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Where There's a Wall There's a Way: The End (?) of Democratic Discourse Regarding Immigration and Border Security Policy

TERENCE M. GARRETT[†]

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[†] Terence M. Garrett (Ph.D., University of Oklahoma) has doctoral field concentrations in public administration, comparative politics, and international relations within the academic discipline of political science. Dr. Garrett is professor and chair of the Public Affairs and Security Studies (PASS) Department at the University of Texas Rio Grande Valley and is currently Master of Public Affairs (MPA) adviser in Public Policy for the UTRGV PASS Department. He has published works in journals such as the *International Journal of Social Economics*, *International Journal of Organization Behavior and Theory*, *Administration & Society*, *Education + Training*, *Public Voices*, *American Review of Public Administration*, and *Administrative Theory & Praxis*. Dr. Garrett has testified as an expert witness on walls and fencing along the Mexico/USA border in the United States Senate's Homeland Security and Governmental Affairs Committee (Apr. 4, 2017). He serves in a leadership role on the Steering Committee for the University of Texas System's *Texas National Security Network*. Dr. Garrett's current research is concerned with phenomenology and organizational theory, homeland security, and the postmodern turn in public administration.

FIGURE 1: TWEET PRODUCED BY REPUBLICAN PRESIDENTIAL CANDIDATE DONALD J. TRUMP, APRIL 16, 2015.



I. INTRODUCTION: DEFINING THE PROBLEM OF “WALLS” IN THE U.S.A. BORDER SECURITY CONTEXT

As of March 16, 2017, President Trump proposed an initial investment towards border security and the wall. Elements include a \$2.6 billion “down payment” for the border wall, the hiring of 1,000 Immigration Customs Enforcement (“ICE”) agents and 500 Customs and Border Protection agents – all under his proposed budget.¹ The fate of funding Trump’s wall now rests with Congress as part of the overall appropriations process.² Additionally, the proposed budget will have cuts made in other agencies in the Department of Homeland Security (“DHS”) including the Transportation Safety Administration (“TSA”) and the Federal Emergency Management Agency (“FEMA”).³ The border wall between Mexico and the U.S.A. is now under consideration for being constructed, or being extended, once again.

Walls have long been used as a solution to address public policy situations such as national security, economic security, and the prevention of an influx of migrants to cross into sovereign territory. Questions arise as to how effective walls are in terms of addressing security and migration issues. Garrett notes that: “Justification for

1. Nicholas Fandos, *Trump’s Border Wall Gets Billions in Budget Proposal*, N.Y. TIMES (Mar. 16, 2017), <https://www.nytimes.com/2017/03/16/us/politics/donald-trump-border-wall-budget.html>.

2. *Id.*

3. *Id.*

increased national or 'homeland' security in the wake of the 'war on terrorism' and September 11 brought about a fusion with the anti-migration policy proponents who have used the events to politically force the U.S. Government to procure land for fencing in the region, through the authority of the 2005 Real ID Act and the 2006 Secure Fence Act passed by Congress and signed into law by President Bush, in the hopes of attaining a more secure border with Mexico and to prevent a terrorist attack sometime in the future."⁴ Garrett and Storbeck submit that walls – such as the U.S.-Mexico border fence in the Rio Grande Valley – represent potential harm to the people dwelling in the region, portraying the 110-mile long wall as “the consequences of U.S. wall-building policies in terms of semiotics (Baudrillard’s *simulacra*), space (Foucault’s *heterotopias*), and subjectivity (Agamben’s *homo sacer*).⁵ I see a continuation of the policy of “wall building,” at least rhetorically, with the president-elect of the U.S.A. There are political, economic, psychological, and social consequences for this wall as there are for others.

In addition to the political consequences, there are economic issues associated with the border wall related to migration policy. Garrett makes the case that:

The general lack of a substantive debate over the relative merits of effective governmental policies on immigration and border security is indicative of the power of the market spectacle. The two market-based solutions:

- (1) bring in the undocumented workers for their cheap (and exploited) labor; or
- (2) keep the undocumented workers out by constructing border fences and accumulating surveillance equipment – preclude any viable alternative strategies such as, for example, providing legal entry for workers that reflect more accurately their true impact on society or providing support to workers in their own country of origin.

Worker products that are relatively inexpensive and plentiful appear to come into conflict with corporate

4. Terence M. Garrett, *Colonization in South Texas: Fences, Heterotopias and Emplacements*, 39 INT'L J. OF SOCIAL ECONOMICS 742, 744–745 (2012).

5. Terence M. Garrett & James E. Storbeck, *The DHS Border Fence in the Rio Grande Valley: Semiotics, Space, and Subjectivity*, 33 ADMINISTRATIVE THEORY & PRACTICE 530 (2011).

interest in border security whereby extensive apparatuses are manufactured and systematically maintained. Cheap labor and lucrative government contracts trump effective and socially meaningful dialogue.⁶

The market “spectacle” is explained as being the...

...heir to all the weakness of the project of Western philosophy, which was an attempt to understand activity by means of the categories of vision. Indeed the spectacle reposes on an incessant deployment of the very technical rationality to which that philosophical tradition gave rise. So far from realizing philosophy, the spectacle philosophizes reality, and turns the material life of everyone into a universe of speculation.⁷

And now integrated in society as...

...The spectacle has spread itself to the point where it now permeates all reality. It was easy to predict in theory what has been quickly and universally demonstrated by practical experience of economic reason's relentless accomplishments: that the globalization of the false was also the falsification of the globe.⁸

I take a position in this paper that exploitation of labor – that primarily of immigrants from Mexico, Honduras, El Salvador, and Guatemala – is part and parcel of the phenomenon of globalization. The wall is a symbolic obstruction, used in all manner to hinder, if not stop, migrants from entering the U.S. The wall cannot completely prohibit determined migrants. The wall can be, and is, used as an apparatus⁹ or simulacrum¹⁰ to convince Americans that they are secure, whether they are or are not. In 2016, Trump has orchestrated a media

6. Terence M. Garrett, *Market Spectacle: Immigration Policy Along the US/Mexico Border*, 41 INT'L J. OF SOCIAL ECONOMICS 32, 34 (2013).

