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Three Boys, Three Murders: Children's Rights, State Violence and the Open Wound of the U.S.-Mexico Border

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Abstract

This article examines the killing of three teenage boys at the U.S.-Mexico border between 2010 and 2013. Through an examination of these murders at the hands of U.S. Border Patrol and Customs and Border Enforcement agents, the article argues that the murders of Sergio Adrián Hernández Guereca, José Antonio Elena Rodríguez and Cruz Marcelino Velasquez Acevedo at the U.S.-Mexico border exemplify the reality that not all children are afforded the so-called universal protection of childhood as outlined in the United Nations Convention

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on the Rights of the Child and other international human rights law. We can see how the state repudiates its role as protector of brown children at the border through the deployment of three tactics — the protecting of Border Patrol agents, victim-blaming and the justification of lethal violence in non-life-threatening situations, and the casting of the U.S.-Mexico border as a zone of exceptionalism — and ultimately how situating these killings within a human rights framework illuminates the possibilities of such a framework.

Keywords: U.S.-Mexico border, Border Patrol, Border Violence, Childhood

In recent years, there has been increased public awareness of the death of children at the U.S.-Mexico border. Jakelin Caal Maquin died in an Immigration and Customs Enforcement (ICE) detention Center in Texas two days after being apprehended by U.S. Customs and Border Protection (CBP). Valeria Martinez Ramirez washed up on the shores of the Rio Grande, cradled in the protective arms of her father. Wilmer Josué Ramírez Vásquez died after weeks in the hospital, his death a result of multiple preventable illnesses he appears to have contracted inside an ICE detention facility. In each of these cases, the state and its affiliated entities insist that they did not cause these deaths; that the deaths of these children are a consequence of the way the flu can ravage a vulnerable child's body, by the harsh terrain of the desert which shows no mercy during frigid winters and scorching summers, by the act of migration itself, not the apprehension or detention. The unnecessary death of a child, generally speaking, is universally regarded as abhorrent; children are seen as vulnerable and innocent, and therefore should be protected from violence and death. We see in the cases of the death of migrant children the way that the state shifts blame away from itself and onto "natural" factors like the desert, the weather, and childhood illness. The abdication of responsibility by the state is both callous and predictable, and contributes to a broader dynamic in which risk, choice and blame are constructed in fluid ways that obscure the structural and institutional violence children at the border are subjected to.

Other children are also killed at the border; children are killed in a direct and unequivocal way at the hands of the state because their deaths are at the hands of U.S. Border Patrol and U.S. Customs and Border Protection (CBP) agents. This article focuses on the death of three children killed at the U.S.-Mexico border, examining the ways in which their deaths at the hands of the state is connected to a broader pattern of state violence against children of color. These unarmed children killed at the border were not migrants and were not apprehended in the act of crossing but rather were killed by the actions of federal agents. While the deaths of these children may seem clear-cut in ways that the death of children who succumb to harsh conditions in the migration process are not, these violent acts at the hands of federal agents repeatedly go unpunished; Border Patrol and Customs and Border Protection agents act with complete and total impunity. Despite the presumed legal, ethical and social protections that are ascribed to children on the basis of them being children as put forth by the United Nations (UN) Convention on the Rights of the Child, these deaths suggest there are some children whose lives are not seen as worth protecting.

The focus of this article is three boys – all Mexican nationals – who were killed at the U.S.-Mexico border between the years of 2010 and 2013. Sergio Adrián Hernández Guereca, 15, was killed when a Border Patrol agent on the U.S. side of the border shot him in the back, a few paces from the international border in Texas. José Antonio Elena Rodríguez, 16, was killed in a hail of bullets from the gun of an officer standing on the U.S. side of the U.S.-Mexico border who shot through the border fence, striking José Antonio 10 times. Cruz Marcelino Velasquez Acevedo, 16, was killed when he ingested a four-times lethal dose of liquid methamphetamine he carried in his backpack when CBP officials encouraged him to take a drink of it instead of testing it on suspicion of it being a controlled substance.

The death of these brown boys at the hands of the state is connected to a broader pattern of state violence against children of color. The racial fault lines of the nation-state have busted open in recent years with the emergence of the Black Lives Matter movement, which has called attention to the deaths of Black men at the hands of the police. The particular vulnerability of Black and brown boys emerged as a point of importance: Tamir Rice was 12 years old

when shot and killed by a Cleveland police officer because he was sitting in the park with a toy gun in 2014. Adam Toledo, 13, was killed by Chicago police in 2021, shot while complying with the officer's orders to drop the handgun he was holding and raise his hands above his head. The killings of José Antonio, Sergio Adrián, and Cruz Marcelino fit squarely into this broader pattern: the state-sanctioned killing of Black and brown boys without repercussion or consequence for those who shot them. The fact that these shootings took place in this special zone of exception of the U.S.-Mexico border complicates matters in an intricate and nuanced way, raising questions of who is protected by the U.S. Constitution in an area that is both the U.S. and also not. Yet, the fundamental fact remains that these unarmed children were subjected to lethal force executed by adults representing and acting on behalf of the U.S. government. Gloria Anzaldúa talks about the U.S.-Mexico border as “una herida abierta where the Third World grates against the first and bleeds” (2004, p. 3). The death of these boys elucidates that analogy in a critical and fundamental way.

