
The Exceptional State of “Roma Beggars” in Sweden

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➤ **Abstract** *Across Europe, social-democratic, liberal democracies have become host to growing numbers of impoverished EU migrants (often called “Roma beggars”) who seem to pose a challenge to the tenets of egalitarianism and social protection that are the foundation of the welfare state. Sweden is no exception. Nor has it been exceptional in its response: creating what can be described as a “state of exception” for homeless, impoverished EU migrants wherein they are afforded fewer rights, and almost no access to care, compared to other migrants to the country (such as refugees and asylum seekers). In this paper we examine the nature of this “state of exception” – and consequent denial of rights for poor and homeless EU migrants – and how it has been justified by invoking the inherent fairness of the Swedish system. We do so by reviewing, but especially extending, the Italian philosopher Giorgio Agamben’s concepts of state (and space) of exception, bare life, and homo sacer to describe the way homeless EU migrants are understood and treated in Sweden, and then by carefully examining the major policy statement on the matter, the “Valfridsson Report,” which was written to harmonize practices across Swedish jurisdictions while providing the legal basis for making an exception of impoverished EU migrants, and which is now being implemented in law.*

➤ **Key-words:** *Bare Life, Begging, Homelessness, Roma/Romani, State of Exception, Sweden, Vulnerable EU Citizens*

“Någonstans måste ett samhälle säga att nu är det nog. Det här är förhållanden som vi aldrig någonsin skulle acceptera i andra sammanhang. Nu har vi i flera år haft en debatt om det här och konstaterat att vi gör ett undantag kring våra principiella ställningstaganden när det gäller alla människors lika värde”

(“Somewhere, a society must say that this is now enough. These are conditions that we would never ever accept in other contexts. Now for several years we have had a debate about this and have found that we make an exception regarding our principal stance concerning the equality of all human beings.”)

Jimmy Jansson, Eskilstuna, Sweden County Council Leader
(Social Democratic Party)

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When the small central Swedish municipality of Eskilstuna revised its laws to require that all beggars (who were already required to be “passive”) seek a permit from the police, the leader of the regional government, Jimmy Jansson explained that after much debate, it was realized that it was now the time – and the place – to make an exception concerning “the equality of all human beings.” It was clear to all who read his comments – and to anyone who had paid attention to the “several years” of debate – that those for whom the exception was being made were “Roma beggars” whose presence in Sweden (outside grocery stores and pharmacies, along towns’ main shopping streets, and near the entrances to sports grounds and event centers) has been growing for the decade since Romania and Bulgaria joined the European Union.

Yet Jansson seemed only to be saying out loud what is already actual practice in Sweden: that whatever the formal requirements of European and Swedish law concerning EU citizens, vulnerable, impoverished, frequently homeless, EU migrants – almost always classed as “beggars” if not worse in the media – are exceptional, *not quite* the citizens that law makes them out to be.¹ Quite often, the official reasoning that repositions impoverished, racialized migrants – many of

¹ While in the media and much popular discourse, vulnerable EU migrants are referred to as “Roma beggars,” in fact the population of impoverished EU migrants in Sweden is fairly diverse and includes many who do not identify themselves as “Roma.” This presents a challenge of terminology; there is no single label that accurately describes who the “Roma beggars” are. We have opted in this paper, unless context dictates otherwise, to refer to them as vulnerable, or impoverished EU migrants.

whom are homeless – as exceptions to the European regime of human rights and the provisions of Swedish law and welfare is quite tortured, as we will show in the following analysis. Similarly, the specific *practices* that construct “Roma beggars” as exceptional are also quite tortured (for example, since poor migrants from Romania and Bulgaria typically do not have a Swedish personnummer [social security number], they cannot avail themselves of most aspects of the health care and social housing systems, while non-European refugees whose asylum applications have not yet been approved and thus also do not have a personnummer *can*).

Our purpose in this paper is to closely examine these tortured logics in order to better understand what they mean for how poverty and homelessness in Sweden is governed in an era of free European movement. In short, we argue that by constructing impoverished EU migrants as exceptional, and therefore without the right and often access to housing and other necessities of life, Sweden condemns them to always being threatened with (frequently state-sanctioned) violence and sometimes actually subject to it, precisely because Sweden *wants* to “make an exception regarding our principal stance concerning the equality of all human beings.” We will make our argument both by reworking Giorgio Agamben’s (1998, 2005) famous theories of “bare life” and the “space of the exception” in light of current Swedish ideology and practice and by closely examining debates and official governmental position papers concerning the plight of vulnerable EU migrants.

Vulnerable EU Citizens in Sweden: A Brief Background

European Union law gives all EU citizens the right to stay in another EU country for up to three months without the need for a residence permit, but also without a right to permanent residence either. In 2015, there were officially between 4–5,000 vulnerable EU migrants in Sweden, most of whom likely arrived under provisions of this law. Usually identified as Romanian or Bulgarian Roma (though in fact the ethnic composition is more complex than that), such EU citizens have elected to use this right of free movement to seek monetary resources and/or opportunities for a better life in other EU countries. Having joined the European Union in 2007 on the cusp of the financial crisis, Bulgaria and Romania, like their eastern European neighbours, remain quite poor (with Bulgaria’s per capita GDP just under 30% of the EU average and Romania’s just under 40%). An estimated 90% of the Roma in Romania live in poverty and at least 25% lack the registration documents required for access to education, healthcare and social insurance (EU Roma Report 2010 in Mäkinen 2013; World Bank Group, 2014). Many are illiterate and have never gone to school or held official employment (World Bank Group, 2014, p.112). Structural discrimination, hate crimes, and other forms of violence against Roma people are not uncommon and are not unique to Romania and Bulgaria, but can be found

throughout Europe (Commissioner for Human Rights, 2012; United Nations Programme for Development and European Union Agency for Fundamental Rights (UNDP-FRA), 2012; Matras, 2015).

