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## Migratory Policy as an Exclusionary Tool: The Case of Haitians in the Dominican Republic

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**Abstract:** This article examines major changes in the migratory policy of the Dominican Republic over the last decade, and how they possibly relate to the consolidation of racist perceptions of the Other, prevalent since the Haitian and Dominican independence wars in the early 19th century. Generally focusing on the intersection of politics, exclusion, and Otherness, the paper takes a multidisciplinary approach fundamentally focused on the juridical and legislative processes, whenever the rule of law is presented as a legitimizing vehicle through which racism is expressed. Considering the conceptual usefulness of migration as a threat, the article problematizes cultural and biologic understandings of Haitian migrants in the Dominican Republic, and their legislative reduction to ‘bare life’. It finally examines the convenience of Haitian lives for the Dominican State, conditioned by *de facto* and *de jure* processes of exclusion.

**Keywords:** migration; racism; xenophobia

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### 1. Introduction

When considering the concept of human rights as a universal precept, one of the issues that still garner fierce resistance is the recognition of fundamental rights in the context of human mobility. In this regard, and as part of the colonial inheritance of the State in the Americas, ingrained racism and

xenophobia grandfathered in social and political structures continue to affect the nexus of recognition and deprivation of the rights of those with ethno-cultural characteristics perceived as non-western (or less western).

The idea of differentiating biological structure as a classification criterion to determine the *natural* inferiority of the colonized has been around since the colonization of America, and has been crucial in determining vertical social relationships. Race and racial identity have been established as basic population classification tools [1]. Upon consideration of the socio-political organization of the States, and of international human rights protection system's structure, one must be aware that the colonial is the hidden base over which modern conceptions of knowledge and rights have been built [2].

Following the scientific and moral challenge of the biogenetic concept of race—brought in fundamentally from biologic anthropology—and within the framework of human rights, we have reached an impoverished state of important debates, insofar as, under the guise of political correctness, any reference derived from race, and consequently any reflection on racism as an ideology, have been curtailed.

This article does not intend to focus on the concept of race as a phenomenon generated by social relations, since it lacks all manner of scientific validity as such. On the contrary, what is the focus of analysis here is the conduct of the racist agent, and of the racist group that sees in the group subject to its discrimination a scapegoat for its own social and psychological challenges [3]. In short, racism is not referred to here in its biologic sense, rather in its social sense, as a necessary idealization determined by stereotypes charged by emotion, and in which knowledge about the Other is distorted to give way to exclusion. This analysis highlights the complex dynamics between xenophobia and racism.

## **2. Outlook of Haitian Migration in the Dominican Republic**

This section intends to introduce the social context of the upcoming analysis, illustrating the magnitude and generalization of the racist phenomenon in the Dominican Republic through the dissection of various mechanisms of exclusion. Nonetheless, it will not be possible to examine the totality of the facts that account for the historic racism directed at Haitians in the country. For this reason, following a brief summary of the antecedents, the facts described herein mostly refer to the last few decades, chronologically matching contemporary changes made to the Dominican migratory normative.

Haitian Independence in 1804 and the expansionist process toward the Spanish side of the island—from 1822 to 1845, mostly under President Jean-Pierre Boyer—resulted in armed conflict between the two countries throughout the first half of the 19th century. Hispanic nationalism and suspicion vis-à-vis Haiti has been a by-product of these wars in the Dominican Republic ever since [4]. In spite of this, we propose that the nationalist and anti-Haitian postulations that currently gain prominence as a transversal element of the social-political culture of the Republic are the result of 20th century political processes promoted under the dictator Rafael Leónidas Trujillo in 1930, and later pursued by president Joaquín Balaguer [5].

In 1991, following the military coup d'état that overturned President Aristide of Haiti, and the sectarian violence that ensued, thousands of people fled toward the border, seeking refuge. By 1993 the Dominican Republic had anywhere between 2,500 and 3,000 Haitian political refugees, and a vastly larger number of economic migrants. On June 13th, 1991, president Balaguer signed the Decree

233–91, authorizing the expulsion of all undocumented Haitians younger than 16 years of age and older than 60 years of age ([6], p. 11). This measure finally confirmed the Dominican Republic's path toward a neo-liberal system with an increasingly hard stance on migration. This approach was clearly disdainful of the rights inherently acquired by long-term permanence or engagement, making no qualms of benefiting from the labor of adult individuals—raised at the expense of a foreign, poorer state—while shunning the humans off their lives if they are not actively contributing to the country's economic output at zero cost. Following this, the Organic Regulation of Public Educational Institutions of May 28th, 1999 [7], excluded undocumented Haitian children, and the children of undocumented Haitian migrants from registering for any school level. This reiterated the apparent tendency of the Dominican Republic to take advantage of human beings as no-strings-attached laborers, which is to say insofar as they did not cost anything to local systems. Despite a bilateral agreement under which mass deportations would be halted, they continued to occur with the tacit consent of a large portion of Dominican public opinion [8].

The Migration Law No. 285/04 [9] replaced in 2004 a law in effect since 1939. The former would be challenged for its patently discriminatory content, which restricted—and in some cases outright excluded—access to basic rights by Haitians in the Dominican Republic [10].

After several NGOs submitted a new motion challenging the constitutionality of the law to the Dominican Supreme Court, on the basis that it was discriminatory toward Haitian women and their offspring, the highest court understood that the National Constitution forbids '[...] all privileges or situations that tend to undermine the equality of all Dominicans, who are, in absolute, those who could invoke said differences [...]' [11]. In other words, if the victims are Haitian citizens or people of Haitian origin, the Dominican State did not consider itself bound to respect their human rights to equality and non-discrimination. The court further considered that the legislation in question did not undermine any constitutional principle [12].

