services of member states that issue visas, moving the border abroad. But a refugee wants to leave his country urgently, of course, and preferebly undetected. But with that, strictly speaking, he cannot qualify for refugee status, because the Geneva Convention requires that he has crossed the borders of his country (Guild, 2001, 53). If national governments would then start requiring legal documents from asylum seekers, then refugee status becomes an empty shell altogether. Another form of outsourcing are the assessments of potential employees who are not EU citizens by the human resources department of the hiring company. The safeguarding of a country's sovereignty (and thus its borders) is never the concern of a private company, except perhaps in a protectionist reflex that is commercially rather than politically motivated. Moreover, there is rarely any alignment between European governments and companies, so that workers from so-called 'high-risk' countries, for instance, which are subject to strict visa

requirements, gain access to Europe very easily through this route. This produces economic migration based on demand (Guild, 2001, 70).

The background to these developments is a fundamental paradox in European migration policy. The EU, in the spirit of an 'ever closer union,' has been committed to a progressive dismantling of internal borders, especially since the 1990s. But that dynamic, concretized in the Schengen Convention (1985), which has been part of the acquis communautaire since 1999, simultaneously strengthened Fortress Europe and its external borders up to and including the creation of the Frontex agency in 2004. Frontex coordinates surveillance, in principle a competence of member states with such an external border, and since 2016 it has been expanded into an independent border guard service. Schengen also requires countries to recognize, respect, and enforce each other's entry criteria: those denied/granted entry in one country must also be denied/admitted in other Schengen countries (Guild, 2001, 21). This evolution has been followed with suspicion, not only because of the criteria for migration, and a fortiori for asylum. It thus remains that eminently national competences and the member states absolutely want to keep it that way, but also because of the scandals with which Frontex has been confronted (Holding Frontex to Account, 2021). On the other hand, the European Court of Human Rights (ECtHR), whose jurisdiction covers a wider area than the EU, applies a broader concept of the right of residence, even though it continues to recognize that (national) asylum law can impose stricter conditions, at least if they are thoroughly examined on a case-by-case basis (Battjes, 2007). Combined with the Schengen treaty, which allows only exceptional internal border controls, this implies that a generous right of residence, according to the standards of the European Convention on Human Rights (ECHR), should be applied throughout the Schengen zone: respect for each other's rules, which, moreover, are tested against human rights. The reality on the ground is different.

Migration policy becomes security policy

The politicization – actually the de-politicization – of migration politics in Europe is a serious game on different, sometimes contradictory, sometimes overlapping, levels: the Council of Europe (ECHR and ECtHR), the European Union plus Schengen, and the national (member) states. The International Covenant on Civil and Political Rights

(1966) – the concretization of the Universal Declaration of Human Rights – serves as a guide, as Weltbürgerrecht (world citizenship), as Kant put it. The fundamental, constitutive, and constitutional prerogative to draw borders is the focus of most debates, but since the late 1990s an all-important paradigm has been added, which today is taken for granted, as if it had always been there: security policy. Underlying this is another factor that continues to influence this intimate relationship between migration and security largely unconsciously, namely the processing of the colonial past in the immigrant countries. In a theoretical approach, the 'percolation' of a security discourse can be explained from two types of logic. On the one hand, a logic of exceptional measures, interventions necessary to ensure the safety of the population in an emergency situation, emerges. But this logic unwittingly becomes itself the justification of a mainstream policy. As a result, the exceptionality of the policy disappears, or rather the exception becomes the basis of the entire political-legal system[5]. On the other hand, a logic of unease may explain the application of this security discourse. Political and official professionals qualify certain persons and groups as causes of unease, they exclude them because they would pose a security risk or they admit them, after it has been established that this risk does not exist (Bourbeau, 2011, 133-134).

What security is at stake, anyway, in this evolution toward 'securitized migration?' What is threatened by immigration? The risk to public health – HIV, for example – is an argument that crops up only sporadically, among politicians and in the press; the terrorist threat, on the other hand, is an argument that has been growing in pertinence since September 11, 2001. But much more systematic and at the same time much less precise is the alleged threat to European civilization, which is said to be under attack with the increase in influx. It is a dormant story, rarely told directly by politicians or opinion makers, at most as an echo of public opinion, but in this very way it contributes greatly to the self-evident securitization of migration policy. This is how the Copernican revolution succeeds: the exception – the dangerous migrant – becomes the rule, the generalized touchstone in every admission procedure. Once this intellectual and moral hurdle has been overcome, it is no longer even important which threat will be averted by a more restrictive immigration policy. Securitization becomes an end in itself, and this is most striking in the 'Australian model,' where border security

has become an ideologically (and legally) coherent paradigm. The Australian Border Force is always expanding its territorial authority at sea through 'security zones,' and any refugee they find there is either pushed back or deported to an extraterritorial camp where they can start the asylum process. With one very severe restriction: these asylum seekers will never be able to stay on Australian soil, even with recognized refugee status. In Peter Chambers's analysis, border security is a social system that reproduces itself within an imaginary frame of reference, and that frame of reference is the border that guarantees Australia's sovereignty (Chambers, 2018, 2). That border is on the one hand very well-defined – the Australian continent, surrounded by an internationally recognized 12-mile zone – but on the other hand more fluid: the security zone in the open sea, where pushbacks take place, and the extraterritorial places where asylum requests of 'illegally arrived' refugees are processed. For registration, special zones have been given offshore status (Christmas Island). For the unlimited waiting period for recognition, places are (or were) rented in neighboring foreign countries: Manus, part of Papua New Guinea (now closed), and the island state of Nauru – an archipelago of Guantanamos for asylum seekers.

The specter of (post)colonialism

Seyla Benhabib already referred to Hannah Arendt, who explained the suspicion of refugees, in the early twentieth century, through colonial racism (Benhabib, 2004, 51). The evolution towards securitization outlined earlier may have had an important influence, as it appeared to be able to put into practice a far-reaching othering of asylum seekers: Fortress Europe exists. Homi Bhaba sees this othering as a recovery of place and time from a colonial era, but in an unmistakable present that is grimly close – the neighbors, as it were. The historically op-pressed come to avenge themselves (Bhaba, 2004 [1994], 241-242), and he quotes from *The Satanic Verses* of Salman Rushdie:

> These powerless English! - Did they not think that their history would return to haunt them? – 'The native is an oppressed person whose permanent dream is to become the persecutor' (Fanon) [. . .] He would make this land anew. He was the Archangel, Gibreel – And I'm back. (Rushdie, 1988, 353)

A pertinent observation, but not a political statement. The European refugee policy that emerged during the twentieth century, especially with the acceleration following World War II, has always had a tendency to de-politicize: the Universal Declaration of Human Rights was regarded as a morally high-minded document, whose main purpose was to embody moral indignation ('never again') as well as resourcing. The declaration could guide politics but was certainly not intended to create subjective rights for which legislators had to vouch and which could lead to enforceable results. Tellingly, nowhere in the texts was colonialism, as an institutionalization of 'racial' superiority, condemned (Mayblin, 2017, 119). It is only twenty years later, with the International Covenant on Civil and Political Rights in 1966, that it becomes possible, as a legal subject, to invoke human rights, although real legal protection is not as strong everywhere, if it exists at all.