By the time they arrive in Sweden, most EU migrants of this type have little money left to stay at a hostel or campground, much less find housing in the private rental market, and there are far too few public shelters in the country in relation to the number of homeless people. What spots there are in shelters are often limited to short-term stays, burdened with symbolic fees, and/or managed in ways that make it impossible for families to stay together. Consequently, poor migrants tend to set up residences in public spaces and disused land – makeshift huts, tents, sheds, or parked cars and caravans. Many others use the spaces in parks, under bridges, or in viaducts as temporary sleeping areas, though this is illegal.²

Thus, the existence of seemingly permanent as well as transient settlements and sleeping environments across the country has garnered attention and sparked debate in Sweden. Apart from their dubious legality, the settlements are also something visually abnormal in Swedish cities and towns. Given the lack of informal settlement traditions in recent Swedish history, the reaction to the growth of “shanty towns,” “tent cities,” and “camps” (as such settlements are variously called in the media) has often been one of shock and outrage. But rather than meeting this new phenomenon with a concerted, coordinated strategy for incorporating Sweden’s new homeless into the Swedish housing system (and society as a whole), the migrants have more often been hassled, evicted, and driven off. Most find new places to settle, only to be evicted again or bussed back to their home countries. The evictions themselves are in fact often of dubious legality under both national and international law and regulations (Civil Rights Defenders (CRD) 2015; CRD, 2017). In addition to frequent harassment by authorities, impoverished migrants are also sometimes threatened physically as night-visitors threaten and abuse the

² A partial exception to this illegality is *allemansrätten* (the right of public access) which allows people free access to the Swedish countryside (including private property in many instances), but here, by custom, stays tend to be limited to a day or so (Bengtsson, 2004).

inhabitants of settlements and vandalize or burn down their homes (Expo Idag, 2014). Yet police seem not to prioritize such crimes as only a small percentage of reports to them are followed up (Dagens Nyheter, 2015a).³

In other words, in addition to the structural violence of the state that vulnerable EU citizens are subject to (by being denied access to decent shelter, hygiene, and health care), they are also threatened (and not infrequently the victims of) direct physical violence – which is to say, it is not only “benevolent” violence of the Swedish state that confronts vulnerable EU migrants upon their arrival in Sweden (Barker, 2017). Nor is “vulnerability” simply something poor EU migrants bring with them to Sweden; it is also something produced and reproduced there. The urban public spaces and green areas in Sweden in which homeless foreigners attempt to find lodging are thus places in which violence triumphs. Here, the “EU migrants” are at risk not only of hate-related violence from civilians, but also of sovereign violence from police and security guards through banishment, its condoning by state authorities, neglect of real social needs by these same authorities, and the *withdrawal* of legal protection. Central to the exercise of both these types of violence, as we will see, is that vulnerable EU citizens in Sweden have been relegated outside the protection of law and society and thus turned into *rightless* people.

The Camp, Bare Life, and the Sovereign

In his influential work, *Homo Sacer: Sovereign Power and Bare Life* (1998), the political philosopher Giorgio Agamben calls the locales where people who have been deprived of or denied their civil and human rights *camp*s. Within the camp, such people are stripped down to what Agamben calls *bare life* – a life reduced to sheer biological existence, devoid of rights, and fully at the mercy of sovereign violence.

³ Indeed, in August 2018, a 48 year old man from Romania, the former typographer and currently homeless Gheorge Hortolomei-Lupu (known as Gica) was murdered in his sleeping place outside the small town Huskvarna. As of this writing, the suspects for the murder are a group of teenage boys between 14 and 16 years old. They had allegedly harassed Gica over two years, humiliating him (while documenting this on film), and eventually murdering him. It took police a week to open an investigation into the murder, and at least twice volunteers and criminologists have been asked in television interviews whether it is important to solve this crime, a question that might strike outside observers as odd, to say the least. For his part, the Social Democratic prime minister, Stefan Löfven, commented that the murder was horrendous and therefore “we need to [...] stop begging because it is no one’s future,” squarely placing blame for the murder on the victim. (Göteborgs-Tidningen, 2018a, 2018b; Tv4 Nyheterna 2018; Tv4 Nyhetsmorgon 2018).

Agamben's goal in *Homo Sacer* is to explicate anew the political relationship between law and life. If law is understood to be the production and maintenance of order in society and among subjects, a distinction must be made between *who belongs* in that society (who is a subject) and who does not, a question that has long characterized Western philosophy – and state practice. As early as 1481, for example, the Council of Bern felt compelled to pass a series of edicts expelling “non-citizens:” gypsies (of course), pilgrims, the wandering poor, and French-speaking beggars. And yet determining who belonged to Bern continued to bedevil the council and by 1527, it required that all local paupers – those who belonged – to wear identifying badges and the city kept a master list of badge-holders in hopes of preventing fraud (Cresswell, 2011), just as Eskilstuna is seeking to do nearly 500 years later.⁴ The Council of Bern was thus experimenting with an early version of what Agamben (1998) identified as a critical distinction in states: the distinction between those who deserve a socio-political life (*bios*) and those who should only be afforded biological existence, or bare life (*zoē*). The distinction is consequential because it determines *how* – under what sort of juridical and political conditions – the state both lets a population (and individuals in it) live, or makes it die, which remains a key function of the state even after the rise of what Michel Foucault (2010) defined as the modern state's “biopower,” which has concerned itself instead with the opposite: making live and letting die. That is to say (and to return to Agamben's arguments), the state has long always had the ability to exclude persons, and populations, from the political community and thereby to promote their social, and not infrequently their actual, death.