7. GUY DEBORD, THE SOCIETY OF THE SPECTACLE 17–18 (Donald Nicholson-Smith trans., Zone Books 1994) (1967), adapted from Terence M. Garrett, *Market spectacle: Immigration policy along the US/Mexico border*, 41 INT'L J. OF SOCIAL ECONOMICS 32, 33 (2013).

8. GUY DEBORD, COMMENTS ON THE SOCIETY OF THE SPECTACLE 6 (1988).

9. GIORGIO AGAMBEN, WHAT IS AN APPARATUS? AND OTHER ESSAYS (David Kishik & Stephan Pedatella trans., Stanford University Press 2009) (2006).

10. JEAN BAUDRILLARD, SIMULACRA AND SIMULATION (Shelia Faria Glaser trans., University of Michigan Press 2006) (1981).

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spectacle based in part on the border wall between the U.S.A. and Mexico.¹¹ Hence, the border wall is an outgrowth of the society of the spectacle¹² – and is a spectacle.

II. BACKGROUND: WHERE THERE'S A WALL, THERE'S A WAY?

The terrorist attacks of September 11, 2001 provided the impetus for the building of the border wall—combining fear with policy to enable construction through the passage of federal laws as “terrorist attacks had . . . given traditional immigration opponents a club they had long been lacking” to put up a border wall.¹³ The 2006 Secure Fence Act and the 2005 REAL ID Act were passed to enable the Secretary of Homeland Security to build approximately 650 miles of fence along the U.S.-Mexico border by overriding environmental and property laws already passed into law as well as requiring passports, or land-based passport cards, for re-entry into the U.S.A. by its citizens.¹⁴ The pressure on private land owners, particularly in Texas, brought about changes to the Secure Fence Act.¹⁵ According to Dinah Bear, former White House Counsellor, then-Senator Kay Bailey Hutchison (R-TX) sponsored and passed an amendment to the 2006 law in 2007 “to give the Secretary of Homeland discretion in the fence’s location [and she] crafted language that made the 700-mile mandate a floor, not a ceiling,” meaning that “Trump can build more than 700 miles if he wants to . . .”.¹⁶ The result is that, while Texas land owners along the U.S.-Mexico border won temporary relief from the initial border fence construction, the 2007 amendment enabled further future construction through 2010 before government contracts expired.¹⁷

From 2011 to 2017 no further wall building effectively took place. The Obama administration had in place a border fence mostly inherited from policies implemented in the Bush administration.¹⁸ The

11. DOUGLAS KELLNER, *AMERICAN NIGHTMARE: DONALD TRUMP, MEDIA SPECTACLE, AND AUTHORITARIAN POPULISM* (2016).

12. DEBORD, *THE SOCIETY OF THE SPECTACLE*, *supra* note 7.

13. EDWARD ALDEN, *THE CLOSING OF THE AMERICAN BORDER: TERRORISM, IMMIGRATION, AND SECURITY SINCE 9/11*, at 270 (2008).

14. *Id.*

15. *Id.*

16. Melissa del Bosque, *Trump’s Border Wall May Spark Another Epic Land Dispute*, *TEX. OBSERVER* (Nov. 18, 2016), <https://www.texasobserver.org/border-wall-trump-land-dispute/>.

17. *Id.*

18. Robert Farley, *Obama Says the Border Fence is ‘Now Basically Complete,’* *POLITIFACT* (May 16, 2011, 5:03 PM), <http://www.politifact.com/truth-o-meter/statements/2011/may/16/barack-obama/obama-says-border-fence-now-basically->

border security policy of the U.S.A. consisted of the fence along with increased surveillance apparatuses and an increased number of Customs and Border Protection (“CBP”) agents to 21,370 deployed along the U.S.-Mexico border by 2015, although the employees’ union for the CBP Rio Grande Valley sector leadership wanted an additional 5,000 personnel in testimony to Congress.¹⁹ The addition of 5,000 CBP agents for border security was coincidentally the number cited by Republican presidential candidate Donald J. Trump that found its way eventually into an executive order for construction of the border wall.²⁰ The National Border Patrol Council was one of the first government employee unions to back Mr. Trump in March 2016 and viewed the new wall as a “vital tool” to control undocumented border crossers.²¹ ICE agents are represented by the National Immigration and Customs Enforcement Council that “represents 5,000 immigration officers and law enforcement support staff” out of nearly 20,000 employees.²² Once Donald J. Trump was inaugurated on January 20, 2017, the CBP and ICE unions have the president they endorsed.

The resulting executive order by President Trump on January 25, 2017 is now in effect as law to build more fence, or a wall, although Congress has to authorize funding for said wall applicable here as ...

Sec. 2. Policy. It is the policy of the executive branch to:

(a) secure the southern border of the United States through the immediate construction of a physical wall on the southern border, monitored and supported by adequate personnel so as to prevent illegal immigration, drug and human trafficking, and acts of terrorism; [and]...

Sec. 3. Definitions. (a) “Asylum officer” has the meaning given the term in section 235(b)(1)(E) of the

complete/.

19. *Testimony of Chris Cabrera Before Senate HSGAC Committee*, NAT’L BORDER PATROL COUNCIL (Mar. 17, 2015), <http://www.bpunion.org/index.php/newsroom/special-reports/1771-cabrera-testimony-hsgac>.

20. *Border Security and Immigration Enforcement Improvements*, Exec. Order No. 13,767, 82 Fed. Reg. 8793 (Jan. 25, 2017).

21. Kate Morrissey, *Border Patrol Union Welcomes Trump’s Proposed Wall as a ‘Vital Tool’*, L.A. TIMES (Nov. 18, 2016, 10:15 AM), <http://www.latimes.com/local/lanow/la-me-san-diego-border-patrol-wall-20161118-story.html>.