Such legal protection does exist in Europe, with the ECHR (1950) and the ECtHR (1959), and since then the legal protection of human rights in legislation and jurisprudence has been strengthened, also regarding refugees. But at the same time there is a restrictive movement in asylum policy, which wants to leave out as much as possible the context of the asylum seeker – motives, situation in the country of origin, etc.: this is also a form of de-politicization (Mayblin, 2017, 119). The decisive distinction between forced and voluntary refugees, politically and officiously translated into 'political' versus 'economic' refugees, is an essential tool here, which precisely allows the individual context of the asylum seeker to be minimized (Mayblin, 2017, 31). A story becomes a qualification. Politically, this can be explained from the logic of global capitalism, which permanently seeks the most profitable allocation on a global scale, especially in the labor market. Uncontrolled migration thwarts this 'management,' and a neocolonial security discourse – "European culture is under threat" – is a working rhetorical argument in this regard. Colonial relations, including racial prejudice – rendered somewhat invisible – are thus restored in another form (Ibrahim, 2005, 172).

The colonial past, which is structurally based on a racialized image of man, reappears as soon as global relations are threatened by social, economic, and ecological shifts. The formation of international human rights intentions and regulations reveals more than once that delays – sometimes for decades – are just about always related to

this racialized view of man and the world. For example, it has been suggested by official bodies that the recognition of other cultures as equal, in terms of human rights, would mortgage modern progress with the West leading the way (Mayblin, 2017, 108-110). Not surprisingly, then, this hegemonic mindset – overt in discourse, covert in policy – continues to influence, if not dominate, the treatment of asylum seekers.

Part II: Theater, Document and Politics

In the first part of Arkadi Zaides's *Necropolis*, one watches a multitude of images of places where refugees died and were buried. As these images fade out, some words appear on the black screen, taken from Walter Benjamin: "[Ein Kulturgut] ist niemals ein Dokument der Kultur, ohne zugleich ein solches der Barbarei zu sein" (Benjamin, 1980, 696)[6]. This statement is the core of the seventh *geschichtsphilosophische These*, and can only be confirmed after seeing these images as well as what follows. But the eighth Thesis is also relevant here:

> Die Tradition der Unterdrückten belehrt uns darüber, dass der „Ausnahmezustand", in dem wir leben, die Regel ist. Wir müssen zu einem Begriff der Geschichte kommen, der dem entspricht. Dann wird uns als unsere Aufgabe die Herbeiführung des wirklichen Ausnahmezustands vor Augen stehen; und dadurch wird unsere Position im Kampf gegen den Faschismus sich verbessern. Dessen Chance besteht nicht zuletzt darin, dass die Gegner ihm im Namen des Fortschritts als einer historischen Norm begegnen. (Benjamin, 1980, p. 697).[7]

If we replace *Faschismus* with 'securitized migration,' this is precisely what is at stake in performances like those of Arkadi Zaides, Ilay den Boer, and Thomas Bellinck, who each show in their own way that a phenomenon of crisis – namely, unpredictable migration – was considered politically exceptional, as a state of emergency in the Schmittian sense, and then transformed into the normality of the political approach to non-citizens, regardless of how they entered the territory. Security and sense of security – two different things – that is all that matters. The 'real state of exception' that Benjamin

believes must be shown is the death city under the Mediterranean (Zaides), the formatted narrativity of asylum officials (den Boer), or the identitarian absoluteness of fingerprints (Bellinck). Moreover, Benjamin blames the wound on a crucial flaw of modern thinking: progress as a historical norm, both in the representation of the past, and in the justification of current political action. This leads, not necessarily to a moral impasse when contemplating the horror of the Mediterranean crossing, but above all to a political cry for help. But is that cry for help political enough in the performances cited?

Access to the City of the Dead

Necropolis (Zaides & Dubricic, Necropolis, 2019) is part of an extensive project that UNITED for Intercultural Action, a network of human rights organizations, has been setting up for 25 years to build a horrific archive. An archive that documents the (life) stories of refugees, especially those refugees who paid with death for their attempts to build a (legal) existence in Europe. They drowned in the Mediterranean or the English Channel, they were mortally wounded by border guards or other police, they killed themselves for fear of deportation, they languished in misery in the city gutter. A growing archive of those who are denied entry to Fortress Europe because they are never able to assert their 'right to rights,' should they have any. Unless they are already dead, and even then it is not obvious. Zaides situates the project within the framework of counter-forensics, a form of forensic anthropology that does not focus only on criminal qualification and legal causality but connects the search for and exhumation of the victims of (collective) violence with a discourse around human rights, often against official attempts at historical oblivion. It also aims to be an alternative to the publication, by governments, of forensic material designed to deter migration (Keenan, 2018, 50). The idea is that the dead must speak, when the living are silenced, due to the disqualification of their stories. Around the archive of United fIA, Zaides creates a poetic fiction: the city of Necropolis, to which one can only gain access if one has not survived attempts to obtain residency. Acceptance as a 'citizen' of Necropolis is thus the mirror image of Europe's fundamental rule: only those who succeed in obtaining a residence permit are entitled to citizenship, that is, to the protection of the law and the rule of law.

Figure 1.
NECROPOLIS
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In a dark room are a table with two computer screens and, in the background, a metal cart covered with shapeless objects, while a projection screen fills the entire back wall. A text appears on that black wall, which also sounds through the speakers. Igor Dubricic's voice gives a clinical description of the fictional city of Necropolis, which welcomes all the victims of the failed crossing, a morbid world in another dimension, without the connotations of the popular imagination about the undead:

> As we keep moving above, around and through Necropolis,
> let us not forget : Everything that we see in this landscape
> of death is made of ourselves – from the North: a crumbling
> glacier of border regulations and bureaucratic classifications;
> from the West: a narrow gorge of falsified history, of
> conquest and enslavement, of abuse and exploitation,
> of greed and betrayal; in the East: a dry wilderness of
> abandoned declarations, of fantastic expectations and
> malicious misinterpretations; in the South: a sinuous, living
> assemblage of rotting flesh resurrected forensically into a
> pulsating anatomy of cavernous orifices, temporary dugouts
> and tightly sealed voids; a dark, warm, dump network of
> underground passages interrelating decomposing leftovers,
> assembling all the corpses, hundreds, thousands of them,
> into a sprawling landscape made of hardened cartilage and
> leathered skin, into a raising architecture built on bones, one
> shared organism, promise of an eternal life as exuberant and
> exhilarating as a violent death at sea: the Leviathan opens its
> mouth. (Zaides & Dubricic, Necropolis - voiceover, 2019,
> pp. 1-2)

This is at once a statement about a world order, which reduces law and its application to its essence: inclusion and exclusion, who may enter and who may not, who has rights and who does not – stripped of all empathy. Mere human existence does not suffice in the real world, and for access to Necropolis the perverse opposite applies: one obtains civil rights when no longer alive, existing only as bio-logical remnants, insofar as they have not decayed. The collective identity of these dead citizens is clear: everyone was once fleeing to trans-Mediterranean Europe. And it is also clear who sets the rules: the 'recognized' dead refugees.