With this ruling in mind, in 2007 the Administrative Chamber of the Central Electoral Council issued Directive No. 017 [13], which determined it might suspend the birth certificates of individuals whose mothers were not legal residents at the time of birth. This determination retroactively deprived Dominicans of Haitian origin of their right to nationality, according to *jus soli* principles. All the while, registrar's offices were ordered to *check* all birth records in which the mothers were Haitian [14,15].

Two weeks after the 12 January 2010 earthquake in Port-au-Prince, and the humanitarian and environmental disaster that ensued, substantive amendments were made to the Dominican constitutional text. Article 11, which had consecrated nationality according to the principle of *jus soli* was then replaced by Article 18, introducing an exception to the right to nationality for those people whose mothers were not legal residents of the territory at the moment of giving birth. In this matter, the organic charter recognizes the right to equality, clarifying it purports solely to equality among Dominicans. The Constitution thus retroactively ratified the jurisprudence on fundamental rights created by the Supreme Court's decision, and other previously approved infra-constitutional norms.

Regarding the right to free education, in June 2012 a directive from the Dominican Directorate of Migration decreed that undocumented non-national children were henceforth forbidden to go to school or to be registered in educational institutions. The directive was extended to Dominican children with Haitian origins [16], which considered both objectively and in tandem with repeated measures limiting access to fundamental rights, reinforced the precarity of life and the institutional segregation attitude of

children and youth with this heritage [17]. Another distinctive discriminatory note is the existence of specific departments within the state apparatus to deal exclusively with *Haitian affairs* [18].

Finally, the Dominican Republic includes 'skin color' as a key biometric indicator on national identity cards, distinguishing between the categories of White (B), Light Indian (IC), Dark Indian (IO), Mixed Race (M), and Black (N) [19]. Strangely, and according to qualified informants interviewed for this article, the latter category is not attributed to a Dominican national, even on request [20].

In the words of Jenny Edkins [21], 'depolitization involves a 'normalizing power', a discretionary power that Žižek explains thus: 'The judges of normality are present everywhere. We are in a society of the teacher-judge, the doctor-judge, the educator-judge, the 'social worker'-judge; it is on them that the universal reign of the normative is based' [22].

The collective deportations of people whose ethnic characteristics suggest Haitian heritage continue to be a problem in the Dominican Republic. Qualified informants denounced the common practice of elaborately choreographed migratory controls enacted the day before salaries are due, allegedly in coordination with business leaders in the agricultural industry. The generalized controls result in collective deportations, suddenly dismembering families and leaving children whose parents are deported wandering in the streets. On more than one occasion the Dominican national press has published pieces on the extrajudicial executions within the framework of standard migratory and border controls operated by the National Army, in which the status of the people of Haitian origin targeted was presumed to be irregular [23]. In October 2012 the Interamerican Court of Human Rights convicted the Dominican Republic for the abuse of lethal force by Dominican armed forces, victimizing a group of Haitian nationals. Seven people, including a pregnant woman, were extra-judicially killed, and a score of people were detained and subjected to inhumane treatment. The survivors were deported. A military court later judged the case, absolving every single one of the unit members of any wrongdoing [24]. The permanent harassment and violence are evident, but so is the unaccountability of those involved, made possible only by tacitly transferring Haitian lives to a conceptual space of *precarious life*, a space where violence and politics converge to dehumanize specific subjects, and deter all but the most basic feelings of empathy and mourning: if the *Other* is not like *us*, s/he cannot be mourned like us [25].

In 2013, the Dominican Central Electoral Council submitted to the Directorate of Migration the 22,640 cases of people of Haitian descent registered in the country's Record of Births, culminating in an administrative decision that retroactively deprived Dominicans of Haitian origin of their *only* citizenship [26], effectively throwing thousands of people into a situation of statelessness on the basis of their mother's national original [27]. This case, condemned by the international community in the strongest terms, and widely qualified as administrative genocide [28], resulted in the strong criticism of the I/ACHR by the Dominican political sector for unduly interference in affairs of national sovereignty, on the basis of its suggestion of violations to the terms of the Interamerican Convention on Human Rights [29].

The above patently establishes a deeply ingrained institutional racism and xenophobia as prevalent and ongoing in the Dominican Republic. In the analysis that follows these facts are examined against the Foucauldian understanding of racism. Posed in evolutionist terms as a conditional idea to *let die*, this concept was conceived by the deprivation of fundamental rights and the induced displacement forced upon extremely precarious lives. In effect, following Foucault, it must be admitted that every

time there has been a confrontation, a homicide, a fight, a danger of death, it has been necessary to think in evolutionist terms ([30], p. 207). It would not be absurd to presume that in the context of the contemporary phenomena that compromised the imagined evolution—the suppression of terrorism and the attempts to control the global economic crisis—the *raison d'être* of modern migratory policies is to eliminate, or to *let die* a specific social group whose ethno-cultural characteristics are instrumental in determining a *natural* vertical classification criterion in regards to the other group, more deserving of its superiority, of the imagined evolution.

### 3. The Function of Racism in the Context of Haitian Migration in the Dominican Republic

Following Foucault on racism as a functional *biopolitical* tool (generally conceived as the political management of human life), a holistic relation to the current migratory policy of the Dominican Republic is evident. In effect, Foucault recognizes that the primary functions of racism are to divide, to fragment, and to censor. These functions are principally manifested through official propaganda and through the media. The secondary function of racism is to establish itself within a more positive nexus, in the guise of: '*the more you kill, make die, let die, the more you will, for that reason, live*'. This can be deduced from the State's actions and omissions [31]. The segregation of families in which children younger than five years of age are deprived of parental care [32], the reduction to the *bateyes* [33], the deprivation of access to health care centers, the arbitrary deprivation of adequate remuneration for the work performed, among other examples, all point in the direction of *letting die* in the name of an evolutionist posture which assigns to Haitian people a slighter merit to live.