Paradoxically enough, such exclusion simultaneously incorporates the excluded into the juridical order (as the Edicts of Bern made clear), by making them rightless, merely bare life. Agamben (1998, p.8) calls this legal position of excluded inclusion “homo sacer,” after an obscure figure in Roman law who could “be killed but not sacrificed.” Bare life remains subject to the law despite its rightlessness through the possibility of being killed with impunity. Rightlessness here does not mean an absence of law, because the very act of exclusion is a legal act that would not be possible without the force of law. Such force arises from political power, and the absolute highest political power in society is the *sovereign*, which functions as the law's prerequisite and facilitator. As the embodiment of political power, Agamben (1998) argues, the sovereign thus stands in a paradoxical position vis-à-vis the law, which can be likened to the sovereign being something like a Möbius strip: the sovereign stands “over” the law because it has the ability to suspend law by

⁴ Apparently Eskilstuna is also reviving an old Swedish tradition. In 1642, new Swedish legislation was passed to regulate vagabondage, including creating passes or licenses that gave one the right to beg only in one's hometown (Levander, 1974).

declaring a *state of exception*, but it is simultaneously included in the law through its role as its upholder. Both the sovereign and *homo sacer* are thus included and at the same time excluded from the juridical order, albeit for opposite reasons.

“State of exception” should thus not be understood here as a fixed time period, but as the *relationship* of constant potentiality that exists between the sovereign and its subject: the decision over which lives are worth protecting – over who belongs and is deserving and who does not and is not. When the sovereign places people in a state of exception – when, however regrettably, it feels forced to make an “exception regarding our principal stance concerning the equality of all human beings” – “worthless life” is separated from political life, and bare life is produced. The decision to banish a certain life to rightlessness opens up a political space in which rights are clarified precisely by being suspended. In this *space* of exception, right is stripped down to nothing more than an exceptional relationship between sovereign violence and bare life – a relation defined fundamentally by the sovereign’s power over life and death.

Agamben’s thesis is that this relation of exception has gained an increasingly prominent significance in society since the French Revolution; the state of exception has been gradually incorporated into the practices of state-making, becoming anything but exceptional, as states have become ever more fully involved in defining, controlling, and disciplining populations (which, of course, was Foucault’s primary preoccupation). When political power was democratized and the sovereign stopped being equated with a divine agent, the sovereign became the same as the representative of the people. The sovereign became synonymous with political *life* and the problem of the impossible distinction between *bios* and *zoē* began to become the problem of the limits of the sovereign’s own power: the rise of the nation-state as a geographical as well as socio-economic container for the legal-political organization of populations, meant that sovereigns – that is, “the people” – had to constantly distinguish the life that is constituent of the sovereign, and that which is “leftover” or otherwise “outside.” Consequently, it is in the interest of democratic (like totalitarian) states to continuously “cleanse” their population, establishing spaces of exception in which those deemed to deviate from the order can be concentrated so as to be gradually eliminated. Agamben sees Nazi concentration camps as one culmination of this process of establishing, with the state, concrete territories in which rights are revoked and a state of exception applies. As indicated, this led him to call these territorial spaces of exception, where bare life was produced and allocated, *camps*. However, Agamben (1998, p.174 ff) argues that this space does not necessarily only mean concentration camps. It must be understood more broadly as the spaces that emerge when the state suspends legal

protection for certain people and places them away from the rest of society – and political life – which suggests that the Nazi camps were not a culmination at all, merely one particularly odious end of a continuum.⁵

The suspension of rights tends to be carried out by perpetuating rightlessness within *the right itself*; the state of exception is made permanent – and material – precisely through its validation in law.⁶ This is achieved in practice by eliminating what is traditionally seen in law as a distinction between “fact” and “right.” To return to Agamben’s discussion of Nazi Germany, this distinction might best be understood this way: if the *right* the law is meant to codify and protect is the right to life, but that right has to be understood in relation to the (presumed) *fact* that the “survival of the race” is at peril, then the *right* has to be rethought to incorporate the *fact*, thereby transforming the *right* itself. Agamben (1998, pp.171-174) points, in this regard, to Carl Schmitt (1933), the German political theorist and “crown jurist of the Third Reich,” who in a 1933 essay explained how the concept of race could eliminate the legal uncertainty that arose when national legislation incorporated with “general clauses and vague concepts.” Schmitt’s problem was that the legal norms of European legislation incorporated situational concepts – for example, “public security and order,” “state of danger,” or “case of necessity” – in order to make the law applicable in all situations. According to Schmitt, this development instead undermined the conformity to law and the security of legal norms as legal concepts became increasingly indeterminate through the absence of formalism. His solution was to replace these clauses with the term “race.” By acting as a legally applied general clause, the reference to the concept of race in a court decision (e.g. “the continuance of the race”) could function *both* as “situation” and as “norm,” both “right” and “fact.” As a legal term, “race” (or “people”) means an amalgam of right and fact, where questions about what is right and what is fact, what is policy and what is law, become irrelevant. Under such an ideology, the race’s interest becomes a socio-political *fact* while also being a guiding *norm* for the purpose of the state. Agamben explains why it is “race” in particular that provides this executive birthing function

⁵ Those dubious of any claim that democratic states can occupy positions somewhere in the direction of that end of the continuum, would do well to consider not only the long history of Indian removal and the creation of reservations, the jail (Camp, 2006; Gilmore, 2007), asylum (Rothman, 1971), World War II “relocation camps,” and (of course) Guantanamo, but maybe most especially the current archipelago of migrant detention and deportation centers around the world (see, e.g. Loyd and Mountz, 2018), to speak only of the U.S. case.

⁶ The U.S. Supreme Court, for example, showed little compunction in validating the sovereign’s plans for Japanese “relocation” camps and only a little more when considering rightless detention in Guantanamo, even if, in the case of the former, it did eventually profess its embarrassment at what it had done. Agamben addresses Guantanamo directly in *State of Exception* (2005).

for state power. The sovereign's legitimacy is based on being the embodiment of the people; as such, the judge (or leader) who decides in the name of the people morphs, through the exercise of his (or her) power, into being both "people" and "sovereign" simultaneously.