After this introduction, two individuals, Emma Gioia and Arkadi Zaides himself, take their seats behind computer screens, backs to the audience, still in semi-darkness. A moving map, a modified Google Earth, appears on the screen, searching for the places where these victims are actually buried: this is the opposite of fiction. A dark sound (sound design by Aslı Kobaner) accompanies the wordless movements of the map. The image starts at the scene of the theater, then the 'viewpoint' – not a character, but also not an anonymous camera – zooms out. The viewpoint rises into the sky, zooming in again at pointy red dots and gradually their names become visible. They are the names of refugees who killed themselves before being deported, of victims of police bullets and other government violence. When the viewpoint 'lands', one hears footsteps on gravel paths. A long walk, which leads to the far corners of the cemetery: most victims of the closed borders are buried where it is difficult to find them, and usually without a tombstone. First the sites are quite far apart in northwestern Europe, then the viewpoint moves to the southern edges of Europe, around the Mediterranean. The movement of the viewpoint slows down and speeds up, tearing the map completely apart, the familiar Mercator projection no longer providing a reference point. The viewpoint arrives at places where there are dozens of red dots: the Greek islands, Sicily, Lampedusa. Here no longer just graves with a rained-out paper with a name, but a container, in which anonymous human remains, fished out of the Mediterranean, are stored, or a mass grave of concrete, with only a few names and otherwise only numbers. They still have the dubious luck of being given a grave, of having something of theirs entrusted to the earth. Who buried them? The architecture of these graves shows minimal respect for the unfathomable of everyone's fate, without decoration, just cement with black letters.

After traveling through the cartographic hell of Fortress Europe, everything goes black, just letters and a voice. One sees and hears reflections at these traces of inhumanity, not sentimental, but with restrained anger, leading to a conclusion: "How did we end up here?" Gioia and Zaides, meanwhile, have rolled an iron cart to their table, on which lie indistinct objects. Then light falls on them: they are human remains, sculpted hyper-realistically in plastic. Carefully, but without looking anyone in the eye, the performers show the objects to the audience. It takes a while before it dawns on the viewer what these objects represent. When there are limbs, hands, a shoe, on display, the

Figure 2. NECROPOLIS © Arnaud Caravielhe

silence in the room is deafening. Gradually and unobtrusively, they place the body parts/artifacts in precise places on the cutting table: a body shape, a reconstructed human being, emerges. But decay has destroyed much. The face is unrecognizable, body parts are missing, they are holes in the body. Whether all parts previously belonged to the same individual is unclear. Meanwhile, the same objects have appeared on the screen, lightly moving, illuminated from all sides: digital 3D animation in the service of forensic objectification. Once the plastic body table is assembled, the digital version also appears in full on the screen. The artificial body dances, that is, it rhythmically moves all body parts, just as living humans can. One might associate this 'choreography' with the agony of a drowning man, but the an-imated movements are arbitrary, they do not express cramps, this body is like a puppet that has lost its puppeteer. This body does not

mimic life, and the pure objectivity of plastic and pixels is at once the most lurid and the most faithful representation of what happens to people doomed to sink into the Mediterranean. Unlike the 'monster' manufactured by Dr. Frankenstein in Mary Shelley's novel, Zaides and Gioia do not want to suggest that new life can be made out of dead body parts. Death definitively belongs to another dimension, giving rise to the imagination of the living, but they cannot cross that boundary – a much more definite boundary than that between Europe and Africa. In Zaides's *Necropolis*, the borders are even more tightly guarded than those by Frontex, and the commentary voice makes this immediately clear:

> In order to gain the right to live in Necropolis, one has to die in an attempt to enter it. Citizenship is granted posthumously to dismembered, decomposing corpses. Everybody else, the others who are still alive but without documents, are kept outside, left to die beyond the entry points. They need to arrive at the gates – dead, in order to be processed. By our "deathright," being already citizens of the Necropolis, we are fateful guardians of its territory. (Zaides & Dubricic, Necropolis - voiceover, 2019, 1)

Necropolis deals with the foundations of the ethical choices made by states governed by law in Europe. The performance establishes, with a powerful metaphor – a body in a city of the dead – hard facts, namely that our 'civilization' relies on 'barbarism' as a mirror image, as Benjamin noted. Is that moralizing? *Necropolis* also opts for a radical inversion of the democratic aporia of migration politics, in which refugees, by definition, cannot have a say in the terms of their eventual reception, let alone their civil rights, much less the geographical boundaries drawn. Many of the victims Zaides mentions, such as Mawda Shawri, who was two years old when she was killed by a police bullet in Ghlin near Mons on May 17, 2018 – a so-called tragedy fatally forced to cross the line between life and death, because the line between legal and non-legal residence can be drawn in any place, including a highway parking lot between a police car and a van of traffickers.[8] That reversal of perspective, which has a solid emotional effect on a sometimes bewildered audience, could be an opening in a debate about a different politicization of migration policy. A debate that goes beyond the bitter

observation that hundreds of bodily remains land at the bottom of the Mediterranean every month. By turning them into fictional legal subjects in Necropolis, Zaides, through counter-forensics, gives them a figurative voice – which one does not hear in the performance. They are made of moving images, plastic objects, and accompanied by detached commentary. They feature numerous extraterritorial enclaves, in dozens of cemeteries across continental Europe. In this too, *Necropolis* is the distorted mirror of the inclusion/exclusion of migrants, who are 'treated' extraterritorially, in camps on remote islands, in consulates, or in corporate personnel departments. Those who perish in these circumstances, once admitted, incidentally possess unconditional civil rights in Zaides's Necropolis.

