

# Signs of the Times: The Migration of Catastrophe

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## 1. BORDERWORK

The best paleoanthropological evidence we have suggests that mass human migrations have been occurring for at least 100 000 years. That means, over the long term, trying to put an end to them is a little like trying to defy gravity or outlaw stupidity. (That is, one might be able to accomplish this, but at considerable inconvenience and expense, and even then, only for a short time.) Refugees, therefore – in the strict sense of that term – are not a modern phenomenon. As long as humans have persecuted other humans, as long as an area was considered uninhabitable for some reason, people have sought to find more hospitable places to live. Even so, through most of recorded history, the vast majority of humans neither possessed the means to travel far, nor had the resources necessary to live away from their homes for any extended length of time. Before the nineteenth century, towns located in the agricultural societies of Europe often barely had enough food to support their own populations. Further, those fleeing political strife and persecution often became indistinguishable from local panhandlers and vagrants. Survival rates for pre-modern refugees were low, with most dying of starvation, illness, or exposure. Groups of people simply could not move *en masse* and survive.<sup>1)</sup>

When such movements of population did become possible, those “people on the move” – to use Paul Dumouchel’s phrase – often came up against more intentional, coordinated human opposition; they butted up against what John O’Carroll and Bob Hodge have called “borderwork” – the ways in which societies and individuals establish, justify, and maintain boundaries – between cultures, between people, between supposedly good and bad violence, between geographical regions, and so on.<sup>2)</sup> For the past 15 years or so, it seems to me, Australia’s borderwork has been particularly militant, even violent.

In 2001, the then Australian Prime Minister, John Howard, made the now-infamous statement: “We will decide who comes to this country and the circumstances in which they come.”<sup>3)</sup> Howard’s assertion was one attempt by him and his Liberal<sup>4)</sup> government to foster support for their so-called “Pacific Solution.” The “Pacific Solution” was the Government’s name for a three-part policy change, introduced a couple of months prior, relating to those who sought asylum in Australia. The first part of this change involved the excision of thousands of islands from Australia’s migration

zone, those areas where one can land and afterwards apply for a visa – in most instances called a “protection” or “temporary protection” visa.<sup>5)</sup> The second was the engagement of the ADF (Australian Defence Force) in patrolling and intercepting boats containing asylum seekers. And the third was transporting the asylum seekers to detention centres in Papua New Guinea and Nauru while their refugee status was determined.

As is the case with most policy decisions, the Pacific Solution didn't come out of an historical vacuum. Like so many pieces of legislation in Australia in the contemporary era, it came as a legal reaction to some quite dramatic events preceding it. In August 2001, a Norwegian freighter, the MV Tampa, attempted to enter Australian waters. The freighter's captain, Arne Rinan, had rescued 438 refugees – the majority of which were Afghan Hazaras, many in very poor health – from a disintegrating fishing boat, which was heading towards Christmas Island, then part of Australia's migration zone.

Despite the captain's pleading, the Australian government refused the vessel entry. Parking four nautical miles off Christmas Island, the Australian government sent in the SAS [Special Air Service], who boarded the ship. Ignoring the SAS's instructions, the captain refused to turn the ship around. Eventually the Australian navy vessel, the HMAS Manoora, picked up the asylum seekers and transported them to Nauru.<sup>6)</sup>

In the light of events like those of the Tampa Affair, the idea that any state can actually decide *who* arrives and *how* they arrive in any strict sense is difficult to maintain; indeed, the policy itself reflected this fact. One way of preventing people from arriving in Australia has been to simply redraw the boundaries of Australia, bringing them far closer to shore. (It's a little like asserting that you control who arrives at your front door by redefining “front door” as your upstairs bathroom door, and placing an armed guard at the bottom of your stairs who will take the guest to your nasty neighbour's house and leave them there for an unspecified amount of time.)