Although Schmitt's approach to activating the state's total authority may appear extreme, it offers a key to understanding why humanitarian calls for human rights can easily be dismissed by state powers, despite the actual binding of these rights to legislation. To develop this point, Agamben (1998, p.131) amplifies Hannah Arendt's (2004) insight that since human rights are inextricably bound with the nation-state's civil rights, a person without citizenship or state (who is in greatest need of universal human rights) is the one who is effectively most distanced from the possibility of the fulfilment of any rights. Agamben argues that the political impotence of international declarations of human rights must be understood as a consequence of their historical origin as the extension of civil rights, i.e. the foundation of the sovereign's legitimacy in the modern nation-state system. "Pure" human life is thus inscribed as the state's earthly foundation for political legitimacy. It has therefore become necessary for the inner threshold between "human" and "citizen" to be distinguished, through the *nation* as a fiction of the "natural" continuity between these two. However, all subjects who disturb this fiction (minorities, refugees, "undocumented" immigrants, etc.) constitute a threat to the entire political-legal order the nation-state's legitimacy is founded in. In this way, the "refugee" (for example) is *liminal* – neither here nor there – which paves the way for the sovereign to place humans, that is *some people*, in a state of exception, in order to prevent the destabilization of legal categories.⁷ According to Agamben (1998, p.178ff), this biopolitical fracture, of which the "refugee" and the "migrant" is a symptom, constitutes the opening through which active rights can be distinguished from passive rights. Since international conventions for human rights seek to fulfil the function of being the representative of the people but cannot otherwise fulfil the role of the sovereign, "the isolation of sacred life at the basis of sovereignty" is reproduced rather than transcended (Agamben 1998, p.134). As the subject of "human rights" increasingly emerges as the epitome of liminality, these very rights are made politically toothless, and instead strengthen the sovereign's basis of authority as the power that (legitimately) separates life from life.

⁷ Once again migrant detention policies, not only in the USA and Europe, but maybe most egregiously in – or rather beyond the borders of – Australia, provide the most obvious contemporary examples.

The EU Migrant as Bare Life

The form of bare life that is relevant here, however, is not the statelessness associated with refugee status, but can be characterized instead as a life that is (paradoxically) both more *and* less deprived of rights than the stateless “asylum seeker” (cf. Lind and Persdotter, 2017). The legal-political status of the vulnerable EU citizens from Romania and Bulgaria involves the possession of an official national citizenship, and indeed an *a priori* right to be in Sweden, yet that very status creates a situation of *rightlessness* vis-à-vis the Swedish state and its humanitarian responsibilities. For, while the paperless asylum-seeker can claim the right to the fulfilment of basic human needs (such as housing and health care) based on the *absence* of citizenship, the vulnerable EU migrant’s very citizenship creates the chance to deny exactly these humanitarian grounds. The state can quite simply submit that it is the home country’s responsibility to fulfil these rights, without taking into account the effective rightlessness this group has “at home” (see EERC European Roma Rights Center, 2010; FRA, 2013; Open Society Foundation, 2012; Berescu *et al.*, 2013). Both groups – asylum seekers and vulnerable EU citizens – find themselves in similar positions, and to a degree for not dissimilar reasons, and yet while one is afforded at least some protection of the state, the other is stripped bare.⁸ The impoverished EU migrant thus comes to live in something like a state of doubly negated liminality: if the refugee occupies a threshold between nation and citizen, the vulnerable EU migrant occupies the threshold of this threshold: neither officially stateless nor effectively a citizen.

Both these liminal positions arise in Sweden due to the absence of Swedish citizenship, but the root of the legal-political liminality of the vulnerable EU migrant, the root cause of their being in Sweden, and the reason they lack real rights, is *poverty*. This poverty can in turn be explained as a result of several intertwining factors, of which two are most tangible: the economic situation in the home countries, and the historical and continuing fact of anti-Romani racism. Structural racism and discrimination “back home” make the Roma people doubly cemented into the ranks of Europe’s lumpenproletariat – Bern’s “French-speaking beggars” updated for today’s world. Given the widespread structural oppression of Roma (and other Travellers), it is not difficult to see how, like Jews, they serve as one of Europe’s primary *homo sacer*: the constant “deviant” and threat to national homogeneity (maybe even more than the immigrant, because Roma, like Jews, are endemic in Europe not exotic to it): the minority that has for centuries been denied access to decent housing or even sanitary living conditions, with, all too often, the pretext of

⁸ In Sweden, asylum-seekers and other paperless residents have a legal right to some welfare such as healthcare (SFS 2013, p.407) and, for their children, education (Lind and Persdotter, 2017).

unsanitary living conditions being the grounds for eviction (for Sweden, see Taikon and Langhammer, 1967; Ds, 2014, p.8).⁹ Yet it would be too easy to explain the striking similarity between historical productions of *homo sacer* – French-speaking beggars, Jews – and today’s context as *exclusively* grounded in racism. Rather we can gain a better understanding of the current production of bare life in Sweden by understanding the state’s power to produce it here as a consequence of the vulnerable EU migrant’s double-negative characteristic of being both a suspect foreigner and destitute, a destitution rooted in their long, historical exclusion from formal economies and labour markets. In turn, however, this very exclusion has to be understood as the historical result of generations of racist oppression. The double-denial of the EU migrant is, in effect, a vicious cycle, and one only accelerated by the contemporary reproduction of them as merely *bare life*, as ones who, regrettably, must be placed in a state of *exception*.

Homelessness as The Camp

Given the association of the word “camp” with the concentration camp, Agamben’s concept of the camp, as the place of the state of exception, is often taken in scholarly work to mean an enclosed territory within which states confine people deprived of their liberty. The people in question have been deemed “security risks,” somehow deviant, and/or quite simply lacking a fixed (political-legal) identity (Gill, 2010; Mountz, 2011; Ramadan, 2013; Minca, 2015, p.77). Yet the idea of the camp is better understood more metaphorically, as the designation of the *spaces* of exception within a nation-state’s borders, where regular law does not apply to a *certain population*. The “camp” is understood here in a double (if interconnected) sense: (1) as an ontologically inevitable symptom of the biopolitical fracture that exists at the threshold between socially included and excluded life, and (2) as the territorial result of the exception those in power direct against people identified as threatening the political order. The geographical materialization of the “camp” in both these senses is, in this specific sense, the *same* space: the places where homeless EU-migrants spend their nights in Sweden. These spaces of exception are made permanent when the sovereign executes the double ban of criminalizing their sleeping areas while also not offering any alternative to these.