The Impossible Officious Judgment

In *The Solomon's Judgment* (den Boer, 2021) Ilay den Boer recounts, in detail, his experiences as a 'decision-maker' (*beslisser*) at the IND, the Dutch Immigration and Naturalization Service. The IND decides, subject to appeal to the District Court, on the recognition of asylum applicants as refugees. It does so on the basis of the Geneva Convention on Refugees and Article 3 of the European Convention on Human Rights, supplemented by (political) guidelines from the Dutch government. Den Boer went one step further, serving as a clerk-in-training at the Amsterdam District Court, where he oversaw the judge's decision-making process, regarding rejected asylum applications. The performance usually takes place in an intimate setting, rarely in a theater, for a limited audience, twenty people at most. Den Boer narrates and engages in conversation, and it is more akin to a seminar than a performance. He first explains in detail what a Solomon's judgment is: a decision in which the one in power tries to overcome the inescapable moral dilemma that such a decision entails, but with no guarantee that her or his decision is the most right one, factually and/or morally. The biblical King Solomon used a ruse to make a decision. Two women dispute the other's motherhood of a child, Solomon proposes to cut the child in half, Solomon assigns the child to the woman who refuses to accept the proposal. Whether the woman with the greatest moral indignation about his proposal is really the mother, Solomon has no such certainty, but the conscience of each is clear. The same moral (un)certainty, den Boer explains, also characterizes the decision about an 'asylum

permit' (*asielvergunning*), as it is called in the Netherlands, which is permission to reside in the country as a refugee, for a certain period of time, with all the rights attached.

He then explains the procedure. Den Boer emphasizes that the asylum seeker does not have to prove – as in criminal law, and usually in civil law as well – that her or his story is true, but he does have to make it 'plausible,' so that it is deemed 'credible.' This narrative review thus differs from the strict legal narrative requirements, as established notably in the law of evidence (de Jong, 2008). To test that plausibility, there is a civil service, the IND, which examines the narratives and, more essentially, the documents. The asylum seeker, whose nationality and origin must first be determined, must make two elements plausible. First, that she or he is in a certain position (e.g., sexual orientation) or has performed certain acts (e.g., organizing a demonstration against the government). Second, that that position or action has led to an action by government or society that has endangered or threatens to endanger the asylum seeker in the future. Perhaps a third element, that there is a 'plausible' causal link between the two: the causality requirement, an essential legal dogma, also in this context. One position never gives rise to asylum: economic conditions, even if they are arguably the result of local or global political-economic policy. Den Boer gives extensive examples; the participants/audience may ask additional questions. Each time, the obligation to protect the refugee – that is the *ratio legis* of asylum law – seems at first glance to be self-evident. Until 'details' emerge such as forged documents, a strange stamp, unusual travel routes, government actions that are highly unusual according to the country specialist (e.g., an unexpected release). Den Boer stresses that his mentor at the IND, a senior official, implored him not to look for the possibility of finding a 'yes' in the story, to suppress the tendency to erase the imperfections in the story while rationalizing. An official decision maker must judge in the context of a society, to which that asylum seeker may belong, at least if his story is 'plausible'.

As he explains all the possible dilemmas, a second storyline emerges in the performance: the moral transformation of den Boer, decision-maker-in-training. In fact, he begins to identify with his job. This is not submission to an official logic or political regime, but rather the creation of a necessary distance between compassion (which is

Figure 3. Salomonsoordeel © Prins de Vos

always his first reflex), and reasonable attention to the complex society in which he and the asylum seeker find themselves. But what does that complexity consist of? Den Boer tries to flesh out that question. Complex is at least the observation, against his own intuition of universal hospitality, that a numerically significant group of Dutch (and other Europeans) feel that the country is 'full,' that national identity is threatened. Complex, likewise, is the demand that countries that see the flood of refugees coming – Turkey, Tunisia, Chad, Niger, etcetera, none of them impeccable regimes – assume their responsibilities, and that Europe is willing to pay big money to do so. Further complexities surround the assumption, whether supported by real data or not, that there will never be support for universal hospitality, and even less for a universally enforceable right of residence. But does such a thing even exist – a 'support base'? Is it not up to politics to create one? Den Boer undertakes that thought exercise. He talks about the establishment of asylum seeker centers: at first there is suspicion from the local population, rebellion, after a few months of indifference, sometimes even understanding and solidarity. So the complexity is there, because a board must actively create the conditions to enable the transition from suspicion to empathy. These reflections become even more concrete when he recounts his friendship with Hassan, a Palestinian refugee from Gaza. This story puts all the roles den Boer has played – as a civil servant trainee, as a participatory observer, as a playwright – even more on edge, especially as Hassan's story, according to official criteria, turns out to have more and more holes. He leaves his audience with an existential question: what kind of world do we want to live in together? This is a slightly less fatalistic version of the question with which Zaides's *Necropolis* ended.

Questions linger. Should the official, the 'decision maker,' in whose place den Boer sat for months, perhaps first make friends with the asylum seeker whose case he handles? Of course, deontology forbids this, but the rather didactic exercise, that *The Solomon's Judgment* inevitably is, nevertheless raises reservations about the basis of such a deontological rule. Is the public servant's neutrality, experienced through the many files, reasonably paid and incorruptible, also not a form of bias, but of a kind that cannot be objectively determined? Den Boer further argues, referring to his mentor at the IND, an experienced 'decision maker,' that it is not the person, the asylum seeker, who should be judged, but his story. But to the extent that a

human being, a stranger, can still be judged by another human being, can he be judged in any other way than by the stories he tells? Or by the stories he creates, even without words or images, by behaving towards another human being in a certain way – all on the scale between intimate and distant. Should one not, if one allows oneself – and indeed the decision maker has the legitimate authority to do so – to assess and then judge a human being, assume that her/his stories coincide with her/his existence as a human being? Of course, there is a gap between a person's self and the stories a person tells, however credible and however reliable, and that is a paradox one encounters in a decision process. But the decision maker cannot afford to give up the illusion of identity. Otherwise distrust is the norm, and then either nothing more happens or violence breaks out.

Den Boer tells one striking anecdote in which that illusion seems to have been lifted. He met his friend Hassan when he had just learned of his rejection. The sparkles in his eyes had died out, his complexion had turned gray. The image he conjures up is very reminiscent of Giorgio Agamben's description, invoking testimonies of Shoah survivors Jean Améry and Primo Levi, among others, of the Muselmann. The Muselmann is the concentration camp inmate in the final stage, wandering in the twilight zone between life and death, physically incapable, contactless, trembling, and shriveled. For Agamben, this figure is the gruesome embodiment of the end of all ethics, of the definition rejection of all compassion, all hospitality (Agamben, *Remnants of Auschwitz*, 41-86). In that moment and in that hyperbole, story and real existence coincide, briefly, painfully, and beyond all hope.