22. Miriam Valverde, *Donald Trump was not ‘Unanimously Endorsed’ by ICE, Border Patrol*, POLITIFACT (Jan. 26, 2017, 5:25 PM), <http://www.politifact.com/truth-o-meter/statements/2017/jan/26/donald-trump/trump-claims-unanimous-endorsement-ice-border-patr/>.

INA (8 U.S.C. 1225(b)(1)).

(b) "Southern border" shall mean the contiguous land border between the United States and Mexico, including all points of entry.

(c) "Border States" shall mean the States of the United States immediately adjacent to the contiguous land border between the United States and Mexico.

(d) Except as otherwise noted, "the Secretary" shall refer to the Secretary of Homeland Security.

(e) "Wall" shall mean a contiguous, physical wall or other similarly secure, contiguous, and impassable physical barrier.²³

The cost of the new border wall is yet unclear, although there is an estimate that the "cost of a border wall is potentially enormous, with initial estimates ranging from a few billion dollars to \$14 billion. And that's just for constructing the wall or fence; it does not include a range of other expenses, from maintenance to border patrol agents to purchasing private property from Texas landowners."²⁴ Complicating factors for constructing a new wall include a "yet-to-be-released" Government Accountability Office ("GAO") report that "estimates the cost of a single layer fence at \$6.5 million per mile, or \$10.4 million per mile for a double-layer fence."²⁵ Senator Majority Leader, Mitch McConnell, estimates the border wall will cost between \$12 and \$15 billion.²⁶ As of February 9, 2017, an internal Trump administration report has determined that the cost of the border wall will be between \$21.6 billion and \$25 billion and take up to three and a half years to complete.²⁷ The largest estimate for border wall construction is from a Massachusetts Institute of Technology Review estimate of between \$27 billion to \$40 billion for one thousand miles.²⁸ The U.S. public is

23. Exec. Order No. 13,767, *supra*, note 20.

24. Rachel Bade & John Bresnahan, *House GOP, Trump Team Hatch Border Wall Plan*, POLITICO (Jan. 5, 2017, 6:10 PM), <http://www.politico.com/story/2017/01/house-gop-trump-border-wall-233237>.

25. *Id.*

26. Tom LoBianco, Manu Raju & Ted Barrett, *McConnell: Border Wall Will Cost \$12B-\$15B*, CNN (Jan. 26, 2017, 11:36 AM), <http://www.cnn.com/2017/01/26/politics/border-wall-costs-republican-retreat/>.

27. Julia Edwards Ainsley, *Exclusive - Trump Border 'Wall' to Cost \$21.6 billion, Take 3.5 Years to Build: Internal Report*, REUTERS (Feb. 9, 2017, 5:59 PM), <http://www.reuters.com/article/us-usa-trump-immigration-wall-exclusive-idUSKBN15O2ZN>; see breakdown in Figure 2 below.

28. Danielle Ivory & Julie Creswell, *One Certainty of Trump's Wall: Big Money*, N.Y. TIMES (Jan. 28, 2017), <https://www.nytimes.com/2017/01/28/business/mexico-border-wall-trump.html>.

not in favor of the wall as a recent Pew Center Poll shows that 39% of those surveyed were in favor, or thought the wall was important to build, while 59% did not think the wall was important.²⁹ At this point in time, the task of determining the final monetary cost of the border wall is difficult and will likely take years before the total is complete.

FIGURE 2: TRUMP ADMINISTRATION INTERNAL COST ESTIMATE REPORT - \$21.6 BILLION (LOW ESTIMATE) TOTAL FOR THE PROPOSED BORDER WALL.³⁰

PHASES – DATES	MILES OF COVERAGE AND LOCATION	ESTIMATED COST
Phase one: September 2017	26 miles (42 km) near San Diego, California; El Paso, Texas; and in Texas's Rio Grande Valley	\$360 million
Phase two: Dates as yet unknown, presumably after September 2017	151 miles (242 km) of border in and around the Rio Grande Valley, Texas; Laredo, Texas; Tucson, Arizona; El Paso, Texas and Big Bend, Texas	\$11-15 million per mile
Phase three: Dates as yet unknown – final completion date – end of 2020	Unspecified 1,080 miles (1,728 km) – effectively the remainder of Mexico/US border	\$11-15 million per mile

The final cost to U.S. taxpayers for the construction of the Trump administration's border wall remains to be seen. Bids will likely have to be extended for wall building contractors to develop a clearer understanding for government officials in charge of the project.

In the past, government contracts of now existing border fence placements illustrate how corporations have benefited from the building of the border fence. Boeing SBI-Net, for example, received \$7.5 million per mile – out of a total of 110 miles – for constructing an 18-foot high fence in the Rio Grande Valley during the period of 2006

29. Rob Suls, *Less Than Half the Public Views Border Wall as an Important Goal for U.S. Immigration Policy*, PEW RESEARCH CENTER (Jan. 6, 2017), <http://www.pewresearch.org/fact-tank/2017/01/06/less-than-half-the-public-views-border-wall-as-an-important-goal-for-u-s-immigration-policy/#comments>.

30. Based on Ainsley, *supra* note 27.

to 2009³¹ in order to make substantial profits.³² In south Texas, the border fence was placed in areas where wildlife refuges, landowners, farmers and ranchers were located, resulting in properties being apprehended by provisions of the Secure Fence Act of 2006 that granted overriding authority of property and environmental laws previously passed by Congress and given to the Secretary of the Department of Homeland Security.³³ The DHS particularly went after the citizens along the border who were poorer, less educated, and spoke primarily Spanish using U.S. Census Bureau data, whereby the wealthier and more politically connected did not get the wall at the time.³⁴ The fence and other security devices such as surveillance cameras, drones, and other aerial devices provide lucrative profits to corporations and still do not entirely prevent migrants from crossing the U.S.-Mexico border.³⁵ The ability to acquire cheaper undocumented workers who enter the U.S. illegally from other nations is still maintained. The twin pillars of the security state apparatus build up and the ongoing underground labor market contribute to current U.S.A. border security and migration policies that benefit corporations thereby precluding any policy change for the foreseeable future other than the current status quo – as the powerful interests dominate public discourse.³⁶ With the new administration installed in office as of January 2017, nothing will likely change. The new wall – or rather the extension of the pre-existing wall – means more corporate profits at the expense of migrants crossing the border and making it more difficult but not insurmountable. And a genuine public discussion of the consequences of existing border security and migration policies will be shunted aside and displaced by the spectacle of the wall.