Socially, anti-*haitianist* attitudes in the Dominican Republic are constructed from the determination of characteristics of an undesirable Otherness, which legitimizes the censoring and segregation of biocultural classes: opposing the black skin of the Haitian subject—which denotes her/his African slave origins—is an interiorized Dominican Indo-European identity, influenced by diaphanous indigenous origins refined by the genetic precisions of early Spanish conquerors; Afrohaitian religious beliefs and rituals are described as antagonistic to the theoretically pure Roman Catholic beliefs of Dominicans [34]; irrational and spontaneous criminality is ascribed to Haitian groups and individuals [35], and opposed by State forces for the sake of national security. The opacity of life in the *bateye*, is, finally, exposed as undesirable and socially constructed as a *natural* consequence of haitianism. This reductive generalization of Haitian migration offers an easy counterpoint to the developed evolutionism with a nationalism background that is its principal foe [36]. For this current of thought, the elimination and/or disappearance of the Haitian population is a *sine qua non* for its own existence. The fragmentation proposed in Dominican society presupposes a desocialized and unassimilable collective in its midst.

Racism, thus, assumes the function of death in the economy of biopower, based on the principle that '*the death of the other equals the biologic strengthening of itself as a member of a race or a population, as an element of a coherent, living pluralism*' [37]. The Foucauldian conception of modern racism specifically ascribes the role of a power technique. It is in this sense that racism is performed within the framework of migratory policy. As signaled by Wieviorka, it is not about knowledge of the Other, but about the lack of knowledge of the Other's identity, which results in diffuse feelings that morph into political conviction and action [38].

At the inaugural conference of UNESCO's 1971 International Year of the Fight Against Racism, Claude Lévi-Strauss—departing from his 1952 position—referred to the subject of 'Race and Culture' clarifying that the racial angle of bigotry is not based on flawed ideas on race, positing that, instead, they have as a deeper source the demographic saturation of the planet. Fake ideas on race are, according to him, an ideological disguise created to mask the conflicts that emanate from that saturation [39]. Lévi-Strauss identifies xenophobia—carefully postulated as the insensitivity to the values of the Other—as a natural occurrence that is impossible to uproot. We decisively depart from this criterion that *naturalizes* xenophobia since, as rational beings, human individuals are by definition carved out of a social context of relative diversity. We suggest that xenophobia is, in this regard, a convenient vehicle for evolutionist foundations and for the pressures of demographic saturation which, put together, result in the demand for hardened migratory policies.

The institutional and legal framework applied in the Dominican Republic to all those who do not have citizenship rights is indeed an effective vehicle to enable and institutionalize racism. Through that prism, the non-national individual is exposed to a push-pull dynamic between human rights and sovereign power, and to the historical debate over the prominence of one or the other. Any guarantees of rights, or at the very least the resort to the available protection tools, are absent.

In contemporary times, declarations of rights are the node through which divine origins transit into national sovereignty, automatically converting a natural-born individual into an immediate carrier of sovereignty [40], in itself a carrier of the recognition of rights. This sovereignty is, however, conditioned by the act of being born within the territory that constitutes the State. The Dominican State's resort to ghastly racist categories, and its development of a legal fiction vis-à-vis Haitian migration is, in principle, based on this transit node.

#### **4. Problematizing Haitian Migration as a Political Tool: Over a Million 'Civil Deaths'?**

In the context described above, racism and xenophobia are manifested through the creation of hostile social conditions that enable the reduction of a specific group of people to a liminal space of indignity and derision, which—for the purposes of the State—is more efficient than mere invisibility. The construction of prejudice about Haitianité is rendered by violent economic overtones such as the subjection to labor exploitation, and by social overtones such as the institutional restriction of access to fundamental rights, and the loathing for Haitian culture.

The Dominican State denominates this structural violence as sovereign policies to solve the nation's problems, in spite of the outcry by regional and international human rights protection systems and public opinions [41]. Its policies, however, ignore the nation's problems with racism, xenophobia, and institutionalized discrimination against Haitians and Dominican-Haitians.

This process allows racism to become subtle and nuanced to the point that the intent of a racist agent becomes improbable. Wieviorka refers to it as *symbolic racism*, characterizing it, on the one hand, as the rebuffing of crass stereotypes in favor of ostensibly non-racial categories, such as the idea that Haitians 'are confrontational', 'illegal aliens', or that they 'do not conform to the social norm', thus reversing their subjection and instead victimizing Dominican society; on the other hand, as the adoption of a dignifying discourse on blackness (*negritude*), directed at suppressing any biologicist accusation of racism [42]. However, this homogeneous discursive block hides at least two contradictions.

Firstly, the exception to the principle of *jus soli* introduced in the National Constitution by the 26 January, 2010 reform states, in Article 3, section 3, that ‘Dominicans [...] are all those born in national territory, with the exception of [...] foreigners in transit through or residing illegally in Dominican territory [...].’ The Migration Law 285/04 states in its Chapter 3, on the Rights and Duties of Foreigners, that ‘[t]he offspring of non-resident foreign mothers born in Dominican territory should be registered in the Consulate of the mother’s nationality, except where the father is a Dominican, in which case the child shall be registered in the adequate Civil Registry Office. The law establishes the process to be followed by health centers for the fulfillment of these determinations.’ These legal precepts tend to avoid the attribution of Dominican citizenship to the offspring of Haitian nationals. The country’s constitutionally ratified migration normative, thus, excludes a specific group of people by way of an unambiguously biologic determination.

According to recent research [43], the official foreign population figures for the Dominican Republic was 524,632 in 2012, out of which 458,233 were Haitian—mostly with irregular status [44]—and 66,399 were of ‘other nationalities’. The immigration status of the latter is not alluded to. Therefore, and considering these numbers as well as the letter of the law, a *discrimination effect* is produced to the detriment of Dominicans with Haitian biologic background. This mechanism constitutes indirect discrimination, even if the legal normative on Dominican citizenship does not blatantly mention that the exception to the principle of *jus soli* is aimed at Haitians. The historical causes leading to the constitutional amendment, as well as the structure and ties of state agencies responsible for collecting population data should be taken into account when assessing the intentionality of the norms, and determining the responsibility of the State in this process of discrimination.