With *The Solomon's Judgment*, den Boer sets out to depoliticize the issue of asylum, initially reducing it to the level of moral dilemma. But after this self-examination, in himself as well as in the viewer, he suggests (or at least allows the doubt) that moral doubt has a political foundation: the arbitrariness of drawing boundaries, the bias in the ordering of narrative elements (the separation or entanglement of police and army, for example), up to and including the very definition of 'the political,' such as the meaning of one's presence at a demonstration. The framing of narratives by of the specialists of the IND – concerning a region, culture, and religion – does not go entirely unmentioned. But whether in doing so he completely strips the debate of an overly gentle moral sensibility is not entirely sure.

Figure 4. Salomonsoordeel © Prins de Vos

Body, Technology, and Identity

The European Commission often publishes 'communications' to the European Parliament and the European Council, intended to spark political debate around a more or less important policy issue. But the *Communication from the Commission to The European Parliament and the Council - Stronger and Smarter Information Systems for Borders and Security* caught the eye of theater-maker Thomas Bellinck, especially this wording:

> The existence of large-scale information systems also implies potential privacy risks, which need to be anticipated and addressed appropriately. The collection and use of personal data in these systems has an impact on the right to the privacy and the protection of personal data, enshrined in the Charter of Fundamental Rights of the European Union. All systems need to comply with data protection principles and the requirements of necessity, proportionality, purpose limitation and quality of data. Safeguards must be in place to ensure the rights of the *data subjects* in relation to the protection of their private life and personal data. Data should only be retained for as long as necessary for the purpose for which they were collected. Mechanisms ensuring an accurate risk management and effective protection of *data subjects' rights* need to be foreseen. (Communication on Stronger and Smarter Borders, 2016, 4)

The text is actually quite innocuous, but the notion of a data subject – my italics in the quote – aroused his surprise, if not his suspicion. The performance *Simple as ABC #7 The Voice of Fingers* (Bellinck & Reza Adib, 2023) begins with an attempt to create empathy on the part of the viewer, followed by a conversation about the limits of the official's moral responsibility. To what point is the latter willing to be complicit in the risk of inhumane treatment? It is a somewhat dubious mode of narration, mixing feelings, moral reflection, and political implacability. This happens even more emphatically when one hears the life story of Francis Galton, told, to Bellinck's toddler daughter in the form of a long bedtime story. The polymath Francis Galton made the first scientific weather maps, developed and promoted eugenics (he coined the term), and discovered that
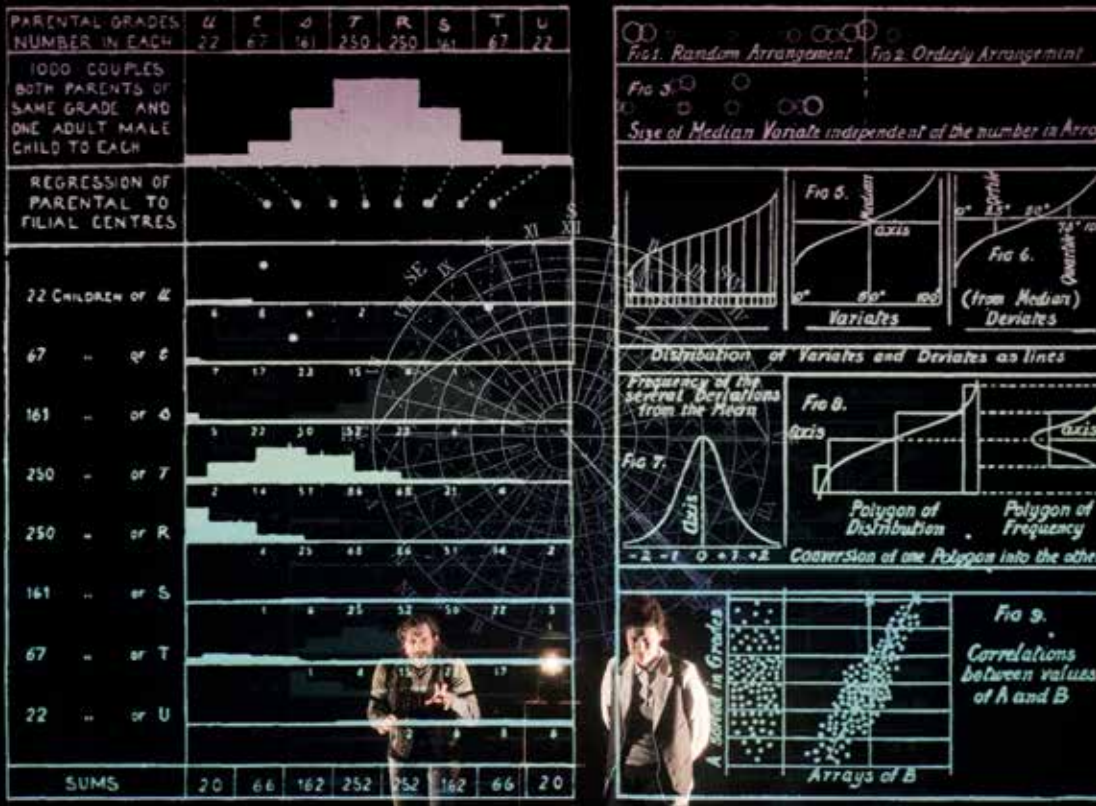
Figure 5. The Voice of Fingers © Nathan Ishar (Studio Pramudiya)

fingerprints are a unique means of identification. He also translated that knowledge into practice.

Two actors, Musia Mwankumi and Jeroen Van der Ven, tell this story, behind a gauze screen – in front of projections of old maps and statistics – and sparsely lit. They speak with empathy, while their static position, elevated above the stage floor, rather creates distance. The story they tell of the inveterate imperialist Galton does not end with his death in 1911, as a knighted Member of the British Empire, he lives on as a ghost. And this ghost saw how his classification of people into *desirables*, *passables*, and *undesirables* degenerated into man-hunting and genocide, and how fingerprints became the instrument to regulate inclusion/exclusion in the Europe of Schengen. The

So much gel has

that it feels as if the

Figure 6. The Voice of Fingers © Nathan Ishar (Studio Pramudiya)

former with horror, the latter perhaps with approval. After this long story, one hears a child's voice counting to one hundred, which will repeat frequently, remembering Galton's motto: "Whenever you can, count." The players enter the stage floor, full of small holes, where they plant (plastic) tulips, hundreds of them. Meanwhile, relieving each other, they tell the story of Said Reza Adib, with all the details and with all the sentiment. The dozens of times Said has to have his fingerprints taken form the refrain of this narrative: as a young rebel in Iran, as a refugee to Afghanistan, as an illegal returnee to Iran, as an asylum seeker in Turkey, Greece, and finally Finland, where he is still stuck in a gray zone. It ends with a conversation in the family about a poem by Afghan poet Mohamed Ibrahim Safa that describes red tulips as a symbol of freedom: "I was born free, I will die free" (Bellinck & Reza Adib, 2023, 57).