Australia's routine, indefinite detention of asylum seekers in offshore facilities that are overcrowded and unsanitary has had serious results: significant numbers of detainees have engaged in self-harm and/or attempted suicide. There has also been some eye-opening research into the very serious health impacts upon those in detention, especially with respect to mental health.<sup>7)</sup> Australia has, understandably, been attracting both domestic and international condemnation for its stance. In August 2013, the Human Rights Committee of the United Nations stated that the indefinite detention of refugees was “inflicting serious psychological harm” which amounted to inhuman, degrading, or cruel treatment.<sup>8)</sup>

## 2. THE DESACRALISATION OF SOVEREIGNTY

One might be given to thinking that asylum seekers in this – or in a parallel – situation should be able to look to the Universal Declaration of Human Rights (1948) and the U.N. Refugee Convention (1954), to which Australia is a signatory, for protection. The UDHR, indeed the League of Nations and later the UN itself, emerged as part of an attempt to limit sovereign power following the atrocities perpetrated by the modern nation-state against its own citizens during the Second World War. Paul Dumouchel has well outlined one of the principal paradoxes of the modern political theory of the state: the idea that the *raison d'être* of the state is the protection of its citizens, all the while it has been precisely the state in the 20<sup>th</sup> century that has exercised paradigmatic violence on its own populations.<sup>9)</sup> In such instances, people often flee their own states. But as Hannah Arendt famously observed in *The Origins of Totalitarianism*, those most in need of human rights protection – the stateless – have typically had the greatest difficulty availing themselves of it:

The conception of human rights based upon the assumed existence of a human being as such broke down at the very moment when those who professed to believe in it were for the first time confronted with people who had indeed lost all other qualities and specific relationships – except that they were still human. The world found nothing sacred in the abstract nakedness of being human.<sup>10)</sup>

There is a tragic irony here. Although the UDHR, as well as earlier documents, like the French Declaration of the Rights of Man, ostensibly accord rights simply on the basis of an individual's humanity, those rights are notoriously difficult to exercise for those who find themselves cast out of political community. (Of course, there is more than one way to be cast out of political community. Citizenship can easily be denied to someone in their own country; this was the case with apartheid in South Africa and with German National Socialism; this is surely one of the difficulties of using the idea of "political community" to undergird individual rights – one can be ejected from it so easily.)

But there's more to be said of human rights besides their legal toothlessness, and that is the *cultural significance of their development* – even of their very existence. I want to argue that insofar as international human rights instruments such as the UDHR function to question the legitimacy and unqualified authority of the modern nation-state they represent something quite typical of modernity as a whole. Max Weber's famous "disenchantment" thesis about modernity is well known, although his thesis is only one of many we could choose from. In "Wissenschaft als Beruf" [*Science as a Vocation*]<sup>11)</sup> he lays out the way in which the modern world has progressively stripped both religions and nature of purpose. Neither rainforests nor Rome, Weber suggests, can convincingly tell us about the meaning of things, which resides now not in a transcendent *out there*,

but an immanent *in here*.<sup>12)</sup>

Modernity names a movement of desacralisation, questioning the authority of both church and state, with neither bishop nor king able to command our undying allegiance, certainly not *a priori*, and not without justifications that are public and subject to intersubjective assessment. The UDHR is precisely another manifestation of this signal trend: the modern desacralisation and delegitimation of extant political orders and structures of authority. It's worth reminding ourselves that the modern nation-state was *itself* originally envisaged as a solution to the kinds of tyranny that were often seen to inhere in the exercise of monarchical power. The founding of modern republics is coeval with the de-founding – and desacralisation – of the divine right of kings and the political authority of the church. To clarify: by “desacralisation” I here mean the sense in which what is considered a “sacred” political order loses its legitimacy and eventually its power. Of course, it's not as though the Enlightenment appeared all at once, and so all the extant powers-that-be thus dropped to their knees. The cultural force of Reformation, which preceded the Enlightenment for instance, went well beyond a critique of Catholic hierarchies. But the sacred is something akin to a thermodynamic phenomenon; no sooner is it squeezed out of one domain that it reappears somewhere else, often in entirely different guise. The sacred doesn't always don a nun's habit or priestly vestments.