Secondly, discursive constructions about irregular Haitian migrants overwhelmingly refer to a homogenous social mass that is supposedly harmful to local peace, security, and social order, an idea the state itself seemed apt to enforce. In a recent report the Dominican State asserted that ‘any person who is not properly documented in a State in fact equates to a *dead-civilian* [*muerto-civil*]; and if while undocumented s/he is a victim of *racial discrimination*, more than a dead-civilian s/he is a *non-being perpetually condemned to anonymity and exclusion*’ ([45], art. 9, 13–14, para. 39). In reality, far from representing a danger to the nation, it is irregular migrants in the Dominican Republic (*i.e.*, human beings whose characteristics make them easy prey for racial discrimination) who are on the receiving end of said dangers, materialized as the *perpetual condemnation to anonymity and exclusion* described in the report. This leads us to two questions: what life is left in a human being who has been deprived of his/her civil life; and, what use are a million dead-civilians to the Dominican State, when it could have avoided the consequences of excluding that number of people, by flexibilizing migratory regulation mechanisms and guaranteeing access to fundamental rights.

In his reflections about the ongoing globalization process, de Lucas observes that the global market—which is responsible for dictating the laws of human mobility (not natural laws and, therefore, not physical either)—attracts a few privileged individuals, whilst exerting a *pull effect* through which it benefits from the excessive supply of a precarious labor force [46]. This labor force would then be used to both disrupt the internal labor market, and for re-legitimization purposes. Quijano follows along the same lines when he points out that slavery in the Americas was historically established and organized as merchandise to produce merchandise for the world market and, thus, to

serve the purposes and needs of a capitalist system [47]. Independent production would eventually be established and expand with the same intent.

The sound conclusion is, consequently, that Dominican economic interests fed by the global capitalist system make an unabashed use of racism to support their evolutionist proposals. Simultaneously, it is actively engaged in the creation of a racist and xenophobic ideological framework, with a widespread impact that naturalizes the subjection and exclusion of Haitian people in irregular migratory circumstances.

The lives of Haitian individuals in the Dominican Republic are tolerated strictly in a sense that comes closest to Agamben's concept of *bare life*, excludable and indeed excluded from all manner of social, cultural, and political structures [48]. The Haitian migrant is recognized as a living body, whose life is valuable only to the extent and for the duration of its productive capacity. For this reason, only its survival in extremely precarious circumstances needs to be ensured, to allow for minimally remunerated informal work. The value of a terminated Haitian life can be ascertained by the indifference demonstrated in public opinion, namely through media coverage. In this regard, Haitian physical casualties move perhaps from the sphere of Agamben's bare life to Judith Butler's concept of precarious life, of lives unworthy of mourning, unworthy of a second thought [49].

In closing, to the notable Marxist trinity of labor, capital, and land, a fourth element of exploitation must be added: the low cost of the labor force to the State, or to the corporations who deal with it, insofar as sourced from foreigners, supported by a hostile framework that posits xenophobia and structural racism, and determines exclusion and subjection to extremely harsh living conditions, and as long as once the productive capacity of adult individuals has been drained, s/he is made to return to her/his place of origin at an imperceptible cost, thus closing the perfect circle that conforms functional racism. As a neat illustration of this perverse order, it should be noted that Dominican grandstanding in the international community about State or State-backed initiatives *to improve the life conditions in the bateyes* ([50], p. 100, note 17) conveniently ignores the additional benefits derived from the use of undocumented, precarious Haitian labor. Thus, whilst sustaining that their *civil inexistence* is a reality against which it can do little, the State is sharply aware of the fact that it will never have to provide these individuals with social security, pensions, or retirement.

Finally, the recent decision by the Constitutional Court to *retroactively* (going back to 1929) deprive of Dominican citizenship those individuals whose parents—at the moment of their birth—were irregularly in the Dominican Republic, leaves little doubt as to the prevalence of structural racism in that country. The judgment overwhelming affects Dominicans of ethnic Haitian origins [51]. As argued in the Court's pronouncement, the measure is justified by a pressing need to link the right to citizenship to the “an ensemble of historical, linguistic, *racial* and geopolitical traits, among others, which together form and support particular idiosyncrasies and collective aspirations [...]” ([52], p. 24). However, contrary to the arguments put forward by the Court, the decision to tear citizenship rights out of the hands of four generations of Haitian-Dominicans is founded on the problematic assumption of a principle of *suspicion*. Those who are black, poor and/or have a non-Hispanic surname are, thus, almost automatically suspect of being the offspring of parents with an irregular residence status at the time of birth.

The decision of the Dominican Constitutional Court openly contradicts the considerations of the I/A Court of Human Rights in the case of the girls Yean and Bosico [53]. In what regards the effects of

statelessness vis-à-vis the enjoyment of fundamental rights (especially the right to citizenship and to juridical personality) the Court stated that “[a] stateless person, *ex definitione*, does not have recognized juridical personality, because he has not established a juridical and political connection with any State; thus nationality is a prerequisite for recognition of juridical personality” ([53], article 178). The I/A Court also stated “the failure to recognize juridical personality harms human dignity, because it denies absolutely an individual’s condition of being a subject of rights and renders him vulnerable to non-observance of his rights by the State or other individuals” ([53], article 179).

The role of the civil society, in particular of the Haitian-Dominican community, has been instrumental [54], relentlessly rallying mobilizing against the Constitutional Court’s decision and bringing international visibility to the issue [55]. This has resulted in a fact-finding mission by the Interamerican Commission of Human Rights. In its *Preliminary Observations* it concluded “judgment 168/13 disproportionately affects individuals who are already subject to many forms of discrimination, particularly discrimination based on race and poverty” [56]. Upon visiting degraded bateyes in various parts of the country, it also signaled that “[p]overty disproportionately affects Dominicans of Haitian descent, and this is related to the obstacles they face in access to their identity documents” [56].