This understanding of the “camp” may seem diametrically opposed to the notion of the camp as a space of internment. With internment, the state seeks to control people by shutting them in, while the sites of homelessness demonstrate the state’s

⁹ Between 2013 and 2016 the majority of EU migrant encampment evictions were justified on grounds of unsanitary conditions, but in no instances were efforts made to provide the means to create sanitary conditions (Davis and Ryan, 2016).

ability to control through *abandonment* – by denying any safe, enclosed, space. In some countries, such as Italy, public authorities have created actual “camp societies” in order to temporarily “solve” the problems of Roma homelessness (Maestri, 2016; Maestri and Vitale, 2016). In Sweden there are (nowadays) no such solutions. Instead, the state works hard to prevent the establishment of any sort of physical camps. By creating a space of exception that is *not* a “camp” in the narrow sense of the term, Sweden’s policy promotes an even deeper bare life in what is in essence a geographically universal rightless space. In Italy, the creation of state sanctioned (and enclosed) camping sites, the state of exception is made permanent (despite such camps officially being temporary solutions) within a defined area, the campsite itself, where different standards of housing and living prevail in comparison to the rest of the population. In Sweden, there is a double denial – a deep contradiction – instead. Official camping grounds are often dismissed with the statement that “we can never accept shantytowns in Sweden,” given the welfare state’s putative commitment to supporting the less-affluent. The acceptance of camping grounds would be – and is – perceived as a direct threat to Swedish identity of moral and egalitarian exceptionalism (cf. Barker, 2018). Yet, this zero tolerance for camping means that a certain group lives under exceptionally unequal conditions in Sweden. Sweden’s egalitarian exceptionalism is denied *in practice*, precisely by creating a generalized state of exception, a non-locatable camp, in which bare life metastasizes. Homelessness *becomes* the camp.

The Settlement Crisis and the Valfridsson Report

But how is such an exceptional state of exception, such a deep contradiction within the Swedish welfare state, justified? How do Swedes explain this exception in practice to themselves?

The September 2014 parliamentary elections had seen the insurgent nationalist Sweden Democrats become the third largest party, but since neither major block (the Social Democrats and Greens to the left, and the Alliance of the Moderate, Liberal, Center, and Christian Democratic parties to the right) would actively work with them, the result was a fragile center-left minority government with the Sweden Democrats serving as powerbrokers. This assured that the question of immigration would consistently be at the heart of national politics (as it was in local politics), continually threatening to bring down the government. Already by the time of the election the numbers of refugees in Sweden seeking asylum was beginning to swell (and indeed, the Sweden Democrats managed to cause a major crisis for the minority government when it refused to vote for its budget because of increased funds for asylum-related services).

Simultaneously vulnerable EU migrants were becoming strikingly visible, and the government vacillated on how best to address the problem of “Roma” encampments and rough sleeping in the parks and squares. On the one hand, Swedish laws governing eviction are strong. Even where people have been occupying another’s land illegally, police or other authorities cannot just drive them out. Rather, the law requires that the landowner must provide the Swedish Enforcement Authority with personal data on all persons staying on the land so that each individual trespasser’s intent and social situation can be assessed. The police and other authorities are also governed by legally binding agreements on human rights such as the UN International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, the European Convention on Human Rights, and the European Social Charter, all of which have been incorporated into Swedish law. These agreements include the rights of all people to have access to water and sanitation, as well as the obligation to offer housing alternatives in connection with evictions and to perform a proportionality assessment for the proposed eviction (CRD 2015; CRD, 2017). There is thus an overlap in the law itself between a criminal and a civil dimension: a crime is committed through the violation of private property laws, while at the same time this crime is clearly conditioned by the social vulnerability of the perpetrator, such that moving against the perpetrator risks becoming itself a crime (though the violation of legal protections and rights of vulnerable people). *Full* compliance with the law involves practical complications concerning the actual procedure of guaranteeing the rule of law and determining vulnerability and thus intent.

On the other hand, the “social issue” of homelessness is also a paradox. The Social Services Act stipulates that municipalities have the responsibility to provide “reasonable assistance” to all people in a temporary “emergency situation.” What is defined as “emergency situation” and “reasonable assistance” is up to social service employees to assess on a case-by-case basis. It is implicit in these regulations that emergency housing cannot be viewed as long-term. The practical questions thus arise as to where people should be placed, especially given the fact that Sweden is experiencing its deepest housing crisis since the 1930s with affordable housing shortages reported in the majority of municipalities in the country (Grundström and Molina, 2016). Municipalities have little, if any, housing to provide even their own “local” homeless residents (Sahlin, 2013). This complex situation puts public officials into a state of confusion over which laws trump which, since, in 2014 and into 2015 as the rapidly increasing number of homeless EU migrants was increasingly understood to be a crisis (which was compounded by Sweden’s decision to accept a proportionately large number of asylum seekers during Europe’s refugee crisis), there were no guidelines on how to address the social and housing needs of such migrants. Consequently the issue was dealt with differently

from municipality to municipality. A few offered provisional accommodation with sanitary facilities on municipal land or in tax-subsidized campsites (Dagens Nyheter, 2015b). Others performed repeated evictions, even in the depths of winter (ETC, 2014). In yet other municipalities settlements grew into small communities which lasted for a number of years (Expressen, 2015).