Simple as ABC is the heading under which Thomas Bellinck and allies make performances, performances, installations about borders, violence, and migration. ABC stands for Automated Border Control, the technology that has been developed worldwide to combat 'unwanted' migration, and with which the securitization of migration policy seems to be definitively anchored both politically and practically, through a decision-making process that is quite opaque (Gunnarsdóttir & Rommetveit, 2017). Meanwhile, since 2009, eight episodes have been shown, starting with a zero version in which hunger-striking asylum seekers – wearing white shirts and black suits – sing the Belgian national anthem on Place Monnaie in Brussels. A political and humanitarian demonstration that did not actually want to be a performance but was perceived as such and selected for the prestigious Theater Festival, which led to some awkwardness on Bellinck's part. Since then, his research has dealt with both structural elements and intimate personal testimonies. In *Man vs Machine (#1)*, an audio-performance with hyper-realistic décor deals with the architecture and cutting-edge technology at Frontex headquarters, in *The Museum of Human-Hunting (#4 and #6)*, also a set of audio-performances, he focuses on the actors in human-hunting, both the hunters and the hunted, inspired by Grégoire Chamayou's philosophical-historical analysis of the phenomenon of human-hunting, in all its literalness (Chamayou, 2010). Chamayou sees human hunting as an extreme variant of Michel Foucault's concept of biopolitics, in which human life and territorial claims (sovereignty) are intimately linked. For *Keep calm & validate (#2)*, he

chooses the form of a 'documentary musical' to expose the bureau-cratic process of digitized border control. This too is a hyperbole for biopolitics, in which a supposedly neutral and pragmatic security discourse is made to sound grotesque by an apparently misplaced pathos – in musicals one sings for no reason. Real security policy, on the ground, is perhaps equally grotesque.

Bellinck's documentary, an almost academic discourse/performance on the structurally violent border control through identification, does possess a certain pathos, and in the projects based more on migrant testimonies, that empathy takes on a melodramatic color, with a clear moral good-and-evil. The performance *The Wild Hunt (#3)* presents a sequence of testimonies, without the mediation of actors. Through editing and pitching, this is at once a soundscape and a series of stories, and the two spheres increasingly merge. A painting with a hunting scene and a bust of Aristotle complete the image of an intimate room in an old museum. Bellinck gives a short lecture, from a bench like the ones in museums facing a work of art, on the narrative bias of historiography. People are classified into hierarchical orders and victors hold the pen. Then he retreats and one hears the forbidden, hushed, repressed stories of hunters and hunted. Individual voices, arousing anecdotal empathy, thus grad-ually turning into an amalgam of sound. It enhances the emotional impact, but it does not really strengthen the political statement. One might wonder the same about *The Voice of Fingers*. The gripping story of Said Reza Adib sounds like an odyssey, except that he did not have to come home, where someone was faithfully waiting for him, but instead had to go away, to and from unreliable destinations. Behind this emotional, sad, infuriating account does lie a sharp and detailed historical and political analysis. That analysis translates in the interview with the EU official, and in the sleep-soft narrative about Francis Galton, which tries to appeal to the tactics of Tahar ben Jelloun, who explained racism to his daughter in a way that should have been absolutely clear to any other reader as well (Ben Jelloun, 2018 [1998]) . Sentiment and sober communication constantly col-lide, but there is rarely any clear politicization – assuming that this would be the theater-maker's ambition.

As a whole, the entire cycle *Simple as ABC* takes shape as an extended political essay, constantly exposing the pain points of securitization, subjectively, and objectively. That sentimental undertones in the

unvarnished stories are also moralizing is inevitable: one does not remain cold at the frustration over the failed storming of the Greek border, where hundreds of adults as well as children were stunned by tear gas. That sentiment provides little political benefit, but combined with progressive digressions on security technology, a narrative can emerge that contrasts the postcolonial and securitization aspects of the existing (anti)migration regime. Whether the moral outrage that Bellinck (rightly) provokes advances his political communication remains an open question. In that communication, however, on the basis of a thorough deconstruction of both the rhetoric and practice of the European refugee policy, he poses particularly uncomfortable questions to policymakers. Ilay den Boer, in *The Solomon's Judgment*, hinted that a concrete friendship can profoundly influence the perspective on migration issues – and on the stories that emerge in the process. *The voice of fingers* also departs from the personal and vulnerable friendship of Bellinck with Said Reza Adib – the obligatory distance between Belgium-Finland is more than a nuisance. Without immediately generalizing here, the thought exercise can be considered, in contrast to Carl Schmitt's *Feindsetzung* (definition of the enemy) as a political benchmark, to take friendship as the starting point for a policy that reconciles the logical-legal necessity of inclusion/exclusion and boundary-setting with strong moral demands, with generously interpreted human rights.

Part III: Identity, Law and Theater

Legal identity as theatrical identity, and vice versa

The way in which, certainly in the last 30 years, the anomalies of a migration policy under cyclical, short-term oriented, economic pressure has been transformed into a security policy, is certainly akin to the legal dehumanization or de-subjectification that characterized a past of slavery and colonialism. These developments, past and present, are accompanied by a series of rituals designed to reinforce the belief in the rightness and inevitability of de-subjectifying policies characterized by an 'obscene theatricality': everything visible serves as a mask for the darkness of legal nihilism (Read, 2016, 59). The rhetoric of slavery as a 'positive good,' which grafted itself onto the many manifestations of patriotism in the southern states of the USA between 1831 and 1860, is a good example, because it

places the 'incidents' as well as the moral justification of slavery in a continuity of 'manifest destiny' (Howard & Brophy, 2019). In times when the mediatization – that is, theatricalization – of supposedly fundamental policy choices, such as the securitization of migration policies, is immediately global and proceeds at a much faster pace, this rhetoric takes on a different form. The creation and later strengthening of Frontex, which is rarely confronted with the effectiveness of its actions, is a good example. Even the communication about the damning report by OLAF, the EU's anti-fraud agency, and the reaction to it by Frontex itself excel in "obscene theatricality" (OLAF Final Report on Frontex, 2022; Statement of Frontex, 2022).

The presence of refugees at Europe's borders has evidently created the (only figurative, not physical) space to create non-right subjects, which precede Arendt's 'right to rights.' A new identity is constructed for them as absolute others: post-colonial beings, security risks, victims of human trafficking, and ultimately data-subjects. Authorities employ the same logic of humiliation, less explicit but as stressful as for enslaved people, back in the day. The 'Australian model' goes furthest in this, definitively stigmatizing boat refugees as subjects who may never set foot on Australian soil, who are nowhere near a form of civil rights. But the 'spontaneous' (and recently bureaucratic and politically backed) condemnation of a category of unregistered asylum seekers – all the single males – in Belgium as lumpenproletariat is not much less questionable. One might say that theater-makers such as den Boer, Zaides, and Bellinck engage in a similar exercise, but with a very different outcome. They provide the building blocks for an alternative identity, which can be straightforward or ambiguous.