This shocking development has drawn the attention of the international community, and particularly of human rights groups. It awakens memories of various segregationist processes that left deep wounds in our collective consciousness, and technically implements what can only be described as an administrative ethnic cleansing process.

## 5. Final Thoughts

The purpose of highlighting the rights of migrants through the prism of evolutionism and biological racism is primarily to frame the impending need to tackle the topics of law and justice as decisive dimensions in the effective fulfillment of fundamental rights. The circumstances of Haitian migration in the Dominican Republic constitute a contemporary iteration of a brutish state of exception within a liminal space, whose biological elements are painfully reminiscent of Nazi concentration camps where not only the law was totally suspended, but where also acts and law are muddled and conflated [57].

According to Agamben, “those who entered a concentration camp moved in a zone of *indistinction* between exterior and interior, exception and rule, licit and illicit, in which even the concepts of subjective rights and legal guarantees no longer made any sense [...]. The camp, having deprived its inhabitants of any political condition and reduced them integrally to bare life is also the most absolute biopolitical space ever realized, in which power faces nothing but pure life without mediation.” This passage closely describes the socio-political situation of Haitians and Haitian-Dominicans in the Dominican Republic [58]. Dominican conceptions of citizenship go far beyond the mere alienage and subordination discussed by Bosniak. They are, as described above, wholly anti-liberal, and for that reason modern understandings of citizenship in liberal societies cannot be used as a framework here [59]. The miserable lives in the *bateyes* offer flagrant evidence of an Agambian state of exception extended not only to the geographic spaces of the slums, but also to each and every individual: deprived of all political and social condition, s/he carries that state of exception *within her/himself*.

It is necessary to counter-argue here that the ethnic composition of the Dominican Republic is itself overwhelmingly of African origin, but those biological characteristics are dignified by social and

cultural identity. The reverse of the coin is the Dominican Republic's tremendous energy expended in matching ethno-racial categories with national origins. In order to determine the ethnic composition of the country, censuses have in the past asked about identification by skin color, offering the options of White, Black, Mixed Race, Indian, or Yellow. In the 1981 Census, which introduced the dubious criterion of presumption of skin color according to physical characteristics and accent, respondents were asked to provide information about their Dominican, Haitian, or other origins. Their answers were sufficient to determine their skin color [60]. A line of research that might in the future shed light on the access to fundamental rights in the country would be the examination of the ethnic indicators among Dominican *emigration*.

Finally, without renouncing the ideography, which conceptualizes human rights as tools for humanity, useful for the realization of human dignity before the sovereign power of the State, it might be worthwhile to revise the general criteria on human rights in the context of migration, judging by this case study. Helplessly facing the most flagrant and palpable phenomenon of systemic racism and state of exception in the Americas, international agencies and civil society organizations must urgently articulate new mechanisms to enable an effective realization of the fundamental rights of migrants, whilst debating the limits of sovereignty and the scope of biopolitics and the power to administer human life.

### Author Contributions

Natalia Lippmann Mazzaglia collaborates with the University of Quebec in Montreal's International Clinic for the Defense of Human Rights and, as such, was member of the team representing the victims in the Case of Dorzema *et al.* vs. the Dominican Republic before the Inter-American Court of Human Rights, a landmark trial on human rights and migration issues. Pedro F. Marcelino has directed and edited the report *Si Proches et si lointaines: Les diasporas haïtiennes aus Caraïbes* published in 2013 by the ACP Observatory on Migration, leading a multi-site research team that included Ms. Lippmann. This is a joint paper for which both authors' experiences informed the respective contributions.

### Conflicts of Interest

The authors declare no conflict of interest.

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10. Dominican Republic Supreme Court of Justice. Servicio Jesuita a Refugiados y Migrantes (SJRM), Sentence No. 9, 14 December 2005.
11. Translated by the authors.
12. A side note must be made here about the case of Haitian asylum seekers attempting to reach the United States by sea. As pointed out by Linda Bosniak (pp. 50–51), 'the single most salient feature of the government's immigration power is the fact that it is substantially unconstrained as a constitutional matter. American courts describe the immigration power as 'plenary' in character, by which they mean that the judiciary has virtually no authority to scrutinize what the political branches do in this domain'. She further notes that 'plenary power has been invoked to support forcible return of Haitian and other nationals seeking to apply for political asylum in the United States' and that '[m]any commentators have observed that the plenary power doctrine is an extraordinary doctrine of judicial abdication that has few, if any, analogues in other fields of public law'. Further to this, the authors would point out that, in recent years American policy vis-à-vis Haitians arriving by boat has been unequivocal: albeit not named, Haitian are targeted on the basis of a presumed nationality, and denied the right to seek asylum at the first port of call, in this case the United States. In July 2013, Australia made the headlines by heightening offshore asylum processing of asylum seekers, preventing them from reaching its shores and deporting them to subhuman camps, the worst of which in Papua New Guinea. See: Bosniak, Linda. *The Citizen and the Alien: Dilemmas of Contemporary Membership*. Princeton and Oxford: Princeton University Press, 2006, pp. 9–11.
13. Disposición Circular No. 017, in the original.