The sovereign state – the “imagined community” as Benedict Anderson calls it – becomes “sacred” at the very moment that monarchical authority is deposed.<sup>13)</sup> In turn, we can see the emergence of the UDHR as expressing a simultaneous desacralisation of the nation-state in terms of sovereign power, and a sacralisation of the human *qua* human. The assertion of the sacredness of the human individual contained in human rights discourse's is co-extensive with its limitation of the moral (if not legal) authority of the sovereign.

### 3. VIOLENCE AND THE SACRED (AND UTILITY)

Human rights discourse attests – implicitly or explicitly – that there is something sacred, something inviolable and of intrinsic value, in each human life; the citizen is therefore not merely an instrument of the state. (The “sacredness” of the human can be, as it was in the French Rights of Man, expressed in secular terms; much the same could be said of Kant's transposition of the biblical injunction to “do unto others” into the categorical imperative.)<sup>14)</sup> So the question of “sacredness” of the human, for the purposes of this discussion, isn't primarily an ontological claim (or needn't be), but a discursive one – one concerning how we talk about humans and their relationships to the states to which they belong. Writing in *The New York Times Magazine* in 1993, the legal theorist Ronald Dworkin put this very succinctly:

We almost all accept ... that human life in all its forms is *sacred*—that it has intrinsic and

objective value quite apart from any value it might have to the person whose life it is. For some of us, this is a matter of religious faith; for others, of secular but deep philosophical belief.<sup>15)</sup>

The contention here is that the human is worthy of reverence. Each human life is irreducible to utility. If not explicit, such a contention is invariably implicit in the mores and practices of most modern cultures; for instance, even though it would not affect the deceased person – and is, in fact, a “useful” employment of resources – we don’t as a rule use dead people to make animal feed. Again, the sacredness being spoken of here I am not framing as the meta-ethical foundation of human rights but its most natural conceptual-linguistic home.<sup>16)</sup> I will soon attempt to further justify this language in terms of incorporating it within a certain anthropology.

But here there is a problem. If what I’m asserting is even partially true, then what are we to make of Arendt’s observation? If Arendt is correct, and I believe she is, it’s hard to understand in what sense the stateless are treated as if they *were* “sacred.” What gives here? Another option, which I will pursue, will be to reconfigure our understanding of what “sacred” might mean in this instance, and how the “sacrality” of the refugee entails no necessary protection against human rights abuses. We should recall that the sacred can show itself in different guises; the *pharmakos*, for instance – the sacrificial victim of ancient Greek festivals – was certainly sacred, although such an “honour” isn’t one that we’d wish on even our most reviled enemies.

The Italian philosopher Giorgio Agamben has offered a series of analyses centring around the idea of “*homo sacer*” [sacred man].<sup>17)</sup> A designation he finds in ancient Roman administrative law, *homo sacer* is an ambiguous, complex figure. Agamben argues that the designation was given to those who had transgressed the social order in a particular, unextraordinary way, and were thereafter designated (or “interpellated”) at the intersection of a passive incapacity (“cannot be sacrificed”) and a passive capacity (“can be killed”). Agamben asserts that the *homo sacer* somehow existed outside the Roman religious-legal order (ie. he cannot be sacrificed) at the same time that this order could not protect him (ie. he can be killed, and the person who kills him cannot be charged). Far from being an historical curiosity, for Agamben, *homo sacer* is actually the exemplary figure of modern political order. His primary, modern example of *homo sacer* is, interestingly enough, the refugee.