One of the consequences of the “renewed” building of the border wall is the alienation of the Mexican government by the Trump administration as demonstrated somewhat in Figure 1 (above).

31. Garrett & Storbeck, *The DHS Border Fence in the Rio Grande Valley*, *supra* note 5, at 530.

32. Garrett, *Colonization in South Texas*, *supra* note 4.

33. T. Christina Miller, et al., *The Taking: How the Federal Government Abused its Power to Seize Property for a Border Fence*, TEX. TRIBUNE (Dec. 14, 2017, 12:00 AM), <https://www.texastribune.org/2017/12/14/border-land-grab-government-abused-power-seize-property-fence/>.

34. J. Gaines Wilson, et al., *Due Diligence and Demographic Disparities: Effects of the Planning of U.S.-Mexico Border Fence on Marginalized Populations*, 14 SOUTHWESTERN GEOGRAPHER 42 (2010).

35. Ted Hesson, *15 Companies That Profit From Border Security*, ABC NEWS (April, 15, 2013), http://abcnews.go.com/ABC_Univision/Politics/15-companies-profit-border-security/story?id=18957304.

36. Garrett, *Market Spectacle*, *supra* note 6.

Republican presidential candidate Trump referred to Mexican immigrants as rapists, promised to build a wall to keep them out, and pledged to deport those Mexican migrants who had crossed into the U.S.A. illegally.³⁷ Additionally, candidate and now-president Trump made statements to the effect that Mexico would pay for the construction of the border wall, primarily with a twenty percent tax on goods imported from Mexico to the United States, although economists and market analysts have stated that U.S.A. citizens would pay for the costs through higher prices passed on to consumers and not Mexico (See, for example, Krugman, January 30, 2017; Bryan, January 29, 2017; and, Jacobs, Rushe, and Agren, January 27, 2017).³⁸ Mexico is the U.S.A's third largest trading partner behind China and Canada.³⁹ Both economies would suffer as a result of raising tariffs in this manner and the NAFTA treaty would be effectively moot as a result.

The border wall proposal has not gone over well in Mexico since it was introduced. Mexico's President Nieto declared, "I regret and condemn the United States' decision to continue with the construction of a wall that, for years now, far from uniting us, divides us," as he cancelled his state visit to Washington, D.C. to meet with President Trump.⁴⁰ New York Times reporter Azam Ahmed notes that: "The perceived insults endured [against Mexico] during the campaign had finally turned into action. Decades of friendly relations between the nations — on matters involving trade, security and migration — seemed to be unraveling."⁴¹ President Trump's border wall proposal is viewed by the Mexican government as an affront that may have damaged relations permanently.

37. Azam Ahmed, *As Trump Orders Wall, Mexico's President Considers Canceling U.S. Trip*, N.Y. TIMES (Jan. 25, 2017), <https://nyti.ms/2ktMun5>.

38. See Paul Krugman, *Building a Wall of Ignorance*, N.Y. TIMES (Jan. 30, 2017), <https://nyti.ms/2jJ0Xh9>; Bob Bryan, *There Are A Lot Of Problems With Trump's 20% Border Tax Idea*, BUSINESS INSIDER (Jan. 29, 2017, 6:05 AM), <http://www.businessinsider.com/problems-with-trumps-20-mexican-border-tax-idea-2017-1>; Ben Jacobs, Dominic Rushe & David Agren, *Trump-Mexico Relations Hit New Low After 20% Border Wall Tax Mooted*, THE GUARDIAN (Jan. 27, 2017, 2:58 AM), <https://www.theguardian.com/world/2017/jan/26/trump-calls-for-20-tax-on-mexican-imports-to-pay-for-border-wall>.

39. *U.S.-Mexico Trade Facts*, OFFICE OF THE U.S. TRADE REPRESENTATIVE, <https://ustr.gov/countries-regions/americas/mexico>.

40. Ahmed, *supra* note 37.

41. *Id.*

III. "THE WALL" CRITICAL THEORY FRAMEWORK: AGAMBEN, BAUDRILLARD, FOUCAULT AND DEBORD

The society whose modernization has reached the stage of the integrated spectacle is characterized by the combined effect of five principal features: incessant technological renewal; integration of state and economy; generalized secrecy, unanswerable lies; an eternal present. – Guy Debord, 1988, "Comments on The Society of the spectacle."

In previous work, Garrett and Storbeck (2011)⁴² analyzed the border wall constructed in the Rio Grande Valley region of Texas using a theoretical construct based on concepts of semiotics, space and subjectivity relying primarily on the works of Jean Baudrillard,⁴³ Michel Foucault,⁴⁴ and Giorgio Agamben (1995; 2005; 2007; and, 2009).⁴⁵ Specifically, we created the border wall concept as simulacrum, space-created heterotopias, and migrants and citizens in border regions (Mexican and U.S.A.) as *homo sacer* – people "the other" who may be sacrificed without rights in the current state of exception – or the perception of the nation-state under siege to justify policies to keep out "the other."⁴⁶ These theories will be explained briefly in the discussion that follows. In addition to the previous work, I will examine current political, social, and economic circumstances with the border wall that has been reprised by the Trump administration to include an analysis of Debord's concept of the society of the spectacle – which is central to knowing the