14. The constitutional validity of Directive 017 of 2007 was challenged before the Dominican Supreme Court of Justice, which would argue that ‘if a foreign woman gives birth in the national territory, her son or daughter, by mandate of the same Constitution, is not born Dominican, [...] therefore certainly it cannot be born Dominican the son or daughter of a foreign woman who, at the moment of birth, finds herself in an irregular situation’. See: “Emildo Bueno Oguis c/Oficialía del Estado Civil.” Dominican Republic Supreme Court of Justice, Sentence No. 460, 2 November 2011.
15. Similar cases put forward on this Amnesty International report: Dominican Republic. “Vidas en tránsito: la difícil situación de la población migrante haitiana y de la población dominicana de ascendencia haitiana.” AMR 27/001/2007, March 2007. <http://www.amnesty.org/es/library/info/AMR27/001/2007/es>.
16. Although it has not been possible to gain access to the text of the Directive No. 7475, its media impact easily exposes its fundamental principles. See: “La circular 7475 de la Dirección General de Migración y los derechos adquiridos.” *Acento.com.do*, 13 June 2012. <http://www.acento.com.do/index.php/news/17897/56/La-circular-7475-de-la-Direccion-General-de-Migracion-y-los-derechos-adquiridos.html>; “Extranjeros ilegales no entrarán a las escuelas.” *Diario Libre*, 11 June 2012. [http://www.diariolibre.com/dleducacion/2012/06/11/i339582\\_extranjeros-ilegales-entraran-las-escuelas.html](http://www.diariolibre.com/dleducacion/2012/06/11/i339582_extranjeros-ilegales-entraran-las-escuelas.html); Julia Ramírez. “Entidades dominico haitiana rechazan circular de Migración.” *El Caribe*, 12 June 2012. <http://www.elcaribe.com.do/2012/06/12/entidades-dominico-haitianas-rechazan-circular-migracion>.
17. Riveros, Natalia. “Estado del arte de las migraciones que atañen a la República Dominicana 2012.” Graphic on the educational profile of Haitian immigrants and immigrants with other backgrounds, with children older than 5 (Gráfico sobre el Perfil educativo de la población inmigrante haitiana y la población inmigrante de otros países con niños de 5 años o más), p. 58. Santo Domingo. *OBMICA*, 2013. <http://www.obmica.org/index.php/publicaciones/informes/57-estado-del-arte-de-las-migraciones-que-atanen-a-la-republica-dominicana-2012>.
18. The Dominican Congress has a Bi-Chamber Commission on Haitian Affairs; in the Chancellery there is a Division of Haitian Affairs; the Dominican National Army curiously has a Department of Haitian Affairs within the State Secretary for the Armed Forces (Secretaría de Estado de las Fuerzas Armadas, in the original); the Police and the Directorate of Migration have similarly named outfits. This unifocal orientation in a single ethnicity, or at the very least the surprising choice of name is remarkably reminiscent of the bureaus of Jewish affairs of the Third Reich, or the Department of Indian Affairs and Northern Development in contemporary Canada (an umbrella federal state department in charge of native issues, which addresses native healthcare, education, justice, etc., based on the ethnic distinction of Canadian First Nations, rather than on the basis of issues shared with fellow Canadians). While it seems extreme to compare the Third Reich with liberal Canada and the Dominican Republic, the civil extermination of bodies in the two latter countries can be equated with the undoubtedly more violent physical elimination performed by the Nazis. Long-criticized postulations of the Indian Act in Canada decree that, in spite of its colonial history, any member of the Canadian First Nations carrying Indian Status will forfeit all its privileges (but presumably not the racial discrimination inherent to his/her condition) should s/he happen to marry anyone not carrying Indian Status. The offspring of that union would

similarly forfeit any claim to Indian Status in the future. In one of the most ethnically diverse countries, this is tantamount to the civil genocide of Canadian First Nations within a couple of generations, at least in Southern Canada's urban areas, where these community live side by side with Canadians of many other ethnicities.

19. In the original: Blanco (B); Indio Claro (IC); Indio Oscuro (IO); Mestizo (M); and Negro (N).
20. According to the testimony of three Dominican lawyers with the Haitian-Dominican Cultural Center in the Dominican Republic, if a Dominican citizen wants his skin color to be listed as 'Black' (N), s/he would have to make a formal request to the adequate administrative office. Otherwise, her/his I.D. would carry the summarily assigned identifier (IO) for Dark Indian. The overwhelming majority of people identified as (N) on their identity cards are Haitians with legal residence in the Dominican Republic.
21. Edkins, Jenny. *Poststructuralism and International Relations: Bringing the Political Back in (Critical Perspectives on World Politics)*. Boulder, USA and London, UK: Lynne Rienner, 1999, p. 51.
22. Žižek, Slavoj. "Beyond Discourse Analysis." In *New Reflections on the Revolution of Our Time*, 1st ed. Edited by Ernesto Laclau. London: Verso, 1990, p. 252.
23. "Patrulla del Ejército Nacional mata haitiano indocumentado." *Dominicanoahora*, 10 January 2011. <http://www.dominicanoahora.com/nacionales/region-norte/1765-soldado-ejercito-nacional-mata-haitiano-indocumentado.html>; "Ejército dominicano mata un haitiano y otros tres heridos en tiroteo camion." *Alter Presse*, 2 October 2004. <http://www.alterpresse.org/spip.php?article1773>; "Haïti-République Dominicaine: Plusieurs organisations stigmatisent l'indifférence des autorités face aux violences de Neyba en octobre 2008." *AlterPresse*, 13 November 2013. <http://www.alterpresse.org/spip.php?article7878>; "R. Dominicana reporta deportación de unos 3.000 haitianos." *Spanish People Daily*, 25 January 2011. <http://spanish.peopledaily.com.cn/31614/7271518.html>.
24. I/A Court. On the case Nadege Dorzema *et al.* v. Dominican Republic. Judgement of October 24 2012 (Merits, reparations, and costs). Serie C No. 251. See also: Loyda Peña. "Afirma que CIDH se extralimita; sugirió denunciar Tratado." *Hoy Digital*, 19 June 2012. <http://www.hoy.com.do/el-pais/2012/6/19/433336/Afirma-CIDH-se-extralimita-sugirio-denunciar-Tratado>.
25. Butler, Judith. *Precarious Life: The Powers of Mourning and Violence*. New York: Verso, 2006.
26. Until recently, Haiti did not recognize dual citizenship. Many Haitians born overseas are, thus, not Haitian citizens.
27. "Migración declara 'irreversiblemente cerrado' el caso de descendientes de inmigrantes haitianos ante JCE." *Hoy digital*, 22 March 2013. <http://www.hoy.com.do/el-pais/2013/3/22/472574/Migracion-declara-irreversiblemente-cerrado-el-caso-dedescendientes-de>; "En vigilia. Descendientes de haitianos exigen documentos de identidad por segundo día consecutivo." *Hoy digital*, 20 March 2013. <http://www.hoy.com.do/el-pais/2013/3/12/470940/EN-VIGILIA-Descendientes-de-haitianos-exigen-documentos-de-identidad-por>; Loyda Peña. "Revisarán casos de hijos haitianos." *Hoy digital*, 24 February 2013. <http://www.hoy.com.do/el-pais/2013/2/24/468682/Revisaran-casos-hijos-haitianos>.
28. "Urge la suspensión del genocidio civil." *Hoy digital*, 16 March 2013. <http://www.hoy.com.do/el-pais/2013/3/16/471649/Urge-la-suspension-del-genocidio-civil>; Loyda Peña. "CERD pide restituir actas a dominicanos de origen haitiano." *Hoy digital*, 11 March 2013.