In this article, I argue that the murders of Sergio Adrián Hernández Guereca, José Antonio Elena Rodríguez, and Cruz Marcelino Velasquez Acevedo at the U.S.-Mexico border exemplify the reality that not all children are afforded the so-called universal protection of childhood as outlined in the United Nations Convention on the Rights of the Child and other international human rights law. Through an examination of these murders at the hands of U.S. Border Patrol and Customs and Border Enforcement agents, we can see how the state repudiates its role as protector of brown children at the border through the deployment of three tactics – the protection of Border Patrol agents, victim-blaming and the justification of lethal violence in non-life-threatening situations, and the casting of the U.S.-Mexico border as a zone of exceptionalism – and ultimately how situating these killings within a human rights framework illuminates the possibilities of such a framework.

Not all Boys are Worth Protecting: Theoretical and Empirical Perspectives

There is a great deal of literature that analyzes the institutional and structural violence that targets migrant communities, and the U.S.-Mexico border is undeniably configured as a central site of this violence. Though the victims of state violence in this article were not migrants nor were they attempting to cross the border unlawfully, we can still look to this literature as a critical contextual component of the structural and institutional apparatus that allows this sort of violence to take place at the border. The structural violence that is situated at the U.S.-Mexico border is not confined just to the border region itself (Menjívar, 2014b; Rodriguez, 2020), but rather reverberates through an intricate system of policies, procedures and laws that govern the lives of migrant and Latino families (Menjívar and Abrego, 2012). Leo Chavez (2013) and Nicholas De Genova (2002) theorize the ways in which through illegalization and racialization, the discriminatory and violent apparatus that targets immigrants indeed profoundly impacts the lives of Latinx people of all citizenship backgrounds. In regards to violence enacted against migrants at the border specifically, this conceptualization allows us to see the ways in which even non-migrants are ensnared in the militarized, technology of immigration enforcement. Jason DeLeon (2015) articulates the ways border enforcement constitutes “blunt force trauma” through indirect violence enacted via federal policy. It is critical to map all of this onto the reality of the increasing militarization of the U.S.-Mexico border (Michalowski, 2007), the integration of policing and border security (Menjívar, 2014a), the dawn of the “cimmigration” system which has collapsed the immigration and criminal justice system in ways that increasingly criminalize migrants (Garcia Hernandez, 2013), and the ways in which the U.S. border is an institutional and structural site of violence (Chacón & Davis, 2018; De Leon, 2015). These acts of violence are manifested in everything from the physical violence enacted against migrants (Bejarano, 2017) to the destruction of the asylum system (Schoenholtz et al., 2021).

The U.N. Convention on the Rights of the Child (UNICEF, 1989), adopted by the U.N. General Assembly in 1989, is an international human

rights treaty which lays forth the fundamental political, social, economic, civil, health, and cultural rights of children. This document is regarded as the international standard to ensure the dignity of children is upheld and identifies the rights they have afforded to them simply by virtue of being children. The United States, notably, is the only country that is a part of the U.N. system that has never ratified the Convention. The Convention covers various areas of the lives of children and speaks specifically about protection from violence. Section 19, point 1, states that “States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child” (UNICEF, 1989). Despite being authored more than 30 years ago, the Convention continues to be an important document and can be attributed to some fundamental advances and legal protections that have had a meaningful and pragmatic impact on the lives of children around the world (Arts, 2014). Scholars and activists for years have pointed to the Convention not simply as the set of standards by which the treatment of children in each nation-state should be measured against, but also the historic importance of the Convention within a broader human rights agenda. McGoldrick (1991) argues that the importance of the Convention is not only in the rights it ascribes to children, but also in its assertion that, in time, it will “be seen to represent an important milestone in the development of civilization in its recognition of the fundamental importance as a universal concept of the rights of the child” (p. 132). The reality, of course, is that despite its importance, numerous challenges in protecting the rights of children persist, not the least of which is implementation (Hammarberg, 1990), the result of nation-states being slow to move beyond ratification and into a true adoption of the Convention.

Also relevant to this analysis is literature on the social construction of childhood (Bluebond-Langner & Korbin, 2007; Qvortrup et al., 2009; Kehily, 2015) which grapples with questions of how societal attitudes, values, and beliefs shape children's lives and how we understand their place in society. The field of critical childhood studies takes an interdisciplinary approach to

questions of how children and childhood is constructed that moves beyond a biological and psychological/developmental approach. Core to this intervention is the idea that childhood is socially constructed, that conceptions of childhood are in constant flux due to shifting cultural contexts (Stephens, 1995; Wyness, 2019), and that children are not simply constructed through their environment but are also agentive forces (James & Prout, 2003). The persistence of racism, poverty, and income inequality has long shaped the childhoods of children of color and poor children in fundamental ways. Particularly relevant to this article is Erica Meiners' reminder that "childhood has historically never been available to all" (Meiners, 2016, p. 6).