Such a situation might be untenable for any government, but was particularly so for this minority one, given the growing popularity of the Sweden Democrats (which by the end of 2015 was polling about 20 %) and its nationalist message, which put pressure on the rather weak governing coalition to “do something” or lose its legitimacy. What it did, in early 2015 (not long after a Sweden Democrats-induced political crisis was resolved through a democratically-dubious grand compromise between the two main blocks in the last days of 2014), was to appoint the prominent jurist Martin Valfridsson as the national coordinator for vulnerable EU citizens in Sweden. He was charged with examining the nature of the challenges the growth of this population presented and then drafting general guidelines for public authorities, municipalities, county councils, and organizations who work with them. The goal of assigning a respected jurist (rather than a politician) to lead the investigation was, apparently, to assure there would be a non-ideological basis for any political decisions that would result. Such decisions would, presumably, be directed by the *apolitical* letter of the law.

During the year he conducted his investigation and wrote his report (which was issued in February 2016), Valfridsson held several press conferences and interviews with the media spelling out his evolving recommendations for public authorities, statements that seemed to work as a kind of precedential basis for the final report. When that report was issued and without any further political or state review, its recommendations were immediately understood to be central guiding principles for Swedish authorities, particularly concerning how existing law should be read. At last, it seemed, there would be some national consistency in how vulnerable EU citizens would be treated across Sweden. Valfridsson thus served as a sort of representative of the “sovereign” on questions of “EU migrant” rights in Sweden.

According to Valfridsson himself, he began from the principle that Swedish law had to be followed and the law had to be applied equally to all.¹⁰ At the same time, he was clear that it was important to distinguish between Swedish law itself and the international conventions Sweden has pledged to uphold. This was deeply significant to his subsequent analysis, since he was able to show that EU migrants without residency occupied a position *between* not *within* these two legal spheres, the latter of which requires the provision of shelter, sanitation, clean water, and so forth, regardless of national affiliation. Under EU law, any EU citizen has the right to stay in another country for up to three months, but without a right to residency. In Sweden the right of residence is connected to gainful employment or education, and only persons (and, with some exceptions, their dependents) who are gainfully employed, on their way to gainful employment, legitimately studying, and/or have sufficient resources to support themselves are eligible for residency rights (SOU, 2016, p.42ff). Few, if any, of these conditions are typically met by vulnerable EU citizens. Consequently, Valfridsson argued that because “EU migrants,” by definition, do not have the right of residency in Sweden, they only have the right to social support in the form of emergency assistance, which under social service guidelines in the case of housing only stipulates “short-term emergency” shelter, not long-term housing – a provision often made real by issuing bus tickets back to the home country.

Valfridsson’s first dilemma was that if EU migrants were provided housing because it was deemed a human right (as are asylum seekers), this would risk negating the right of residence. And if that happened, so too, then would the distinction dissolve between national citizens and non-citizens, as well as between the “nation-benefitting” gainfully employed and the “nation-draining” unemployed non-citizens. In other words, the modern state’s function of distinguishing between political and bare life – valuable and worthless life – would be fundamentally threatened. The political-legal power of residence rights had therefore to trump universal human rights, for if no real difference was made between “citizen” and “other,” the very *raison d’être* of the nation and nation-state would be jeopardized. In other words, Valfridsson, acting like the sovereign as described by Agamben, made it his task to

¹⁰ In his own words: “Samordnarens utgångspunkt har varit att svensk lag måste tillämpas lika i motsvarande situationer. Ingen grupp får särbehandlas, vare sig negativt eller positivt. Budskapet från det svenska samhället bör därför vara tydligt: alla EU-medborgare är välkomna hit och de måste på samma sätt som alla följa lagar. Därför ska lagliga boenden användas. Det är förbjudet att bo i parker, i andra offentliga rum eller på privat mark. Det är också förbjudet att lämna avföring eller sopor efter sig” (SOU, 2016, p.61) [“The coordinator’s starting point has been that Swedish law must be applied equally in the corresponding situations. No group can be treated separately, either negative or positive. The message from Swedish society should therefore be clear: all EU citizens are welcome here and they must follow the same rules as everyone. Therefore, legal accommodation should be used. It is forbidden to live in parks, in other public spaces or in private land. It is also forbidden to leave faeces or garbage.”]

mark the *limit* for inclusion in the state's social care. The right of residence was the political tool by which certain people could be excluded from the state's protective care and from rights more broadly. The right of residence was, for Valfridsson, a legal "fact" through which the Swedish state could *choose* to deny broader human rights, since, there is no logical causality that says an absence of residence rights automatically means the absence of human rights. If anything, the reverse is true, given the humanitarian function of human rights as rights for "the rightless" – that is, those *not* already incorporated into and given the protective covering of a state. Valfridsson's conclusion, that the "law" would not give EU migrants the right to decent living conditions and sanitation in Sweden, must then be read as a *decision* about how the law should be read, not necessarily a fact inherent in the law itself.

Under this decision, municipalities were not obliged to compensate for the lack of rights by finding housing solutions (however provisioned), such as granting the use of land for caravan sites or settlements. At a press conference in connection with the publication of his report, Valfridsson explained: "If you grant the use of municipal or private land, this ultimately creates difficulties. The society helps to restore the slum communities we have frenetically worked to counteract in Sweden. If you choose to come to Sweden, you must live in a lawful manner" (Sveriges Television, 2016). It matters not, apparently, that many EU migrants do not live lawfully because they cannot afford legal options. Yet Valfridsson does not offer them any legal solutions. Instead, the report expounds on his views as to why publically-leased campsites (for example) would be unfair: "There is a severe housing shortage in many places in the country, and there are already a number of homeless citizens.... Regardless of the living standard at the allocated sites, it would be difficult for a municipality to justify why a certain vulnerable group would gain access to this solution, but not others" (SOU 2016, p.6, p.70).