42. Garrett & Storbeck, *The DHS Border Fence in the Rio Grande Valley*, *supra* note 5.

43. BAUDRILLARD, *supra* note 10.

44. MICHEL FOUCAULT, *THE ORDER OF THINGS: AN ARCHAEOLOGY OF THE HUMAN SCIENCES* (1970); MICHEL FOUCAULT, *POWER/KNOWLEDGE: SELECTED INTERVIEWS AND OTHER WRITINGS, 1972–1977* (Colin Gordon ed., Colin Gordon, Leo Marshall, John Mepham & Kate Soper trans.) (1980); MICHEL FOUCAULT, *SECURITY, TERRITORY, POPULATION: LECTURES AT THE COLLEGE DE FRANCE, 1977–78* (Michel Senellart ed., Graham Burchell trans.) (2007); MICHEL FOUCAULT, *HETEROTOPIA AND THE CITY: PUBLIC SPACE IN A POSTCIVIL SOCIETY* 87–102 (Michiel Dehaene & Lieven De Cauter eds., Routledge 2008) (1967).

45. GIORGIO AGAMBEN, *HOMO SACER: SOVEREIGN POWER AND BARE LIFE* (Daniel Heller-Roazen trans. 1998) (1995); GIORGIO AGAMBEN, *STATE OF EXCEPTION* (Kevin Attell trans.) (2005); GIORGIO AGAMBEN, *PROFANATIONS* (Jeff Fort trans. 2007) (2005); AGAMBEN, *What is an Apparatus*, *supra* note 9.

46. Garrett & Storbeck, *The DHS Border Fence in the Rio Grande Valley*, *supra* note 5; *see also* Paul James Pope & Terence M. Garrett, *America's Homo Sacer: Examining U.S. Deportation Hearings and the Criminalization of Illegal Immigration*, 45 ADMIN. & SOC'Y 167, 167–186 (2012).

phenomenon.⁴⁷

Garrett and Storbeck (2011) employed Jean Baudrillard's theoretical concept, the simulacrum, which signifies that an image that is intended as real, and may in fact exist, can become *hyperreal* – or something that in reality it is not.⁴⁸ Garrett and Storbeck (2011) submit the theoretical notion that the 18-foot high border fence constructed in the Rio Grande Valley is represented or portrayed by government officials and others sympathetic to the “wall” as a symbol of security based on events surrounding the 9/11 terrorist attacks – although the terrorists did not cross the U.S.-Mexico border.⁴⁹ Conversely, those people dwelling in the region directly affected by the wall see or perceive it as a threat to their security and well-being. The transitory interpretation of the border fence is captured in Figure 3 below as:

47. DEBORD, *THE SOCIETY OF THE SPECTACLE*, *supra* note 7; DEBORD, *COMMENTS ON THE SOCIETY OF THE SPECTACLE*, *supra* note 8.

48. Garrett & Storbeck, *The DHS Border Fence in the Rio Grande Valley*, *supra* note 5.

49. *Id.*

FIGURE 3. 9/11 AND THE BORDER WALL BECOME HYPERREAL, SIMULACRA.⁵⁰

<i>it [the image] is the reflection of a profound reality; (the image is a good appearance)</i>
<i>The border fence is the image of homeland security.</i>
<i>it masks and denatures a profound reality; (it is an evil appearance)</i>
<i>The border wall is the image of oppression: loss of land, detrimental to society and commerce—leading to despair and fear.</i>
<i>it masks the absence of a profound reality; (it plays at being an appearance)</i>
<i>The border fence/wall gives the impression of a sense of security at the expense of those victimized by its presence in the lower Rio Grande Valley.</i>
<i>it has no relation to any reality whatsoever; (it is no longer of the order of appearance)</i>
<i>The border fence in its 18-foot-high physical construction does not lead to real security (if it is at all completely possible)—agents on the ground, electronic surveillance methods, better international immigration and national security policies are proven more effective [leading to:]</i>
<i>it is its own pure simulacrum</i>
<i>The simulacrum or “hyperreal” becomes real. 9/11 (itself having become a simulacrum) makes other hyperreal actions possible, such as the border fence. The proposed border fence becomes a manifestation of “security” based on the fears of another “9/11” by placing a physical structure to impede or stop illegal immigration/terrorism; in reality, it represents a porous and temporary barrier to delay crossing into the United States.</i>

50. Originally Figure 2, Garrett & Storbeck, *The DHS Border Fence in the Rio Grande Valley*, *supra* note 5, at 535. Adapted from BAUDRILLARD, *supra* note 10, Garrett (2010), and Noe (2002).

The border wall, as such, is complex in terms of theoretical interpretation. Baudrillard's concept is utilized here to capture one key element of the border wall – its symbolism. With regard to the Trump administration's border wall – nothing has changed in terms of semiotics.

There are other elements to describe, explain and assess the phenomenon of the border wall. So, for Garrett and Storbeck (2011), the next element for consideration and explanation is the theoretical concept of the border wall as a heterotopia.⁵¹ The border wall in the Rio Grande Valley has displaced land from farmers, ranchers, and people who dwell in the area in that the wall is mostly distant from the Rio Grande.⁵² In some instances, the border wall, which mostly follows the levee system designed to prevent flooding in the region, is as far as two miles away from the river.⁵³ Land is effectively lost and the federal government, through the U.S. Army Corp of Engineers and the Department of Homeland Security, have designed a wall that slices through private land holdings in many places in south Texas. The land between the wall and the Rio Grande becomes what is called a *heterotopia* – the other place – or land that is rendered useless or a no-man's land ...