In *The Voice of Fingers*, Bellinck shows how the biometric identity with which official migration practice begins, not only forces the barely recognized legal subject – the arriving refugee – into a mechanism that promises straightforwardness but, ultimately, ends up in increasing arbitrariness. Moreover, this identity is anything but neutral, because of its past history, because of the implied conception of the human race, because of the disruptive social existence that results from it. Thomas's letter to Reza seems for a moment to set a tone in which their friendship transcends everything, but that would suggest that this whole agony does not matter. The taking and checking of fingerprints has become a mode of existence that mortgages and damages friendship, in any guise. The existence of

an 'unfinished' legal subject – an asylum seeker, he has not found it yet – reduces him to a moral subject who is difficult to approach, who remains a stranger even in the face of the most unconditional and empathetic activist that Bellinck is, despite outspoken affection. Yet Bellinck remains hopeful that that bond will blur digital identity, "until the day we shake hands again and our fingertips touch again." The last sentence, however sentimental, confirms the principled equality of both as subjects, as well as it reinforces their belief in the feasibility of this ideal. Friendship guarantees a perspective, a counter-identity, against all odds.

The identity of the asylum seeker, in *The Solomon's Judgment*, is composed of narrative data, of a story that must be 'plausible'. This requirement comes on top of biometric identifiability. At the same time, den Boer deconstructs this plausibility in his performance by repeatedly raising moral dilemmas in the reconstruction, by the asylum seeker himself and by the decision-makers. If someone ends up in an economically hopeless situation because of the social injustice installed by an undemocratic regime, what weighs most heavily? The oppression of this regime (a ground for asylum), or the economic motive to emigrate (not a ground for asylum)? Inevitably, such considerations are tested against a view of humanity, and against an ideologically not-so-neutral assessment of the impact of socioeconomic relations. That estimate is then used as a parameter for the possible legal subjectivity of the asylum seeker. Den Boer's suggestion that friendship decisively influences these and other assessments puts considerable pressure on the foundations of that legal subjectivity, and undermines it itself. The decision-maker deploys his own identity to assess the story, plausible or not, which must result in an existential decision. Only once the refugee has an asylum permit is he a full legal subject, albeit with a precarious status. But unlike the fingerprint, this 'narrative identity' is not stable. Indeed, a granted nationality – the final stage, namely full citizenship – can be revoked, albeit in principle only in the case of dual nationality, but an 'innate' citizenship cannot be erased at all. Indeed, statelessness must be avoided at all costs (European Convention on Nationality, 1997, art.4).

The most radical form that legal de-subjectification can take is civil death, the erasure of (most) legal subjectivity, an ancient and medieval punishment that in Belgium has been abolished by the Constitution and cannot be reintroduced (Grondwet, 1994, art.18).

Figure 7. The Voice of Fingers © Nathan Ishar (Studio Pramudiya)

Civil death, the legal degradation of the human person, is at the same time also the most radical legal fiction, as Alexis de Tocqueville noted about slavery in America (de Tocqueville, 2012 [1840], 327). In *Necropolis*, Zaides connects the reality of the de-subjectification of migrants – who are not only civilly dead, but also physically dead before achieving citizenship in Europe – with an even more far-reaching legal fiction, namely the citizenship of the dead. Only those who can prove that their death was directly or indirectly caused by their situation as refugees are granted access to the Necropolis. Their 'identity documents' consist of dates, a name, a date, a cause of death. "Necropolis has no other body than a body of data: an ever-expanding archive made of what is meticulously extracted from the rotting remains and inscribed across the landscape" (Zaides &

Figure 8. Salomonsoordeel © Prins de Vos

Dubricic, Necropolis - voiceover, 2019, 1). The figurative gatekeepers of Necropolis thus demand evidence about the causal link between flight and death; a 'plausible' story is not enough. Zaides is stricter than the politicians and their agencies. On the other hand, migration is always about territories and territoriality, about hard borders that are physically demarcated, that cannot be crossed by living bodies except in exceptional cases. And it is precisely this physical logic that Zaides breaks through, in which he is less strict: Necropolis is a virtual city, connected only to points on a digital map, even if they are effectively visible in the images of cemeteries and memorial plaques. One hears and sees the footsteps of Zaides, the traveler, the visitor, who in this way acknowledges their existence and their identity: they exist in his gaze, which is the gaze of the camera.

Against the denial and erasure of (legal) subjectivity in the pre-vailing migratory regime – a grim form of deconstruction – these artists place ambiguous identities: sentient fingers, alternative interpretations of narratives, dead people with civil rights. And they add an affective element: friendship, with the man wandering through the bureaucracy, with the narrator of an incoherent story, with the fatal victims on the escape routes. This could be a step toward politicization.

Beyond moral outrage

From the aforementioned confrontation of the legal-political ap-proach to migration policy and some documentary theater pro-ductions on the practice of this policy, some conclusions can be drawn. An increased de-subjectification of refugees attempting to reach a place of asylum, unpredictably, is a constant in the policies of the 'white' forts. The refugee who emerges preferably has as few subjective rights as possible, barely even 'right to rights,' in the Australian model. In their performances, Zaides, den Boer and Bellinck/Said Reza Adib seek, in very different ways, to restore the migrant's identity as a (legal) subject. The cold materiality of the dead, the structural suspicion towards the narrator, the supposed objectivity of fingerprints, in each case there are signs of de-human-ization that require a recalibration of human dignity, in their eyes. Empathy can be a response, like the friendship suggested by den Boer and Bellinck, but also the morbid idea of civil rights in the political community of the dead, a community Zaides creates on the servers at his disposal. These responses express moral outrage, are in line with Habermas's universalism that starts from the premise of moral integrity that justifies civil rights for every human being, including a principled freedom of movement. Whether this is also followed by a political response, a politicization that involves submitting these moral demands to a political community in the form of political de-cision possibilities, is less certain. Now obviously theater cannot be required to make workable political proposals, quite the contrary, but documentary theater can design a counter-universe, and test it against an audience without having to be immediately workable.