In an earlier interview, Valfridsson defended the evictions of vulnerable people from camping and other lodging sites by stating that even Swedish families with children sometimes get evicted, and that there is no legislation guaranteeing shelter for Swedish citizens (Dagens Nyheter, 2015b). In this line of reasoning, denying homeless people housing solutions is based on grounds of equal treatment; the fulfilment of human rights for foreign Roma and other vulnerable EU citizens would be *positive discrimination* that would disadvantage Swedes. Offering a solution – like legalized camping – would run the risk of disturbing Sweden's "moral economy" of housing (i.e. the economy's mooring in social conventions concerning what citizens have the right to demand of society) (Thompson, 1971; Mau, 2004), which was already burdened by a severe housing crisis (Christophers, 2013; CRUSH, 2016; Grundström and Molina, 2016).

The second challenge facing Valfridsson was whether, and how, to revoke the legal security of evictees during the eviction process. The solution here was, through vague wording, to call on the police to begin to prioritize criminal law over civil law in order to circumvent the possibility of appeal. Three months before his report was released, Valfridsson called in an interview for the police to “take a step forward” to “help” municipalities and landowners by applying the Public Order Act or the Police Act to “remove” people and thereby avert a crime. Police, he argued, should exhibit “zero tolerance” against the emergence of EU migrant settlements (Sveriges Radio, 2015). How the police were to implement these laws was specified in the final report.¹¹ In connection with the release of the report, Valfridsson welcomed an announced review of the laws, which, he averred, would “simplify” prevailing legislation which was “outdated.”¹² The review was concluded in May 2016 and proposed to add a new procedure designated as “removal” (rather than “eviction”) which would be subject to fewer restrictions on the use of police power (Ds, 2016, p.13, p.17). The proposal was duly legislated in July 2017, with the Justice Minister averring that the value of the new law was obvious: “If it gets harder to establish [settlements] then the total number of beggars will decrease and thus also the problem” (Olsson, 2017).

In effect, the law (which made “removing” Roma and other vulnerable EU citizens from temporary and longer-term settlements easier) was reformed in order to protect the law: the part of constitutional law that protects private property (for Swedish citizens) was protected by eroding the part of the law that protected evictee’s interests and recognized their needs, and thus eroded their human rights more broadly. Before the July 2017 change, evicting people from informal housing settlements was the responsibility of the Swedish Enforcement Agency and other authorities, which could call in the police to enforce duly arrived at decisions. Now, the police could directly “remove” people, while also being charged with preventing

¹¹ For example, in relation to private land, Valfridsson notes that the Police Act (§13) allows the police to bar or remove people if doing so is necessary to prevent a crime from being committed (p.64). On both public and private land, the Penal Code (Chapter 8, §§8,9) specifies that “arbitrarily” or “selfishly” occupying another’s property is a criminal offence, and that police patrols may intervene in and remove “recent” campers but that police powers are limited if such a residence has become “permanent.” In that case, then the police may not be able to “directly” or “immediately” remove the squatters (p.65). Finally, on public lands, the Public Order Act allows police to remove “immediately” any persons, devices, or furniture, if they have been placed in the space without proper permission or in violation of local ordinances. This is perhaps the broadest specification of police power and allows for the removal of tent encampments (p.65).

¹² The transcript of the press conference, in which these comments welcoming the law review could be read, is no longer available on the websites of either Sveriges Television or Sveriges Radio and they are not alluded to in the press coverage from the time. Extensive notes taken by the lead author of this paper during the press conference, however, quote these words. For coverage of the Conference, see Sveriges Radio (2016); Sveriges Television (2016).

vulnerable EU citizens from finding somewhat stable places to sleep in the first place. This is to say, the police have been charged with creating a kind of rightless space available within the law, wherein they may – by moving homeless people along – intervene in a crime that has not occurred. Roma and other homeless people come to be, in essence, *exceptional*: suspect merely for *being*.

Altogether, Valfridsson's message, in both his report and in his public statements, was that active homelessness *itself* should be treated as a sort of illegal state: it is forbidden to reside illegally, while at the same time it is "illegal" to find legal solutions for those for those who do not have the right to reside legally. Valfridsson was arguing, like the leader of the Eskilstuna municipal council, that sometimes exceptions had to be made to the regime of universal human rights (though it must be said that Valfridsson exhibited far less of the regret that this was the case than did the municipal leader). The "zero tolerance" Valfridsson advocated for illegal settlements in effect meant a zero tolerance against the symptoms of homelessness, which paradoxically are made even *more* permanent through the concurrent "zero tolerance" for finding housing options. In this way, Valfridsson's report, and the effective adoption of its recommendations by the Swedish government and municipalities across the country, while perhaps meeting the desires crystallized by the rise of the Sweden Democrats, does so by *deepening* homelessness as a state of exception, homelessness as the camp itself, homelessness as the phenomenal form that bare life takes.

And as befits Swedish exceptionalism, this state of exception has been achieved precisely through the invocation of *equality* (cf. Barker, 2018). In this sense, for many Swedes, zero tolerance towards vulnerable EU migrants and their encampments is not at all regretful, but rather a confirmation of the goodness and justness of Swedish society. For them, a zero tolerance policy needs no justification at all.

Conclusion: The Fusion of Fact and Right

In essence Valfridsson presented three *political* conclusions masquerading as purely legal reasoning: (1) In Sweden, there is no absolute or universal right to welfare; (2) equal treatment under the law means making exceptions of some people residing in the country and justifies unequal treatment; and (3) zero tolerance for acute homelessness is *just*. The only way to understand how such conclusions can be arrived at *through* reference to the law, is to understand how Valfridsson skilfully fused *right* with *fact*. The liminal political identity of the "EU migrant" (who is neither Swedish nor "refugee") opened up the possibility of creating a vacuum within the law itself in which it is up to the sovereign to decide what is dictated by "right." Any such decision was necessarily informed by the political interests of the

state and the parties that govern – and contest the government of – it, and thus what is formulated as “fact.” Valfridsson’s three conclusions – which both revoked the rights of and targeted “EU migrants” – were each based on a respective “fact,” which then became law in their own right: (1) the border between included and excluded has to be maintained in order to protect the existence of the state and nation themselves (Barker, 2018); (2) the moral economy of citizens’ social rights must not be disturbed by an expanded, seemingly unwarranted, right to housing and sanitary conditions; and (3) the “depraved” social consequences of homelessness – “shantytowns,” for example – should not disturb the people and thereby threaten to deepen the crisis of the legitimacy of the Swedish state and its governing coalition. Such a melding of right and fact allows for the appearance of legal neutrality, a mere upholding of the letter of the law (rather than an expansive reinterpretation of it). Schmitt (1933) may have based his logic in the primacy of preserving “the race,” but for Valfridsson the objective was, to a significant degree, different: not the preservation of “the race,” or necessarily even of “the people” (who are by now the sovereign), but rather the preservation of the law itself. Yet, of course, it is only a part of the law that is preserved (since those parts of the law that protect the rights of evictees, for example, are, through Valfridsson’s recommendations, circumvented).