Retaining his example, we can draw parallels that Agamben himself does not: that the social position of the refugee is precisely as the person who has transgressed (“illegal immigrant”) at the same time that this transgression cannot lead to any straightforward sacrificial killing. But is it true, as Agamben suggests, that *homo sacer* – at least in his or her modern incarnation – *cannot* be sacrificed? There are good reasons to doubt it. In Australia, post 9/11, refugees were regularly presented in the media as a threat to national security; language used often to report on refugee arrivals in Australia – even in the so-called “quality press” – mixes the language of asylum and

humanitarian aid with images of sovereign power in the face of war – of “incursions,” “invasions,” and of “assaults” on “Australia’s shores”; of people “massing in Indonesia” and others being on the “front line.”

Over the long term, this militaristic language couldn’t be upheld, and so the talk of the asylum seeker shifted such that a common way of portraying the asylum seekers was to call them “queue jumpers.” As a way to diffuse a serious issue, there could have been fewer better choices. This tended to suggest that citizens should regard these arrivals (coming ashore on substandard boats from unstable countries) as people that might cut in front of you in a lunch queue. With one phrase, three things could be implied: (1) That the issue was trivial, that asylum was akin to being in a line to a service counter; (2) That the asylum seekers were somehow trying to cheat; and (3) That there *was* such a thing as a queue in the country of origin. Readers familiar with even the most basic facts about refugees leaving Syria or Myanmar realize that it isn’t a matter of people minimizing red tape or growing impatient while waiting in a well-ordered queue.

The idea being propagated here was that the asylum seekers were undeserving, unappreciative cheats, and citizens were being magnanimous even in allowing them to sit in our detention cells, where we fed them something and gave them access to toilets. But along with this was a fear, often propagated by the media, that the material conditions of this “hospitality” were scarce and that asylum seekers who complained about treatment were looking the proverbial gift-horse in the mouth. This, of course, is a sentiment not restricted to Australia, and is captured in particularly sharp – and darkly comic – detail by George Saunders:

It’s one thing to be a small country, but the country of Inner Horner was so small that only one Inner Hornerite at a time could fit inside, and the other six Inner Hornerites had to wait their turn to live in their own country while standing very timidly in the surrounding country of Outer Horner.

Whenever the Outer Hornerites looked at the hangdog Inner Hornerites crammed into the Short-Term Residency Zone, they felt a little sick, and also very patriotic. They were glad they weren’t Inner Hornerites. Inner Hornerites were pathetic and whiny and grasping, unlike them, the Outer Hornerites, who for many years had been demonstrating their tremendous generosity by allowing the Inner Hornerites to overflow into the Short-Term Residency Zone. Not that the Inner Hornerites appreciated it. No, they never wept with gratitude anymore, only stood glaring resentfully at the Outer Hornerites, who, having so much room, had no need to stand very close together, and in fact could often be seen drinking coffee at the spacious Outer Horner Cafe with their legs thrown out in the aisles, causing the Inner Hornerites to wonder: Jeez, couldn’t those jerks spare us a couple hundred extra square yards of that vast unlimited

country?

For their part, the Outer Hornerites felt that, yes, okay, their country was pretty big, but it wasn't infinitely big, which meant they might someday conceivably run out of room. Besides, what if they gave more of their beloved country to Inner Horner and some other crummy little countries came around demanding bits of Outer Horner? What would happen to the Outer Horner way of life, which was so comfortable and afforded them such super dignity and required so much space? Well, those Inner Hornerites could take a flying leap if they considered the Outer Hornerites selfish, it was pretty nervy to call someone selfish while standing on land they were letting you use for free.<sup>18)</sup>

But as the public has become aware of the war-torn chaos that characterised almost all of the areas from which the asylum seekers were fleeing, public discourse began to shift to an ostensibly more "compassionate" response, where the policies were justified in terms of the welfare of those thinking of seeking asylum. This was achieved by figuring the detention and harsh treatment of refugees in terms of "sending a strong message" to so-called "people-smugglers," war profiteers understood to be a particularly low form of life, as well as to other refugees who might consider attempting the journey. "Sending a strong message" has since become a kind of refrain. Referring to the 174 children currently held in detention centres on Manus Island and Nauru, Prime Minister Malcolm Turnbull recently declared his "passionate concern for those children":

We are giving their parents every incentive to return to their country of origin, to go to settle in another country, because we know that if we give those people smugglers any marketing opportunity, they will use it, and there will be more deaths at sea and more children put at risk....