Some point to a risk that arises from an overly accurate reconstruc-tion of the legal-political system responsible for the dehumanization of migrants. Courtroom drama thus reconstructs the paradox of a

system that both legally oppresses and simultaneously gives legal weapons to those who fight that oppression. Research shows that invoking rights that the oppressive system itself makes available can not only provide reparations to irregular litigants – not often, but still – but moreover has an emancipatory effect, especially when class actions are involved (Guterman, 2014, 149). That sense of liberation is ideal material for community-based theater because it allows for the development of narratives that subtly undermine dominant legal narratives. But, at the same time, and this is the risk, such a strategy – both in the real courtroom and on the theatrical scene – affirms the authority of the law and of those who enact it. Those who, in harsh reality, are able to make an alternative legal rhetoric succeed have forced themselves to control and even internalize the prevailing rhetoric. By invading the law and allowing, conversely, that law to invade itself in that move, the law, even in which it continues to enforce systemic oppression, is strengthened – so the reasoning goes (Guterman, 2014, 152). To be clear, the representations analyzed here do not do this, although *The Solomon's Judgment* seems to go a long way with the IND's official guidelines that speak, in bandaged terms, of a balancing of the national interest and the (plausible) interest of the asylum seeker. The requirement for a decision, surely the cornerstone of this permit system is not questioned by den Boer. Bellinck and Zaides do not go along with this dominant logic. On the contrary, they reject it radically and with emotional theatricality, but each by very different means: sad stories of frustrated friendship and a choreography of mortal remains.

Completely beyond moral outrage and like a poison arrow at the heart of fascistoid politics once stood Christoph Schlingensief's project, *Bitte liebt Österreich - Erste österreichische Koalitionswoche* from 2000. On Vienna's Herbert-von-Karajan-Platz, Schlingensief built a container village which functioned according to the rules of the then-popular *Big Brother* television format. Inside, he brought twelve 'asylum seekers' together, installed a web television where viewers could vote for the deportation one resident each day: out of the container and out of the country. The 'winner' of this reality show could stay in the country, at least if an Austrian citizen wanted to marry him or her. At the time, to the dismay of all of political Europe, Austria was led by a government coalition with Jörg Haider's far-right FPÖ, which had grown to become the country's second-largest party through an outright racist election campaign. The right-wing

Figure 9. NECROPOLIS © Eike Walkenhorst

tabloids and, of course, the FPÖ itself screamed blue murder against this, in their eyes, anti-national and money-grubbing 'so-called art project.' The far-left also took aim at the provocative slogans and undertook an attempt to free the asylum seekers.

It has been said of the original *Big Brother*, as conceived by John de Mol, that the format redefined the value of television programs as commodities, repackaging the flat reality of the residents as a 'documentary of ordinary life' (Corner, 2002). The market value of *Big Brother* is determined by the value of the currency 'traded' in the program, and that currency is the residents. Schlingensief argues that asylum seekers, to the extent that the political debate also functions as a market (in the media), could also be considered cur-

rency. Their value is determined by the racism that can be projected onto them or, for the *Gutmenschen* (do-gooders), the compassion an asylum seeker can generate. This may be a very cynical view of the debate, but by descending to this bottom, Schlingensief exposes the moral bankruptcy of neoliberal class society – which denies itself by erasing the concept of class. Racism is the only capital that the new lumpenproletariat can invest and the political regime collects that investment, suggests Carl Hegemann – who helped ideologically guide *Bitte liebt Österreich* (Hegemann, 2000). Seyla Benhabib may argue that asylum and migration is pre-eminently an area where democratic politics must pass a trial by fire, but with Schlingensief, that trial has long since passed – and it ended badly. His 'asylum seekers' – he deliberately cast doubt on whether they were 'authentic' or stage actors – were still allowed to perform in a puppet theater, cheap Kasperle drama with a script by Elfriede Jelinek. In the real world, perceptions of migration – 'the hordes' – have become resounding currency on the political market, borders are sold to and bought off by questionable regimes. This has not changed since the *Koalitionswoche* in Vienna in 2000; quite the contrary.

Bitte liebt Österreich was visionary, already beyond moralism, while theater today sometimes makes an all too subtle plea to align moral universalism and political realism, starting by recognizing migrants and refugees as full subjects of law. Even Zaides's *Necropolis*, however morbid, depicts a kind of utopian community, entreating us to listen and look at everyone who is a living, human being and who has good or not-so-good reasons for crossing borders. He accomplishes this by showing just the opposite, namely, the dead as full citizens, dancing awkwardly. These are worthy thoughts, but there is little reason for optimism. The borders are immovable, impenetrable, and they are reinforced again and again thanks to what is supposed to be a democratic consensus. It is not that asylum seekers languish at the gates of Fortress Europe. There are pseudo-objective procedures which test the 'plausibility' of their stories, of their experiences, there are (too few) shelters, there are civil society organizations that oscillate between elementary hospitality and complicity in securitization. And there are theater-makers who demonstrate this incapacity, who cloak their indignation in beauty, who suppress their cynicism through imagination. But there is also the law, and the support, the 'bearing surface' for the law. Though no one can tell who bears this surface.

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Notes

1 In Western philosophy, since Aristotle, the distinction has been made between *distributive* justice and *retributive* justice, the former defining a general principle ("to each his own," *suum cuique tribuere*, noted by Ulpianus in the *Institutiones*, part of Emperor Justinian's *Corpus Iuris Civilis* (Ulpianus, 529, I.I.3)), and the second implies the redress of prior injustice, including possible retaliation (van Roermund, 2018, p. 44).

2 Freedom of movement is a human right: the right to move freely within a country, and the right to leave and return to one's country (Universele Verklaring van de Rechten van de Mens, 1948, p. art. 13; Internationaal verdrag inzake Burgerrechten en Politieke Rechten, 1966, art. p. 12).

3 "world citizenship should be limited to conditions of general hospitality"

4 The ancient Greek concept of freedom implied first and foremost self-government, not submission to foreign rulers, and not (negative) freedom as protection against government interference. This idea only really gained ground after the French Revolution and later took shape as "inalienable individual rights" (de Dijn, 2020,pp. 1-5).

5 The use of the state of exception (*Ausnahmezustand*) as a political justification originated in its modern form during the French Revolution, but was elaborated on philosophically by Carl Schmitt, who saw it as the essence of "the political". According to Schmitt, the power to declare the state of exception defines power *tout court*. The concept takes on a totalitarian connotation, as evidenced by Schmitt's debates with Walter Benjamin and Hannah Arendt, among others, both of whom were also fascinated by the (exceptional) revolutionary *momentum*. This does not prevent renewed recourse to the exception-as-normality as justification for example the US Patriot Act (2001) which followed the attacks on the New York Twin Towers (Agamben, *State of Exception*, pp. 1-31).

6 "[A cultural asset] is never a document of culture without at the same time being one of barbarism."

7 "The tradition of the oppressed teaches us that the 'state of exception' in which we live is the rule. We must arrive at a concept of history that corresponds to this. Then our task will be to bring about the real state of exception, and this will improve our position in the struggle against fascism. Its chance consists not least in the fact that the opponents meet it in the name of progress as a historical norm."

8 A so-called tragedy (Tindemans, 2021).