We see that in the name of state security, or homeland security, people with long-cherished familial relations and friendships with neighbors across the border in Mexico are having their way of life and existence challenged by the fence structure. While there has always been an element of distance drawn on the international border, the new 18-foot-high concrete-embedded border wall with increased surveillance—where it is built and where it does not exist—complicates and devalues the space between Mexico and the United States. The heterotopia of the distance between the steel pikes of the border wall and the actual border, centered in the middle of the Rio Grande, becomes a place where people will be shut out of their land, livestock and wildlife are cut off from access to water, and, most important, the people along both sides of the river are more effectively being stopped from

51. FOUCAULT, THE ORDER OF THINGS, *supra* note 44; Garrett, *Colonization in South Texas*, *supra* note 4.

52. See *Fencing the Border and its Birds*, THE CORNELL LAB (Sept. 20, 2009), <https://www.allaboutbirds.org/fencing-the-border-and-its-birds/>.

53. *Id.*

daily economic, social, and political interaction.⁵⁴

The distance between the Rio Grande and where the actual wall is built remains an important element for consideration as to whom will suffer the consequences of the wall's placement. So, whether the area in question is along the Rio Grande – where actually the midpoint of the river is the border between the state of Texas in the U.S.A. and Mexico – or in areas such as where New Mexico, Arizona and California meet Mexico on land also by treaty, the wall *re*-presents a place where no one may dwell, or a place that is neither sacred nor profane in its vicinity. The security apparatus, whether wall, cameras, drones, aerial blimps or paramilitary troops on the ground, guards against the incursion of *the other*: undocumented border crossers of whatever whereabouts in the world attempting to gain physical entrance into the U.S.A.

The next aspect of Garrett and Storbeck's (2011) and Pope and Garrett's (2012) analysis of the wall is the immediate policy issue for which the border wall is and was designed: to keep out the other, or what we refer to as the *homo sacer* – those who may be sacrificed and are without rights as human beings.⁵⁵ The current state of exception⁵⁶ allows the U.S.A. state to declare that the nation is under a state of siege and since the Bush administration after the terrorist attacks of 9/11, through the Obama administration, and finally to the Trump administration, to declare a state of emergency authorizing public law and policies to strip the rights of undocumented border crossers from Latin America, China, or other parts of the globe. Laws in the U.S.A., such as the REAL ID Act of 2005, the Secure Fence Act of 2006 and now the Executive Order signed by President Trump to provide for further construction of the border wall and enable the U.S.A. government to institute security measures such as the increased “paramilitarization” of the U.S.-Mexico border through the massing of over 15,000 Customs and Border Patrol agents among other strategies and tactics.⁵⁷

The reincarnation, or reintroduction, of the border wall has brought about a concern that was always “there” – to be observed – but

54. Garrett & Storbeck, *The DHS Border Fence in the Rio Grande Valley*, *supra* note 5, at 542.

55. AGAMBEN, *HOMO SACER*, *supra* note 45.

56. AGAMBEN, *STATE OF EXCEPTION*, *supra* note 45.

57. Exec. Order No. 13,767, *supra*, note 20. *See also* Brian Naylor, *Trump's Plan to Hire 15,000 Border Patrol and ICE Agents Won't be Easy*, NPR (Feb. 23, 2017, 5:12 AM), <https://www.npr.org/2017/02/23/516712980/trumps-plan-to-hire-15-000-border-patrol-and-ice-agents-wont-be-easy-to-fulfill>.

we missed and failed to capture in the original analysis, although we discussed the matter before the final article.⁵⁸ I realize now that the key element of any discussion of the border wall must center on Debord's (1967/1994) concept of the society of the spectacle.⁵⁹ While the public is susceptible – indeed, is held hostage – to the spectacle, the accentuation of Republican candidate Trump and the current president through the use of social media, Twitter especially, is unprecedented. To have a complete theoretical analysis of the border wall, insights from Debord include ...

*Spectacular government, which now possesses all the means necessary to falsify the whole of production and perception, is the absolute master of memories just as it is the unfettered master of plans which will shape the most distant future. It reigns unchecked; it executes its summary judgments. It is in these conditions that a parodic end of the division of labor suddenly appears, with carnivalesque gaiety, all the more welcome because it coincides with the generalized disappearance of all real ability. A financier can be a singer, a lawyer a police spy, a baker can parade his literary tastes, an actor can be president, a chef can philosophize on cookery techniques as if they were landmarks in universal history. Anyone can join the spectacle, in order publicly to adopt, or sometimes secretly practice, an entirely different activity from whatever specialism first made their name. Where 'media status' has acquired infinitely more importance than the value of anything one might actually be capable of doing, it is normal for this status to be readily transferable; for anyone, anywhere, to have the same right to the same kind of stardom (emphasis added).*⁶⁰

President Trump with his obsessive use of social media via Twitter is an exemplar of spectacular government and the wherewithal to become a star whose “ability to dominate the mediascape of contemporary capitalism and now sectors of the political scene is facilitated by quasi-religious beliefs that the allegedly successful

58. See Garrett & Storbeck, *The DHS Border Fence in the Rio Grande Valley*, *supra* note 5.

59. DEBORD, *THE SOCIETY OF THE SPECTACLE*, *supra* note 7.

60. DEBORD, *COMMENTS ON THE SOCIETY OF THE SPECTACLE*, *supra* note 8.

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businessman ...has the qualifications to lead, and there is no doubt but that his celebrity status attracts devoted followers.”⁶¹ Those victims of the spectacle who are enthralled with the idea of a border wall – its falsifying perception – are sensitized and conditioned as the majority of the American public are rendered incapable of exercising what is in their own best political and economic self-interest. The billionaire star of *The Apprentice*, businessman, entrepreneur and six-time filer of bankruptcies becomes president of the U.S.A. The wall is simply one spectacle-manifestation of the society of the spectacle and its latest and one of the best perpetrators. This is not a recent phenomenon, rather the society of the spectacle is ongoing.