- <http://www.hoy.com.do/el-pais/2013/3/11/470834/CERD-pide-restituir-actas-a-dominicanos-de-origen-haitiano>; Bueno Torres. “Sin identidad...no soy nadie.” *Listín diario*, 16 February 2013. <http://www.listin.com.do/puntos-de-vista/2013/2/15/266095/Sin-identidad-no-soy-nadie>.
29. Oscar Medina. “¡A Denunciar esa Comisión!” *Listín diario*, 18 March 2013. <http://www.listin.com.do/puntos-de-vista/2013/3/18/269956/A-denunciar-esa-comision>; Wanda Méndez. “Abogados divididos en torno a posición de la JCE ante la CIDH.” *Listín diario*, 15 March 2013. <http://www.listin.com.do/la-republica/2013/3/15/269615/Abogados-divididos-en-torno-a-posicion-de-la-JCE-ante-la-CIDH>; “JCE pide a CIDH no acoger medida cautelar contra RD porque demandantes no han agotado recursos de jurisdicción interna.” *Hoy digital*, 13 February 2013. <http://www.hoy.com.do/el-pais/2013/3/13/471186/JCE-pide-a-CIDH-no-acoger-medida-cautelar-contra-RD-porque-demandantes-no>; Viviano de León. “RD expresa inconformidad a CIDH por tantas audiencias.” *Listín diario*, 13 March 2013. <http://www.listin.com.do/la-republica/2013/3/12/269223/RD-expresa-inconformidad-a-CIDH-por-tantas-audiencias>.
  30. Foucault, Michael. *Genealogía del racismo*. La Plata: Editorial Altamira, 1996, p. 206.
  31. Following exploratory visits, UN experts on the human right of minorities pointed out that ‘[...] Haitians living in established communities as well as Dominicans of Haitian descent live and work in fear of and in a situation of vulnerability, extreme poverty, and exploitation. Their documents are administratively denied, and all their other rights are subject to the arbitrary refusal and abuse of low-level bureaucrats, police officers, and soldiers who have power, lack instruction, and rarely have to account for their actions.’ See ref. [5].
  32. See in: IACHR. “Informe de Fondo No. 64/12. Case 12.271 Benito Tide Méndez y otros con República Dominicana.” 29 March 2012, paragraph 128. [www.oas.org/es/cidh/decisiones/corte/12.271Fondo.doc](http://www.oas.org/es/cidh/decisiones/corte/12.271Fondo.doc).
  33. In a 1999 report called “The situation of Haitian migrant workers and their families in the Dominican Republic” (‘La situación de los trabajadores migrantes haitianos y sus familias en República Dominicana’) the Interamerican Commission on Human Rights described bateyes as ‘[...] inadequate [places to live], lacking electricity and sewage. The overcrowding, the lack of hygiene, of drinking water, and of latrines are all very serious problems. These shortcomings create conditions for diseases such as diarrhea, malaria, and tuberculosis.’ See: IACHR. “Report on the situation of Human Rights in the Dominican Republic.” OEA/Ser.L/V/II.104, Doc. 49 rev. 1, 7 October 1999, para. 343. Available at: <http://www.cidh.org/countryrep/DominicanRep99/Table.htm>.
  34. This conception is highly reductive, since Haitian religious culture has been influenced in equal measure by elements of African religions as well as by the evangelizing mission of Catholicism. Likewise, in the Dominican Republic Catholicism shares its space with Afrodominican rites such as santería.
  35. See, for example: “Haitianos matan compatriota y entierran cadaver.” *El Caribe*, 30 November 2012. <http://www.elcaribe.com.do/2012/11/30/haitianos-matan-compatriota-entierran-cadaver>; “Policía apresa haitiana mató a cuchilladas a otra de su misma nacionalidad.” *El nuevo diario*, 25 June 2012. <http://www.elnuevodiario.com.do/app/article.aspx?id=291761>; Ricardo Rodríguez Sosa. “Haitianos matan a un dominicano.” *El Nacional*, 16 September 2011. <http://www.elnacional.com.do/nacional/2011/9/16/95245/Haitianos-matan-a-un-dominicano>.