There is no way of reconciling this statement – in which the dead bodies of war victims become a "message" delivered to other war victims in order to prevent further casualties – to itself. The logic goes: because of the undesirability of death, we allow people to die in order to prevent people from dying. Ostensibly the message being delivered was Australia's official policy on asylum seekers – but what made the assertion more ethically troubling was that the message was actually the *bodies in the water*. The sustained correspondence in the parliamentary record between the assertion of "sending a strong message" and humanitarian catastrophe suggests that – in this perverse communicational exchange – the bodies of the asylum seekers were indistinguishable from the message itself. (This is itself not unusual, as Marshall MacLuhan and many a Mafia boss – also prone to using bodies as messages – have shown us.)

We can see (in Turnbull's statement, which is characteristic of statements made by the Australian

government over the past 10 years) that the asylum seeker is now cast as a subject of ethical concern; a humanitarian slant has been added to the ostensibly self-evident claims of sovereignty. But the ethical concern – or its orienting logic – is in terms which are irreducibly utilitarian rather than deontological (the normative mode in which human rights discourse usually operates). Injuries to asylum seekers – deaths, disabilities, mental illnesses, etc. – are seen as the unfortunate means by which other asylum seekers can be protected from the same fates, ironically caused by the same authorities. We will sacrifice some of them, it is implied, in order to teach others that they too will be sacrificed.

The language of “sacrifice” here isn’t metaphorical. As Jean-Pierre Dupuy among others have noted, as a normative ethical scheme, utilitarianism shares some striking parallels with religious forms of sacrifice, characterized by René Girard as the process by which a small(er), ostensibly legitimate act of violence is committed to forestall or defer a greater, illegitimate act of violence, thereby re-establishing or maintaining socio-political stability.<sup>19)</sup>

Entailed by Kant’s notion of the “categorical imperative”<sup>20)</sup> is the idea that the person or group who is at least advantage (in a social scene where there is an unequal distribution of advantages) must not be sacrificed simply because s/he is a person – that this would violate a potential victim of some distribution by treating that person as a means to an end and not an end in him or herself. This is the antisacrificial principle behind Rawls’ “original position,” based on Kant’s categorical imperative, where a victim cannot be sacrificed in order to achieve some common good.<sup>21)</sup>

Anthropologically speaking, the fundamental mode of sacrifice is propitiation: the offering up of something, the destruction or negation of something, in order to prevent further calamity. In this sense sacrifice “contains” violence in both senses of that term: it limits or restricts violence at the same time that it is characterized by it.<sup>22)</sup> Following from this we can make the following claim: contrary to Agamben’s assertion, in Australia at least, the asylum-seeker – *homo sacer* – actually is sacrificed, although that sacrifice putatively operates outside the domain of the “sacred” – under the aegis of rationality rather than the exuberant excesses characteristic of a ritual sacrifice’s climax.

#### 4. WHO IS MY NEIGHBOUR?

Yet the sacrifice (or “sacrifice”) of innocents only “works” unproblematically, runs smoothly, in the absence of witnesses. As soon as the state’s monopoly on violence, or rather, its capacity to establish itself as good violence, as the embodiment of rationality, is questioned – as soon as the legitimacy of the state falls under scrutiny – the legitimacy and efficacy of sacrifice is diminished; it loses a degree of its sacrality. The fact is that the UN Declaration is not a treaty – and nor is the “International Bill of Rights” enforceable in any straightforward way. (The ad hoc committees

formed around the horrendous situation which developed in the former Yugoslavia (1991-2001) [the so-called “ICTY”] *reflect* this point rather than *refute* it.) As yet, the refugee cannot make efficacious appeals through courts, but perhaps, ultimately, sadly, only through images.