IV. COURSES OF ACTION: THE BORDER WALL AS ART AND RESISTANCE TO THE SPECTACLE

“You show me a 50-foot wall and I’ll show you a 51-foot ladder at the border...That’s the way the border works.” – Janet Napolitano,⁶² former Governor of Arizona in 2005.⁶³

“A person who thinks only about building walls, wherever they may be, and not building bridges, is not Christian. This is not the gospel.” – Pope Francis.⁶⁴

“I want people in Ohio and other places to understand: this is what we’re dealing with,” [Mr. Nevarez of Eagle Pass, Texas] said. “I’m going to fight like hell to make sure they don’t build on my property.”⁶⁵

The construction of a ladder generally is not considered a work of art, rather the ladder is used by some migrants to cross into the U.S.A. In the Rio Grande Valley, where the 18-foot high border was constructed, crude ladders are constructed to enable the passage of undocumented border crossers as shown in Figure 4 below. Art professor and “no border wall” advocate, Mr. Scott Nichol, has followed the development of the border wall in the Rio Grande Valley

61. KELLNER, *supra* note 11, at 21.

62. Governor Napolitano later became Secretary of the Department of Homeland Security under the Obama Administration.

63. Marc Lacey, *Arizona Officials, Fed Up With U.S. Efforts, Seek Donations to Build Border Fence*, N.Y. TIMES (Jul. 19, 2011), <http://www.nytimes.com/2011/07/20/us/20border.html>.

64. Daniel Burke, *Pope Suggests Trump ‘Is not Christian’*, CNN (Feb. 18, 2016, 10:47 AM), <http://www.cnn.com/2016/02/18/politics/pope-francis-trump-christian-wall/>.

65. Boer Deng, *I’ll Fight Like Hell to Stop Him Building a Wall on my Property*, THE TIMES OF LONDON (Apr. 29, 2017, 12:01 AM), <https://www.thetimes.co.uk/article/ill-fight-like-hell-to-stop-him-building-a-wall-on-my-property-bw96f225n>.

for years, employing his camera to make photographs depicting the false sense of security of the construction of the border wall and the struggle by migrants crossing from mostly Latin America into the U.S.A.

FIGURE 4: LADDER ON THE BORDER WALL IN THE RIO GRANDE VALLEY CIRCA 2016.⁶⁶



Ladders are one means to go over the border wall. There are other options. Some may simply climb over in opportunistic places. One may go under the wall via tunnels. Another may buy a plane ticket and over stay a visa. The possibilities to migrate to the U.S.A are endless. Where there's a wall, there's still a way to get past.

Art sometimes reflects actual experience in life. In 2000 and 2005, artistic reflection and renditions of the conflict over the border were conducted by performers, one of whom sent a cloud full of names of migrants who died trekking from Mexico into the U.S.A. Another performing artist made a visual impression by shooting a man from a cannon in Tijuana, Mexico across the border to San Diego, California.⁶⁷ Art, in this case, was designed to draw attention to the plight of undocumented border crossers moving across Mexico into the U.S.A.⁶⁸ The general working principles for these works was to draw

66. Photograph by Scott Nichol (n.d.) used by permission.

67. Ila Sheren, *Performing Migration: Art and Site-Specificity at the U.S.-Mexico Border*, 4 THE INT'L J. OF THE ARTS IN SOC'Y, 353, 354 (2009).

68. *Id.*

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public attention to the spectacle of the society of the spectacle.

In another vein, Gretchen Baer, an artist who does her work painting murals on the Mexican side of the border wall in Sonora, states:

I have always been a big believer in using anything and everything as a public canvas. Turning something that isn't art into art inspires and empowers people. For one small Mexican town, we turned the border wall into a giant kids' mural. The wall represents all that Americans fear about Mexico. The kids of Naco, Sonora, have responded with the world's longest kids painting of flowers, hearts, suns and colorful kid stuff. Now the wall is coming down and replaced. But love trumps hate... Build a bigger wall and we will paint a bigger mural!⁶⁹

The resistance to the wall here signifies a desire not to be overtaken and overwhelmed by the circumstances of the wall separating communities along the Mexico-U.S.A. border. There are those who dwell on the border refusing to accept the spectacle manifested in their own neighborhoods.

Protest marches ensued shortly after the executive order to build the wall on the Mexico-U.S.A. border and suspend immigration for thirty days from seven predominantly Muslim countries—Iran, Iraq, Libya, Somalia, Sudan, Syria and Yemen.⁷⁰ In New York City, thousands gathered in protest against the border wall and immigration ban enabled by President Trump's executive order.⁷¹ In Washington Park, chants of "No ban! No wall! This is our New York!" And "Say it loud, say it clear, refugees are here to stay" as well as "No hate! No fear! Immigrants are welcome here!"⁷² Similar marches occurred around the U.S.A. in San Francisco, San Diego, California, Chicago, Illinois, Buffalo and New York City, New York, Pittsburgh,

69. Gretchen Baer, *La Frontera: Artists Along the U.S. - Mexico Border*, BORDER ARTISTS (Jan. 9, 2017), <https://borderartists.com/2017/01/09/gretchen-baer/>.

70. Julie H. Davis, *Trump Orders Mexican Border Wall to Be Built and Plans to Block Syrian Refugees*, N.Y. TIMES (Jan. 25, 2017), <https://nyti.ms/2ktUvwa>.

71. Mazin Sidahmed, *Protesters Gather in New York as Fear Grows Over Trump's Immigration Plans*, THE GUARDIAN (Jan. 26, 2017, 8:20 AM), <https://www.theguardian.com/us-news/2017/jan/26/new-york-trump-immigration-executive-order-muslim-protests>.

72. Joe Marino & Chris Perez, *Hundreds Gather for 'Emergency' Anti-Trump Protest*, N.Y. POST (Jan. 25, 2017), <http://nypost.com/2017/01/25/hundreds-gather-for-emergency-anti-trump-protest/>.

Pennsylvania, Austin and Brownsville, Texas, and many other events were held throughout the U.S.A. including over 2,000 who protested Trump's border wall and ban at his resort in West Palm Beach, Florida.⁷³ The border wall spectacle has created momentum for resistance. Whether it will have an effect and continue remains to be seen.