Also particularly relevant to this article is work that illuminates the ways racism and racialization interrupt notions of childhood, in particular the ways that some children are seen as unworthy of protections that [white] children are normally afforded by virtue of being children. Much of this work focuses on the racialization and subsequent treatment of Black boys (Ferguson, 2000), situating them as "the problem" in educational spaces (Noguera, 2003) and as a threat to society broadly (Wilson, 2011). This racialized treatment of Black boys functions to render them essentially as adults, erasing their right to childhood and their status as children, and therefore characterizing them as ineligible for the protections awarded to children in our society (Ladson-Billings, 2011). Dumas describes how Black boys are subject to processes of dehumanization, which he argues are fundamentally important in understanding Black childhood. "While prejudice signifies negative attitudes that can lead to discrimination, dehumanization involves something far more dangerous: a construction of the Other as not human, as less than human, and therefore undeserving of the emotional and moral recognition accorded to those whose shared humanity is understood" (2016, p. 29). Though a much less developed field, some scholars build on the work on Black boyhood and extend this analysis to understand the ways Latino boys are subjected to similar racialized mistreatment (Rios, 2011) and dehumanization (Medina Falzone, 2021). What is clear is that this supposed "universal" protection awarded to children as children is not extended to those who are deemed unworthy of or undeserving of this protection. State-sanctioned violence and the targeting of boys of color is a critical conversation

within this context. Numerous scholars (Davila, 2021; Wright, 2021; Campos-Manzo, 2020) illuminate the ways boys of color are subjected to violence at the hands of the state (Basile et al., 2019). The racialized dynamics of policing (Gilmore, 2007), the exertion of violence against males of color by the state (Executions & Crimes, 2019), and the criminalization of boys of color contribute to a broader discourse that renders boys of color as assumed aggressors and therefore deserving of disproportionate violence at the hands of the state.

Three Boys, Three Murders at the Hands of the State

Sergio Adrián Hernández Guereca, José Antonio Elena Rodríguez and Cruz Marcelino Velasquez Acevedo¹ are three boys, all Mexican citizens, who were killed at the hands of the state in the name of border security. José Antonio Elena Rodríguez and Sergio Adrián Hernández Guereca were killed by Border Patrol agents and Velasquez Acevedo was killed by Customs and Border Protection agents. These killings spanned three border towns - one in Texas, one in Arizona, and one in California - and took place over a period of three years. Each story is painfully similar, culminating in the complete impunity afforded to the agents. In this section, I will share the details of the incidents that resulted in the killing of these three boys. The act of sharing their stories is an important one, because their lives and deaths are important, and the act of (re)membering is one of sacredness (Sanders, 2007). Sergio Adrián Hernández Guereca was a promising student. José Antonio Elena Rodríguez was a basketball player and loved to cook. Cruz Marcelino Velasquez Acevedo loved spending time with his sister and family. After

¹ Throughout this piece, I will refer to the children by their first names, in an effort to humanize them and call attention to their identities as children. Calling them by their last names can inadvertently contribute to the sense that they are suspects or criminals or assailants. Border Patrol and CBP agents will be referred to by official title, to serve as a reminder that they were acting in their professional roles on behalf of and as agents of the U.S. government.

sharing their stories and the circumstances of their murders, I will argue how the state repudiates its role as protector of brown children at the border through the deployment of particular tactics.

Data for this article were gathered through publicly available documents and journalistic accounts of these incidents, which I then combed through and analyzed to produce the accounts presented in this article. As an interdisciplinary scholar of education and immigration, I spent time in Nogales at the U.S.-Mexico border in 2016 where I learned of the killing of José Antonio Elena Rodríguez. That sparked a political and personal interest in learning about incidents of violence against Mexican boys at the border at the hands of U.S. Border Patrol agents. Analyzing public documents and media about these three incidents and bringing this analysis into conversation with my scholarly work on illegality, young people and the border is the methodological foundation of this article.

Sergio Adrián Hernández Guereca (15)
Killed at the U.S.-Mexico Border in El Paso, Texas in June 2010

There are differing accounts of what happened in the moments before a U.S. Border Patrol agent shot Sergio Adrián Hernández Guereca. There are some facts, however, which are undisputed. Sergio, a 15-year-old Mexican citizen, was standing on the Mexican side of the border. Border Patrol Agent Jesus Mesa Jr. was standing on the U.S. side of the border. Mesa discharged his weapon twice, striking and killing Sergio in the back. Though there is video evidence of the shooting, most other details remain a source of contention.