The image of three-year-old Alan Kurdi's body on a beach near Bodrum, Turkey, on 2<sup>nd</sup> September, 2015 created an international media storm. As is often the case in our mediatized world, this image did more to change foreign policy on Syrian refugees than the harrowing statistics and analyses previously available had done. French President François Hollande, Irish Prime Minister Enda Kenny, and British Prime Minister David Cameron all made impassioned public statements about the image; donations to aid agencies surged.

The publication of this image is now widely considered a “game changer” with respect to Western countries' attitudes towards Syrian refugees. It galvanized an outpouring of compassion, which – although itself neither justice nor action – may prompt justice and/or action in the future. It also put the lie to the extant principles behind Australia's refugee policy: the death of this child, like any child, resists recuperation in utilitarian or sacrificial terms. The death of Alan Kurdi failed as a sacrifice, at least in Australia, because it undermined the legitimacy of the Australian government's “message”; it was at this moment that anything that is truly universal about human rights was shown, but precisely as the universal appearing in the particular, the abstract in the painfully concrete.

If the image does prevent any further casualties, we should hope that it would be the result of humanitarian efforts to assist refugees, and not because of its intrinsic, sacred capacity to

temporarily defer violence. But if utilitarianism, at least utilitarianism alone, cannot supply an adequate ethical framework for the refugee crisis, perhaps the very language of “rights” – and not simply their implementation – is also inadequate. If rights becomes so ectoplasmic they can fit all phenomena indifferently, perhaps we need to look elsewhere. Indeed, the notion of rights, when looking at the picture of Alan Kurdi, seems wildly out of place. In a Wittgensteinian sense, it does not seem to do justice to the fate of this child by claiming that “his rights were not upheld”; there is somehow something aloof, even disrespectful, about applying this universalist, quasi-cosmopolitan language to such tragedies. The Kurdi family itself never spoke in terms of “we want to publicly note that our rights here have been ignored,” but rather “our family has been devastated.” The ethical appeals here are very different, and perhaps not merely of “rhetorical” significance.

What we see at work in an age of massive displacements of human beings is a delegitimised nation state emerging in the absence of a legitimate political order to replace it. A standoff raged not so very long ago that appears odd – even quaint – from a distance. It concerned whether one was *for* or *against* something called “globalisation.” The heights of this standoff (calling it a “debate” adds perhaps more cognitive content than is warranted) most likely occurred in 1999 at the World Trade Organisation’s Ministerial Conference at the Washington State Convention and Trade Center in Seattle. Although estimations of numbers aren’t exact, it is thought that more than 40 000 protestors were in attendance, obstructing roads and causing myriad forms of minor chaos. Those in attendance were called, often by themselves, “anti-globalisation” protestors; and analysis that followed often mimicked these terms:



The point is not that the issues being foregrounded by the protestors were invalid: it's that, from a short historical distance, we can see that it is not *globalisation* that is at issue at all. One cannot choose to *refrain* from globalisation in any strict way. This is not a defence of the practices of the WTO or any particular configuration of global capitalism; the question here is not whether we want globalisation or not, but what it might look like.

I refer here not simply to global trade and market regulations, but the fact now that the issues we all face are inherently global issues, not ones of nation states – or at least not primarily ones exclusive to nation states. The issues of mass migration and refugees have parallels elsewhere and so is not unique in this respect; one does not stop an oil spill at the border and ask to see its passport; the aftermath of the Fukushima accident is still being felt, as cesium-134, cesium-137, and strontium-90 continue to gush into the Pacific Ocean. And there is no successful way of attracting the attention of a well-propagated genetically modified plant and asking it to come home to the laboratory. Birds, who often carry the seeds of such plants in their intestines, are as respectful of national sovereignty as they are of windshields.