V. DISCUSSION AND CONCLUSION: AN ASSESSMENT OF THE BORDER WALL

The border wall project continues while it seemingly was stalled for the most part between the Bush and Trump administrations. The government contracts that were not quite completed during the Bush administration were permitted to be completed during the first term of the Obama administration.⁷⁴ One of the main talking points for the Trump presidential campaign, and, indeed, the prior Republican primary, was the construction of the border wall. Even though the majority of the U.S.A. public was clearly opposed to the further construction of the wall, the fact of the matter is that candidate Trump was able to successfully use the issue along with an array of other policy changes to successfully motivate enough voters and garner the presidency in November 2016.

The society of the spectacle continues. While I have established that the border wall is a combination of simulacrum and heterotopia designed to create *homo sacer* on both sides of the U.S.A.-Mexico border, the fetishizing of production becomes the reality that creates the condition of a presidential candidate embodying the characteristics to get elected on a platform containing a plank that the American public does not want, but a plurality of voters in his party wanted to have. Mexico will never pay for the border wall, despite the urgings of President Trump, who, while as a businessman sent a bill for a wall he constructed in Scotland to the locals in 2008 who resisted his business interests and they did not pay.⁷⁵ Mr. Trump at the time had promised economic development in northeastern Scotland, but a local government official has a perspective as to what happened and what will happen in the U.S.A. under a Trump presidency:

73. AFP, *At least 2,000 march on Trump's Florida resort*, YAHOO! NEWS (Feb. 5, 2017), <https://www.yahoo.com/news/least-2-000-march-trumps-florida-resort-041259651.html?ref=gs>.

74. Farley, *supra* note 18.

75. Katrin Bennhold, *In Scotland, Trump Built a Wall. Then He Sent Residents the Bill*, N.Y. TIMES (Nov. 25, 2016), <http://nyti.ms/2fYGljw>.

If America wants to know what is coming, it should study what happened here. It's predictive," said Martin Ford, a local government representative. "I have just seen him do in America, on a grander scale, precisely what he did here. He suckered the people and he suckered the politicians until he got what he wanted, and then he went back on pretty much everything he promised.⁷⁶

If President Trump's wall goes forward, it still will not stop undocumented border crossers from entering the U.S.A.⁷⁷ Economic and political job seekers and refugees will continue to arrive in U.S.A. territory. The overall issue of the wall will be that corporate interests will be able to bid on lucrative government contracts to build the border wall. Affected government agencies such as ICE and CPB will continue to press for further wall development, as it coincides with their interest to militarize the Mexico-U.S. border along with further personnel, and electronic surveillance – both on the ground and aerial in scope. Corporations such as Boeing SBI-Net and others will press the Congress to fund the wall and create government contracts. The fact that undocumented border crossers will not be stopped will mean that migrants will endure further hardships in order to improve their economic livelihood.⁷⁸ Nothing will change in that regard.

The implementation of the border wall will mean that border dwellers who have not already been impacted by the wall will suffer the consequences of its construction. Private landowners, farmers, ranchers, national parks and refuges and other sensitive environmental areas are in the wake of the proposed border wall. Additionally, the Mexican government will not pay for the wall. Any taxes imposed, whether 20 percent or some other amount, will be passed along to U.S.A. consumers who will pay for the projects. Trade agreements such as the North American Free Trade Agreement ("NAFTA") will be placed in jeopardy and perhaps rendered moot. The economics of the wall construction may have a permanent detrimental effect on the U.S.A. and Mexican relations.

In terms of resisting the society of the spectacle⁷⁹ resistance

76. *Id.*

77. Fredy Burgos, *Trump's Wall Isn't Going to Stem the Flow of Undocumented Immigrants*, NEWSWEEK (Dec. 20, 2017, 6:10 AM), <http://www.newsweek.com/trumps-wall-isnt-going-stem-flow-undocumented-immigrants-751639>.

78. Garrett, *Market Spectacle*, *supra* note 6, at 32–41.

79. DEBORD, *THE SOCIETY OF THE SPECTACLE*, *supra* note 7; DEBORD, *COMMENTS ON THE*

groups will continue—whether artistic or through social movements that protest. These efforts are a few of the last vestiges of democratic discourse regarding the border wall and are peripheral to the policy. There is little hope that elected officials will thwart the border wall spectacle as there are too many corporate interests that have influence on the Congress. Partisanship does not seem to matter. The public record shows that Democrats and Republicans in Congress are susceptible to industries who want to obtain lucrative government contracts to build and maintain the wall through campaign donations and lobbying. Therefore, the prognosis for the construction of at least some sections of the border wall to go forward look positive. There will likely be an extension of the current border wall.

The border wall will be a waste of public money in the U.S.A. to the point that the costs will run between \$21 billion to \$25 billion—or more.⁸⁰ This aspect is part and parcel to the society of the spectacle. The policy objectives it aims to appease will not be met as actual security will not be achieved. Undocumented border crossers may be delayed but they will not be impeded ultimately from entering the U.S.A. – as is the case from the 2006-2009 border wall construction. The same goes for potential terrorists who would not attempt to cross the border into the U.S.A. from Mexico due to the current level of paramilitary presence of the CPB, ICE, and other federal law enforcement agencies. The evidence is from the 9/11 attacks where none of the 19 hijackers came into the U.S.A. via the Mexican border. The overall migration and border security situation in the western hemisphere will worsen before the society of the spectacle and its policy element, the border wall project, is rendered useless.

SOCIETY OF THE SPECTACLE, *supra* note 8; Garrett, *Market spectacle*, *supra* note 6, at 32–41.

80. According to Maya Rhodan, U.S. Senate Democrats say the wall will cost nearly \$67 billion. Maya Rhodan, *Democrats Say President Trump's Border Wall Could Cost \$67 Billion*, TIME (Apr. 18, 2017), <http://time.com/4745350/donald-trump-border-wall-cost-billions/>.