36. See, for example: Fabio R. Herrera Miniño. “En el umbral del 169 aniversario de la separación.” *Hoy digital*, 22 February 2013. <http://www.hoy.com.do/opiniones/2013/2/22/468414/En-el-umbral-del-169-aniversario-de-la-separacion>.
37. Foucault, Michel, op.cit. note 29, p. 206.
38. Wieviorka, op.cit. note 4, p. 67.
39. Lévi-Strauss, Claude. “The View from Afar.” In *The UNESCO Courier*. Chicago, IL: University of Chicago Press, 2008, vol. 5.
40. Agamben, Giorgio. *El poder soberano y la nuda vida*. Torino: Giulio Einaudi editore, 1995, pp. 162–63.
41. See: Loyda Peña, op. cit. ‘Afirma...’, 19 June 2012.
42. Wieviorka, op. cit. note 4, p. 125.
43. Riveros, Natalia. Estado del Arte de las migraciones que atañen a República Dominicana 2012, op. cit. note 17, p. 55.
44. Rivers, op. cit., p. 65. To reach this conclusion the author compares the statistics of the Encuesta Nacional de Inmigrantes del año 2012 (2012 Immigration Census) with the figures of the Immigration Directorate, which identified 11,000 people of Haitian descent.
45. Committee for the Elimination of Racial Discrimination, CERD/C/DOM/13–14. Report presented by the Dominican Republic as a member State, in reference to Article 9 of the Convention in the periods 13–14 (2011), § 39. The same argument was recently made by the State when justifying its allegations before the Interamerican Court on Human Rights, in the audience of the case “Nadege Dorzema and others vs. the Dominican Republic.” on 22 June 2012.
46. De Lucas, Javier. “La inmigración, como res política.” In *Cuadernos Electrónicos de Filosofía del Derecho*, 2004, vol. 10, p. 3.
47. Quijano, Aníbal, op. cit. note 2.
48. A necessary note is that Haitian political bodies are disputed also in Haiti, where the rule of precariousness prevents citizens from partaking in the social order (much like the situation of Haitian denizens in the Dominican Republic. For a discussion on this, see Ferreira, Maria João. “Bodies Do Matter! The Rule of Precariousness in Haiti.” *International Social Science Journal* 62, no. 205–06 (2013): 339–50.
49. Butler, op. cit. note 24. Other contemporary examples might included the lives of Syrian or Libyan refugees shipwrecked off the coast of Italy, or the example of 9/11 terrorists put forward by Judith Butler (2006).
50. On the occasion of the presentation of the Dominican Republic’s report to the Committee for the Elimination of Racial Discrimination, on the basis of article 9 of the Convention, the State maintained that ‘[...] so as to guarantee better living conditions in the bateyes, several modernization and social reorganization programs were executed in the CAEI communities, the only sugar factory operating in the region of San Pedro de Macorís, at a cost exceeding US\$25 million in the years 2007–2010. This amount includes the construction and equipment of primary and secondary schools, primary health care centers, bateye rehabilitation [...]’. See here: CERD/C/DOM/13–14 (2011), par. 77. Nonetheless, this has been contested by Natalia Riveros’ report ‘Estado del arte de las migraciones que atañen a República Dominicana 2012’. Santo Domingo, Dominican Republic: Observatorio Migrantes del Caribe, 2012. (The state of

- migrations affecting the Dominican Republic 2012). The author underlines the precarious conditions workers and their families are subjected to (note 17, p. 100).
51. According to the first national immigrant census (Primera Encuesta Nacional de Inmigrantes en República Dominicana, 2013), the number of people affected by this measure would be 244,151 personas (2.5% of the country's population), out of which 209,912 have Haitian origins. [http://media.onu.org.do/ONU\\_DO\\_web/596/sala\\_prensa\\_publicaciones/docs/0565341001372885891.pdf](http://media.onu.org.do/ONU_DO_web/596/sala_prensa_publicaciones/docs/0565341001372885891.pdf).
  52. Constitutional Court of the Dominican Republic. "Sentence TC/0168/13." 2012, p. 24, §1.1.4. <http://tribunalconstitucional.gob.do/sites/default/files/documentos/Sentencia%20TC%200168-13%20-%20C.pdf>.
  53. I/A Court of Human Rights. "Case of the Girls Yean and Bosico V. Dominican Republic." Judgment of September 8, 2005. Seri C No. 130.
  54. For additional information refer to: <http://reconoci.do/>.
  55. We should note the worrying bouts of racism and xenophobia demonstrated by certain segments of Dominican society in support of the Court's decisión. Manifestations of racial hatred, sometimes calling for violent action have occurred in Dominican streets with the acquiescence of the authorities. See: Primera, Maye. "Miles de dominicanos de origen haitiano pierden sus derechos políticos." *El País*, 11 November 2013. [http://internacional.elpais.com/internacional/2013/11/11/actualidad/1384142862\\_840717.html](http://internacional.elpais.com/internacional/2013/11/11/actualidad/1384142862_840717.html); Primera Maye. "Si te portas mal, te va a llevar el haitiano." *El País*. 2 November 2013. [http://internacional.elpais.com/internacional/2013/11/02/actualidad/1383366569\\_134694.html](http://internacional.elpais.com/internacional/2013/11/02/actualidad/1383366569_134694.html).
  56. "Preliminary Observations from the IACHR's Visit to the Dominican Republic." *I/A Commission of Human Rights*, 6 December 2013. [http://www.oas.org/en/iachr/media\\_center/PReleases/2013/097A.asp](http://www.oas.org/en/iachr/media_center/PReleases/2013/097A.asp).
  57. Agamben, op.cit. note 39, p. 217.
  58. The authors have recently authored a report on Haitian human rights within the Caribbean region for a consortium of institutions including the ACP Observatory on Migration, IOM, and the National Consultative Council of Haiti. While it focused on the case studies of the Bahamas, Cuba, and Dominica, the Dominican Republic was an omnipresent example for its extremes, deserving a plethora of observations in the report's body and in the annexes on third countries. See: Pedro F. Marcelino, ed. *Si Proche et si Lointaines: Les Diasporas Haïtiennes aux Caraïbes*. Brussels: ACP Observatory on Migration.
  59. Bosniak, Linda, op. cit., pp. 9–11.
  60. Chandrai Estévez. *La Variable Étnico Racial en los Censos de Población en la República Dominicana*. Santo Domingo, Dominican Republic: Oficina Nacional de Estadísticas (National Statistics Office), 2012. <http://www.one.gob.do/>.