So what are we to do? I will suggest two answers – a theoretical one and a practical one. Here I'm obliged to speak exclusively about the Australian case, given the particularities these sorts of situations always involve. A quick note, first, about the impact of detention on asylum seekers. A 2013 issue of the *Medical Journal of Australia* focused its attention

In the editorial of an 2013 issue of *The Medical Journal of Australia*, Gillian Triggs – President of the Australian Human Rights Commission – once again raised the issue of the extraordinarily deleterious effects of Australia's current immigration detention policies on inmates mental health in Australian detention centres. The effects of detention on asylum seekers is now beyond serious dispute. Triggs' suggestion was a simple one:

The Commission has long recommended that the Australian Government increase the use of community detention and bridging visas to reduce the numbers of asylum seekers in closed detention. In the 2012–13 financial year, 88% of asylum seekers who had arrived by boat and lodged asylum applications were found to be refugees and were granted permanent residency in Australia. It therefore makes much better sense, and is more humane, to adopt these strategies to ensure that asylum seekers can lead healthy lives in the future.<sup>23)</sup>

What needs to occur is a quite radical re-figuring of the nature and ambit of the UDRH, ensuring it reflects current geopolitical and environmental circumstances. As it stands, for instance, the UNHDR simply does not adequately take into account the impact of natural disasters, civil war, and collapse of the state.<sup>24)</sup>

However, as a philosopher I'm not satisfied stopping the analysis here with "solutions," as these need to be undergirded by an ethical framework in which they are justified and seen to be so. One theoretical possibility – as counter-intuitive as it might sound – lies in the "neighbor principle," as is often articulated in applications of the modern law of negligence, although it needn't require this legal framework for its context. There are additional options.

In a parallel way – in *Le Sacrifice Inutile* – Paul Dumouchel convincingly argues that we needn't follow Hayek in suggesting that our conceptions of justice must be tied to the deliberate actions of individuals; we may still seek forms of redress even where no individual can be held responsible for the suffering he or she undergoes in cases where this suffering *is* the result of people's actions even when no one in particular – or, more importantly, the omission of actions. Dumouchel's argument entails that those worst off as a result of the weakening of solidarity bonds between people characteristic of modernity are deserving of redress. "The kind of violence they suffer is a kind of *violence by omission* that certainly does flow from human actions, even though very often it is the deed of no one in particular."<sup>25)</sup>

The "neighbor principle" demands that we owe a duty of care to those who may foreseeably be harmed by our actions and omissions, including our actions or omissions towards strangers. And here I'd add this as a citizen of Australia, that perhaps those who come to our shores to seek asylum, however they come, *are* our neighbors: they are at our mercy, and our ethical obligation to them exceeds our obligation to those who might risk their lives in future by coming to our country. We may need to countenance what the shrinking of the world through globalization entails – that anyone may, either now or sometime in the future, become our neighbor.

## Notes

- 1) Michael Marrus, *The Unwanted: European Refugees in the Twentieth Century*. Oxford: Oxford University Press, 1985, p. 5.
- 2) Bob Hodge and John O'Carroll. *Borderwork in Multicultural Australia*. Melbourne: Allen & Unwin, 2006.
- 3) Prime Minister John Howard, 'Transcript of the Prime Minister the Hon John Howard MP Address at the Federal Liberal Party Launch Sydney' (28 October 2001) <<http://australianpolitics.com/news/2001/01-10-28.shtml>>
- 4) In Australia, the two traditional political parties are the left of centre Labor Party and the right of centre Liberal-National coalition.
- 5) The legislation involved here includes the *Migration Amendment (Excision from Migration Zone) Act 2001* and the *Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Act 2001*. See *Migration Amendment (Excision from Migration Zone) Act 2001 and Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Act 2001*.
- 6) The Migration Legislation Bill of 2012 was defeated in parliament, but – if passed – would have let Australia send asylum seekers to Malaysia. Part of the reasoning here, many argued, was that a potential asylum seeker would be dissuaded from coming to Australia if they knew that they would be transported to

Malaysia, given the perceived harshness of the Malaysian detention system. This policy had international precedent; for instance the US transported Haitian refugees to Guantanamo Bay in 1990s in a similar manner. What we see here is the creation of “anomalous zones,” where ostensibly fundamental rights and legal principles like *habeas corpus* are suspended.