The Border Patrol claims that Sergio and three other young people were spotted near a hole in the fence near the Paso del Norte Port of Entry, throwing rocks. An agent on patrol nearby on a bicycle apprehended on the U.S. side of the border one of the young people who is said to have crawled through the hole in the fence, dragging him a few feet away. FBI Special Agent Andrea Simmons, speaking about the case, says

this agent, who had the ... subject detained on the ground, gave verbal commands to the remaining subjects to stop and retreat. However, the

subjects surrounded the agent and continued to throw rocks at him. The agent then fired his service weapon several times, striking one subject who later died. (Valencia et al., 2010)

The official account changes when, a few days after Sergio is killed, CNN reports “a federal law enforcement official told CNN that the FBI's use of the word surrounded,[sic]’ was ‘probably not the best choice of words,’ and that it is more accurate to say that people were nearby throwing rocks” (Valencia et al., 2010). Who “people” are is unclear in this new account, and how “nearby” they were is also unclear. The Border Patrol insists that the agent acted in self-defense (identifying the rock-throwing as potentially “lethal”) and absolved him of all allegations of wrongdoing (Borunda, 2018). Mesa never left the U.S. side of the border during the incident.

Sergio Adrián Hernández Guereca was a high school student and Mexican citizen living in Juarez, Mexico. Video captured on a cell phone shows Sergio running away from the border before he is struck down by the officer's bullets, clearly contradicting the official account of events. His body was recovered on the Mexican side of the border. There is no evidence of Hernández Guereca throwing rocks, the use of lethal force is questionable even if he had been throwing rocks. Sergio's family contends he was playing a game with his friends, during which they would run up to the border through a culvert, touch it, and then run back. The New York Times reports “The international borderline, unmarked, runs through the middle of the culvert” (Liptak, 2020). The family says that in one of these run-touches to the border, Sergio's friend was grabbed by the Border Patrol agent (which is the apprehension that can be seen on video). Sergio, witnessing his friend get grabbed, begins to run away from the border, at which point he is shot by Agent Mesa. This story is consistent with the cell phone footage of the incident. The fact that this is a cross-border shooting (Agent Mesa was in the United States and Hernández Guereca was in Mexico at the time of the incident) had significant repercussions in the aftermath. Jesus Hernández and Guadalupe Guereca, Sergio's parents, sought to bring a lawsuit against Mesa to hold him responsible for the unreasonable use of force against their child. The case went to the U.S. Supreme Court and in February 2020, a decade after

the death of their child at the hands of the U.S. Border Patrol, the Court ruled that the parents did not have any right to sue because he was not protected under the due process clause of the U.S. Constitution because he was a Mexican national killed on Mexican soil.

José Antonio Elena Rodríguez (16)
Killed at the U.S.-Mexico Border in Nogales, Arizona in October 2012

There is a large painting of José Antonio Elena Rodríguez on Calle Internacional, a few feet into Mexico, on the road that runs along the U.S.-Mexico border. This stretch of the border is called Nogales on both sides – Nogales, Arizona on the U.S. side and Nogales, Sonora on the Mexican side. The painting is just a few feet away from where José Antonio, age 16, was killed by Border Patrol Agent Lonnie Swartz. Like the killing of Sergio Adrián Hernández Guereca, the events leading up to the killing of José Antonio are a jumble of different accounts of rock throwing, perceived threats, and the lethal discharge of a U.S. Border Patrol weapon that resulted in the death of a child.

At 11:00 p.m. on October 10, 2012, Border Patrol cameras detected two men climbing the border fence. Border Patrol agents were dispatched, where they saw the men as well as a pair of other men hauling bundles of marijuana nearby. Others – not the four men in question – began throwing rocks over the fence at the agents. Swartz, from his location on the U.S. side of the border wall, took out his gun and began firing through the fence into Mexico. It is unclear how many rounds he discharged from his weapon, though it is documented that he fired for 34 seconds, emptying his gun clip, then moved about 45 feet, reloaded his gun, and fired three more bullets through the border fence. There is no evidence that José Antonio was one of the rock throwers. His mother, Araceli Rodríguez, says that Calle Internacional was the route her son took most evenings walking home from the park where he played basketball. Like Sergio Adrián, José Antonio was killed while in motion away from the officer, as is demonstrated by where the bullets entered his body. Officer Swartz struck José Antonio 10 times – eight bullets in his back and two in his head (Carroll, 2018). He died on the sidewalk, a few blocks from his family home.

In a move that was surprising because officers are almost never held culpable for these sorts of shootings, Officer Lonnie Swartz was charged with second-degree murder. The charges were undoubtedly brought forward because of the outrage on both sides of the border by advocates who argued against this excessive use of force by a U.S. agent, resulting in the death of an innocent child. There is no evidence that José Antonio was throwing rocks or was connected in any way to the four men involved in the altercation. As in the case of Sergio Adrián, advocates argued that even if José Antonio was throwing rocks, the level of brutality in Agent Swartz's response was out of proportion (Carroll, 2018). Ultimately, in a move consistent with these cases, Border Patrol Agent Lonnie Swartz was found not guilty of all charges.