So the real object, in fact, is not the law, but the legitimacy of the state itself, and through that the greater *order* which the state in turn maintains through legislation, legislation that incorporates the bare life of the “EU migrant” *by* excluding them. This larger order, of course, ultimately comprises a global political-economic structure of production and ownership, which generates and perpetuates the poverty that sets the “EU migrant” on the road (no less than war and political oppression send refugees on the road), as well as makes an unconditional universal right to housing inconceivable. We must not forget, therefore, that what distinguishes the vulnerable EU migrant who comes to Sweden from other EU citizens is that their extreme poverty means they cannot afford legal sleeping arrangements. And what distinguishes them from refugees is their “state-full-ness,” which paradoxically bars them from the sort of social support – and fulfilment of human rights – afforded the stateless. Nor should we forget that Swedish housing (and other social welfare) policy is influenced by the moral economy of Swedish welfare that rejects the very idea of informal settlements or other housing solutions that expose the false equality upon which that moral economy is based: in Sweden, given the embrace of the welfare state, the presumption is that there is no *need* for such settlements. Yet, finally, we mustn’t forget that after nearly thirty years of a deepening neoliberalization of the housing system in Sweden, this moral economy

in fact simply does not exist; it has long been replaced by a more “monstrous” system (Christophers, 2013) that rewards overproduction for the wealthy and interminable queues for affordable housing for the rest.

The fact that Valfridsson can deny “EU migrants” right to housing based on the lack of unconditional right to housing for the Swedish population themselves, proves that it is not the *welfare state’s* solvency that needs to be protected for the state’s own insiders, as for example Barker (2018) argues. In *Nordic Nationalism and Penal Order* (2018), Barker argues that a kind of “penal nationalism” has been developed by the Swedish state as a coercive tool targeting immigrants, asylum seekers and “EU migrants” (whom she calls “The Roma”), in order “to keep the welfare state solvent, for members” (Barker 2018, p.8). Finding neoliberalism, revanchism, and political economy as insufficient causes behind the harshening tendency to criminalize the movement of poor and foreign bodies, Barker argues that current pressure to expel asylum seekers and “EU migrants” in Sweden derives from the desire to *preserve* the welfare state. The exclusion of “EU migrants” is then, thus the result of a politics of *equality* for insiders, instead of a politics of growing inequality: “We usually think of exclusionary means as the result of social inequality, but in this context the exclusion comes from equality. [...] [the] penal power [is] used to uphold equality, for those on the inside.” (Barker 2018, p.12) Thus, Barker understands the eviction strategies and denial of responsibility for the needs of the homeless “Roma” as a consequence of the group being “too much for Swedish cultural sensibilities which are based on equality, a sense of social security, and upholding human dignity” (Barker 2018, p.94). According to Barker (2018, pp.94-95) then, “it is critical to realize that poor people are not forced out of Sweden because the welfare state has been hollowed out and left dependent on coercive means of control. The Roma are forced out because they do not belong to the Swedish welfare state. The Roma are forced out because they are not nationals. The Swedish government expressed sympathy rather than antipathy for the Roma, yet it heeded the logic of welfare state preservation, to maintain the resources and benefits for members and members only”. Symptomatically enough, Barker immediately follows up this sentence with quoting Valfridsson’s statement regarding the absence of a “national roof-over-your head guarantee” (Barker 2018, p.95), in other words the moment of truth revealing the *absence* of “solvency” regarding the Swedish welfare state’s promoting social rights to even its *own* citizens. So Barker is right in defining the state violence targeting “EU migrants” as an exercise in power in order to legitimate the state in the eyes of its citizens. But the “equality” and “welfare” in question that needs to be “protected” is discursive, not actual. That is why we identify the thing to *really* be protected is the larger political-economic order to which the Swedish welfare state and its discourse of exceptionalism and equality

is an important ideological complement. In this current political-economic arrangement, it is of uttermost importance – from the state’s point of view – to uphold the *impression* of Swedish welfare being solvent for the own population, in order not to trigger the social antagonisms that might result when people realize that the Swedish welfare system is ultimately dependent on a capitalist logic that in the past promoted full employment and social protection of workers but which by now is long gone. The current housing – and overarching “social rights” – system in Sweden, is built upon a base of a Keynesian economic reality in which the constant industrial economic growth made sure that significant social rights of Swedes were practically (not unconditionally, universally or legally) guaranteed. In this sense, the fact that in theory any Swede could fall between the social security nets (as some always have) and her- or himself become a ‘homo sacer’, needs to be foreclosed by punishing the human beings whose mere presence makes this fact so startlingly visible.

These are the actual facts that belie the artful mixing of right and fact that Valfridsson accomplished as he reinforced homelessness as the camp and helped the state of exception that *is* homelessness to metastasize – so much so that by now it is simply unremarkable when a *Social Democratic* politician can blandly state that it is time to make an exception to the belief in the equality of all human beings. In Sweden, under the guise of equality, there is no equality for homeless vulnerable EU citizens. Stripped down to bare life, they are left to live – and to die – only by their own wiles, and in doing so to confirm the very legitimacy, and the rightness, of the Swedish state.

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