Cruz Marcelino Velasquez Acevedo (16)
Killed at the U.S.-Mexico Border in San Ysidro, California in November
2013

The video footage that caught the death of Cruz Marcelino Velasquez Acevedo is surveillance video from the inside of the San Ysidro Port of Entry facility. Cruz was a 16-year-old boy, a Mexican citizen, who had legal authorization to cross the border via a border crossing-card that is awarded to certain people living in border areas, often because they have regular business in the United States (work, school, etc.). Cruz presented at the San Ysidro Port of Entry with a backpack filled with two large, disposable water bottles filled with a dark amber-colored liquid. What we know now is that Cruz, like many other young men in the Tijuana area, was approached by drug smugglers in Tijuana and either convinced or coerced into sneaking these bottles into his backpack. It is important to note that this could have been a voluntary or coerced decision on his part because, as is well-documented in a variety of sources (Campbell, 2008; Beasley, 2018), young men living in the border region are often targeted by cartel members who are trying to move drugs across the border. Young men are perceived as less likely to be stopped, and also are often easier to convince because so many of their families live in poverty. Those who need more convincing are routinely threatened with violence. The exact circumstances that coalesced in Cruz presenting at the Point of Entry that day

with liquid methamphetamine in his backpack are unknown, though we do know that he had no prior illegal convictions nor had he ever been suspected of smuggling drugs at any point prior to the incident which resulted in his death (Stewart, 2017).

When Customs agents Valeria Baird and Adrián Perallon stopped Cruz to question him rather than simply waving him through, all three were formally on U.S. territory – Cruz had crossed the boundary only moments before. Agents Baird and Perallon asked Cruz what was in the bottles, clearly suspecting contraband. Cruz replied it was apple juice. The closed-captioned surveillance video does not have sound, but we know, from her own admission, that when Cruz said it was juice, Agent Baird told him “prove it.” Cruz takes a swig from the bottle. The agents can be seen talking with each other, laughing, and then Agent Perallon makes a gesture with his hand, encouraging Cruz to take another drink. The boy is encouraged to take four drinks total from the bottle. Within moments, the concentrated methamphetamine had entered his bloodstream and Cruz demonstrated signs of extreme physical and emotional distress. By all accounts, Cruz began to sweat profusely, and, with clenched fists, fell to the ground, screaming “mi corazón! Mi corazón!” Medical experts testify that in those moments, Cruz’ internal temperature rose to 105 degrees and his pulse reached 220 beats per minute, more than twice the normal adult heart rate. He was transported to a local hospital, arriving one hour after ingestion, and was dead two hours later, having ingested a lethal dose of methamphetamines (Dibble, 2017).

The San Ysidro Port of Entry is equipped with technology to test a liquid that is suspected of being a controlled substance. This technology is not only fast and accessible to agents in the field, protocol for these agents requires them to test anything they suspect is a controlled substance (Dibble, 2017). Urging anyone, let alone a child, to taste what is suspected to be liquid methamphetamine is clearly dangerous, but it is also entirely outside of standard operating procedures. Criminal charges were never brought against Agents Baird or Perallon and both are still employed (at the time of this writing) by Customs and Border Protection in San Diego (Dibble, 2017). Baird’s attorney argued that no suit should be filed because Acevedo wasn’t a U.S. citizen and had no connections with the United States that entitled him to any

constitutional rights. The attorney representing the Acevedo family argued that had protocols been followed, Cruz would still be alive today. The attorney reasoned that had proper protocol been followed, the contraband would have been identified as such and Cruz would have served time in a youth facility as punishment, but that the Customs agents' actions levied what amounts to the death penalty for his crime, never allowing Cruz the opportunity to atone for it. Acevedo's family filed a wrongful-death lawsuit brought against the two border officers and the U.S. government, and was awarded \$1 million when the United States decided to settle (Dibble, 2017).

How Brown Boyhood is Suspended at the Border: Analyzing the Killings and the Aftermath

I argue the state repudiates its role as protector of brown children at the border through the deployment of three tactics –victim-blaming and the justification of lethal violence in non-life-threatening situations, the protection of Border Patrol agents at all costs, and the casting of the U.S.-Mexico border as a zone of exceptionalism. In this section, I will discuss each of these three tactics as illuminated through the killings of Sergio Adrián, José Antonio, and Cruz Marcelino.

Victim-Blaming and Justification for Lethal Violence

Blaming the victim is an age-old tactic used to deflect culpability, and these cases are no different. In discussing the killing of children, however, victim-blaming is particularly egregious. The reason children are regarded as different from adults in the justice system is because they physiologically do not have the same brain development and decision-making capacity as adults. As was discussed earlier, The U.N. Convention on the Rights of the Child takes a less biological and more ethical and developmental approach, arguing that children constitute a protected class by virtue of being children.

Blaming the victim was a critical part of the justification and defense for the lethal acts on behalf of Border Patrol and Customs and Border Protection agents in these cases, and the justification machine went into full

effect in the aftermath of these incidents. In the case of both Sergio Adrián and José Antonio, rock-throwing comes to constitute a central part of the justification. What begins as a suspected unlawful entry in Sergio's case and suspected drug smuggling and unlawful entry in José Antonio's case is recast as incidents that are centrally about boys throwing rocks at agents, likely because there is no evidence Sergio or José Antonio were involved in the drug smuggling or attempting to cross the border. In both cases, the boys were assumed to be part of the rock-throwing crew and as a result, the agents responded with lethal force. The discrepancy of force between parties when one is armed with a rock and the other is armed with a firearm has been elucidated elsewhere. The case of Palestinian children throwing rocks at the Israeli army, who are equipped with high-powered military vehicles, tanks, and firearms, is a particularly poignant example of the powerless and the powerful coming head-to-head in an unarmed match of weaponry (Cook et al., 2004). Similarly, the United States Border Patrol has some of the most sophisticated and advanced weaponry of any state agency; to pretend that there was any match in weaponry is a complete fabrication and nothing more than an effort to justify the violence shown against these children. It is also important to note that in the aftermath of the shooting, several news outlets began to run stories claiming that Sergio Adrián was a *pollero*, a youth drug smuggler, despite the fact that he had no drugs on him, had no record of arrest either by the United States nor the Ciudad Municipal Police, and that there is no other evidence these claims are founded (Valencia et al., 2010). This was also, clearly, an attempt to simultaneously discredit him, to justify his murder in the name of protecting the United States from the influx of drugs from Mexico, and to make him a less sympathetic victim.

In the case of Cruz Marcelino, the "blame the victim" defense was even easier to trot out. He was referred to as a drug smuggler from the beginning, as soon as the news of his death broke. While not technically incorrect given that the liquid methamphetamine was in his possession, it suggested that he had a long history and track record of smuggling drugs when there is no evidence that this was the case (Valencia et al., 2010). Thus, the difference is between calling him a drug smuggler and saying that in the interaction during which he was killed, he was smuggling drugs. Of course, we have no ability to

know if this was a one-time incident or not, because José Antonio is no longer alive to tell that story. What we do know, as I mention in the previous section, is that in a cartel-controlled city where young people navigate deep, profound and intergenerational poverty, the act of a young person being paid to absorb the risk of gang leaders by smuggling small amounts of drugs across the border is not a simple case of free will. The fact that Cruz was smuggling drugs in his backpack was a necessary and central part of the state's quest to vilify him, which was necessary because the break in protocol in his death was so egregious. In what circumstance would it be acceptable to tell a person to taste a substance an agent suspects of being a controlled substance? This is never the protocol, for good reason – it is dangerous, unreliable and not standard protocol anywhere. That the agents mocked Cruz, laughing, while doing this adds another layer of egregiousness to the assault on his body and his dignity. Cruz' death is exactly why the facility is equipped with fast, easy, and accessible technology to test suspected substances; any other process is dangerous and unreliable. Yet the completely dangerous incompetence of the officers is eclipsed by the fact that Cruz was a “drug smuggler.” The insinuation, of course, is that he deserved what he got.

Painting these boys as dangerous and guilty of a crime is an intent by the state to complicate the circumstances of their deaths. This tactic is a key way that the state repudiates its role as protector of brown children at the border by juxtaposing their guiltiness with the upstanding reputations of the border agents, thereby making a de facto argument that the state has no responsibility to look out for them as children. As I will explore more fully in later in this article, the abdication of this responsibility is furthered by the fact of their nationality and casting as “non-American”; they are doubly unworthy of protection. Thus, though the deployment of this tactic intends to complicate the circumstances of their deaths, we can simply go back to the universal rights in the U.N. Convention on the Rights of the Child to remind ourselves that this is not complicated at all – adults should protect children, and the state should protect children; adults acting on behalf of the state should be held responsible for protecting children. There is nothing complicated about that. Lastly, though this point may be obvious, it is important to clearly state that even if they were guilty of all they are accused

of – if Sergio Adrián was throwing rocks, if José Antonio was throwing rocks, if Cruz Marcelino was a seasoned and habitual drug smuggler – that the use of use of lethal force against children in these scenarios is still completely unjustifiable.

Impunity and Protection of the Border Patrol and CBP

The tactic of protecting the agents of the state at all costs is central to the state’s repudiation of its role as protector of children. This tactic works in concert with the blaming the victim, because it relies on the dehumanization and “guilt” of the deceased as a means upon which to argue the valorization of the agent. In this way, the scales are turned – the unarmed child is constituted as the aggressor and the armed agent of the state is constituted as the fearful victim that needs protection. It is difficult to imagine that such a recasting could be possible, yet time and time again this recasting lays at the basis of the protection of agents of the state whose actions have caused the death of children at the border. Thus, that the state closed ranks and immediately set out to protect these Border Patrol and Customs and Border Protection agents is not a surprise, though it is worth examining in this context because the protection of the agents is diametrically opposed to their role as protector of children.

Part of what is so egregious about the death of Sergio Adrian is that there is video evidence of the deadly encounter which contradicts the agents’ accounting of events.² Thus, despite the documented evidence that shows Sergio running away from the border and the officer – making it impossible to argue that the officer was acting in self-defense because even if he had been throwing rocks earlier, he was absolutely not throwing rocks in that moment – the Border Patrol agents were never brought up on any charges in this case.

² It is worth noting, of course, that this aligns quite squarely with the number of Black and brown men who have been killed in the U.S. at the hands of police for whom there is documented video evidence that contradicts the official account of the officer including Eric Garner, Jason Harrison, Antonio Zambrano-Montes, and Walter Scott.

In José Antonio's case, the casting of the Border Patrol agent as the victim and fearful for his life was a much more explicit act because he was forced to argue the case in court as a result of the indictment brought against him. There is so much about the Border Patrol's case that does not add up in this situation. Agent Swartz shot José Antonio 10 times, certainly more than was required to incapacitate him. José Antonio died on the sidewalk, away from the border wall and on a downslope, which would have made him difficult to see from the opposite side of the border. Calle Internacional is a busy street, with many people on it at nearly all times of the day and night, thus shooting indiscriminately at the street is like shooting indiscriminately at any main downtown street across the country. The agent fired, paused, moved, reloaded his gun and fired more. The accusations that José Antonio was throwing rocks is completely unsubstantiated. All that can be proven is that José Antonio was on that street; unsurprising given that he was four blocks from home and frequently traveled that street as the straightforward way home from the nearby basketball court. In fact, when the agent was indicted, activists and advocates were relieved, not only because it is so rare to get an indictment like this but because the evidence seemed to point so clearly to the agent's culpability (Williams, 2018). Yet somehow, the fact that the agent fired through the Border Fence and killed a child that was not proven to have been acting aggressively is inconsequential. Through this recasting, José Antonio is guilty and the Border Patrol agent defends himself by saying that that he felt threatened. The Guardian quotes the defense lawyer in the trial saying something that almost acknowledges Agent Swartz' disproportionate use of force: "Yes, a gun is more powerful than a rock, but agents are authorized to respond in certain situations. That's the mindset, that's the way they're trained" (Carroll, 2018). The Guardian goes on to retell the moments in the court proceedings during which we can readily see how the agent is recast as the victim.

In emotional testimony, Swartz said he was frightened and fired after rocks appeared to hit a fellow agent and a police dog. "This has gotta stop. Somebody's going to get hurt," he recalled thinking. He said he

aimed at what appeared to be two ‘shadowy figures’ throwing rocks. (Carroll, 2018)

Agent Swartz is painted as the victim, frightened by “shadowy figures.”

In the case of Cruz Marcelino, the recasting of victim and perpetrator is even more flagrant because not only were the agents never in danger, but also because the actions of the agents were clearly against CBP protocol. Yet and still, these officers were protected and faced no criminal charges, nor any professional repercussions.

Thus, we can see that the impunity through which these agents are protected is widespread and well-documented; it is virtually impossible for injured parties to get accountability from the system because it is set up to protect the agents. The ferocity with which these agents are protected is juxtaposed to the lack of protection they extend to the Mexican children they interact with through their professional lives, and comes to constitute a key tactic in their abdication of their responsibility to these children.

U.S. Exceptionalism and the Violence of “Securing” the Border

If there is anything more noble than the protection of children, it is the protection of the nation-state. The casting of the U.S.-Mexico border as a zone of exceptionalism is a key tactic in the state’s repudiation of its role as protector of brown children at the border. U.S. exceptionalism, the notion that the U.S. is different from all other nations and as such is worthy of universal respect, has been used for decades to justify numerous atrocities – genocide, aggressive intervention in international affairs, and lopsided trade deals, to name a few. What we see here, then, is another example of U.S. exceptionalism in action, in the way that the border is seen as a zone of exceptionalism. Jennifer Chacón discusses this in her work *Border Exceptionalism in the Era of Moving Borders* saying:

While the Fourth Amendment governs interactions between government officials and civilians at the border, as a practical matter, the constraints on official actors at the border are less stringent than

would be the case in many other contexts. In the context of border policing, which the courts have linked to the protection of sovereignty and the sanctity of the nation's boundaries, the courts have treated the government's interest as extraordinarily strong. Thus, courts have a more permissive standard for what constitutes a reasonable action on the part of a government actor in the context of policing the international border than in many other policing contexts. (2010, pp. 134-135)

Thus, the border does not simply mark the international demarcation between two nations, it in and of itself is a special zone – one in which certain laws, legal rights and social order are suspended. Take for example the federal law which suspends the rights afforded under the Fourth Amendment of the U.S. Constitution, which protects Americans from random searches. According to Federal law, the U.S.-Mexico border is a special zone, one in which the U.S. Customs and Border Protection has the authority to operate within for 100 miles (citation). These basic constitutional rights are suspended in this 100-mile zone, giving federal authorities the right to conduct “routine searches” without a warrant or even probable cause.

The cross-border nature of the killing of both Sergio Adrián and Cruz Marcelino is notable; that the agent was located in the United States and shot into Mexico is a unique situation, and one that many would assume to be an overstepping of boundaries because U.S. officials, acting on behalf of the United States government, killed a Mexican child on Mexican soil. However, these events have been recast in the name of security in this special border zone – drug enforcement and protection of the officers from rocks is prioritized over the health and survival of children. There are two aspects of U.S. exceptionalism wrapped up here. First, there is the idea that a Mexican child is not worth as much as a U.S. child. It hardly needs to be said that if the tables were turned, and it was a Mexican agent who fired through the border to kill a child in the United States, the punishment would come quickly and definitively. Second, the idea of the border as a dangerous and violent place that the U.S. must secure to keep out the foreign invader is also rooted in U.S.

exceptionalism because it works under the assumption that the U.S. is special and must be protected at all costs.

José Antonio, on the other hand, ingested the deadly dose of liquid methamphetamine on U.S. soil. The justification for his death is on much shakier ground, given that there is no ability for the CBP to claim that they were in danger. However, their actions hang on the defense of their responsibility to secure the border against drug smuggling, and therefore, the wanton disregard for policy and protocol make sense within this context. The constructed narrative about how dangerous drug smugglers are and how vulnerable the border is, is marshalled as justification for the callous, inhumane, and illegal actions of the agents. That José Antonio was a child is meaningless; he is unworthy of their protection when there is a border to protect.

On the Possibilities of a Human Rights Framework

While each of these three incidents received some coverage in the media, they were, for the most part, mere blips on the radar. Further, the coverage they did get and the illumination of these incidents on the national stage largely occurred because activists and victims' families insisted that these egregious acts of violence not simply be swept under the rug. This dynamic also points to the critical need for human rights education in the United States. It is staggering to think how little U.S. residents know about the atrocities that are committed at the border in the name of their security and protection, and it is also inspiring to imagine what could be if this knowledge was held in a more widespread manner. Human rights education, in its various spaces and forms and applications, offers one example of how that could happen. As Monisha Bajaj reminds us in discussing human rights education for learners in India, "exposure to abuses for learners who are positioned at the margins of a given society—and in the case of [participants in HRE who occupy] the very periphery of the global economy—is intended to facilitate a transformative action approach that starts from knowledge and awareness of human rights violations and focuses on the next steps of solidarity, intervention, and activism" (Bajaj, 2011, p. 505). The positioning of a human rights education

framework as a way to problematize U.S. exceptionalism and the lack of awareness of the atrocities committed in the name of national security at the U.S.-Mexico border not only has the potential to transform the consciousness of individuals but of society as a whole. Further, the points of connection between violence committed by the state against Mexican children at the border and the violence committed against Black boys by the police is fertile ground for solidarity between Black and Latinx communities in the United States.

While children's rights is a core component of a human rights framework, in many sectors it tends to be underutilized as an intellectual and political frame (Jerome & Starkey, 2021). The killing of these three boys on the border is one that stretches the boundaries of understanding because in many ways, we may be quick to think of the killing of boys at the U.S.-Mexico border as a part of the category of immigrant/migrant rights. The cases of Sergio Adrian, José Antonio and Cruz Marcelino, however, do not make sense in this framework; though they were killed at the border, these boys were not migrants nor were they trying to cross the border. Understanding this case through the lens of children's rights, and thus, by extension, human rights, is not only appropriate but also quite generative.

The current discourse around immigration, immigration policy, and the border puts advocates and scholars in a largely defensive and at times even apologetic posture. We may say "yes, he should not have crossed the border illegally but..." or "yes, she was living in the U.S. without authorization but..." or even "Yes, it wasn't right for her to bring her children illegally but...." The dominance of anti-immigrant political discourse means that even in speaking in defense of migrant and border communities, we often engage in blaming them. What framing these killings through a children's rights framework opens up for us, though, is the clarity to be unapologetic in our claims of their humanity. Sergio Adrián, Cruz Marcelino, and José Antonio should not have been targeted and killed by federal agents because they are children. It does not matter if they were throwing rocks, it does not matter that he was smuggling drugs – they were children. Human rights are human rights because they are inalienable; afforded to people on the basis of their humanity, not because they have been proven as worthy or because they make "good"

decisions. Children's rights, as a part of a broader human rights framework, allows us to escape the trappings of the "worthiness" debates we so often get ensnared in immigrant rights work and allows us to unapologetically and fully call for humanity and dignity for migrant and border communities. This recasting both serves as a reminder that we need to do this more often, and is an invitation to imagine what the possibilities are – for accountability, for solidarity, for intervention – when we do.

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