- 7) Gillian Triggs. “Mental Health and Immigration Detention.” *Medical Journal of Australia*. 199. 11 (2013): 721-722.
- 8) United Nations Human Rights Committee. *F K A G et al v Australia*. 2013, paragraphs 9.4 and 9.8. (Communication No. 2094/2011; UN Doc. CCPR/C/108/D/2094/2011); United Nations Human Rights Committee. *M M M et al v Australia*. 2013, paragraphs 10.4 and 10.7. (Communication No. 2136/2012; UN Doc. CCPR/C/108/D/2136/2012.)
- 9) Paul Dumouchel, *The Barren Sacrifice: An Essay on Political Violence*. (tr. Mary Baker) East Lansing : Michigan State University Press: 2015. xi; 31-60.
- 10) Hannah Arendt. *The Origins of Totalitarianism*. London: Harvest, 1968. 299.
- 11) “Wissenschaft als Beruf,” *Gesammelte Aufsätze zur Wissenschaftslehre* (Tübingen: Duncker & Humblodt, 1922). 524-55.
- 12) Parallel – albeit not identical – arguments could also be derived from modern thinkers such as Descartes and Hobbes.
- 13) Carolyn Martin and David W. Ingle. “Blood Sacrifice and the Nation: Revisiting Civil Religion.” *Journal of the American Academy of Religion*. LXIV.4: 767-780. See also Robert N. Bellah, “The American Civil Religion,” *Daedalus* 96 (Winter 1967): 1-21, and Robert N. Bellah and Phillip E. Hammond, eds., *Varieties of Civil Religion* (San Francisco: Harper & Row, 1980). Supposedly “secular” governments – from the early French republic to the autocratic rule in North Korea – exhibit numerous features which one would normally think of as consummately religious. For instance, the French *Culte de la Raison* which emerged after the revolution had a number of cultural expressions, including the *Fête de la Raison*, which was a public act of worship (of reason) which took place before “altars of liberty” and included girls clad in white Roman dress and tricolour sashes who swirled around an appointed Goddess of Reason who “impersonated Liberty” for the worshippers present. See, for instance, Charles Lyttle, “Deistic Piety in the Cults of the French Revolution.” *Church History* 2.1 (1933): 22-40.
- 14) And this is true even if such discourse (human rights) is often invoked merely to advance particular geopolitical aims – the invasion of other states in order to protect “human rights.” Even the most aggressive – or “hawkish” – foreign policy markets itself as standing up for victims.
- 15) Cited in Michael J. Perry. *The Idea of Human Rights: Four Inquiries*. New York and Oxford: Oxford University Press, 11.
- 16) I am not arguing that the task of supplying a theistic – or otherwise religious – metaethics is a useless task – merely that my argument here doesn’t rely on any metaphysical claims about human personhood; my argument takes place at the level of the ways in which talk about the human is commonly conducted, not at the level at which one might want to supply philosophical justifications for the ontological validity of such language, which – for the most part – exists independently of any such justification.
- 17) Giorgio Agamben. *Homo Sacer: Sovereign Power and Bare Life*. Trans. Daniel Heller-Roazen. Stanford, California: Stanford University Press, 1998.
- 18) George Saunders. *The Brief and Frightening Reign of Phil*. London: Bloomsbury, 2005. 1-2.
- 19) René Girard. *Violence and the Sacred*. Trans. Patrick Gregory. Baltimore: Johns Hopkins University Press, 1977.
- 20) Immanuel Kant. *Groundwork for the Metaphysics of Morals*. Ed. and trans. by Allen W. Wood. New Haven

- and London: Yale University Press, 2002. 4: 429; 4: 436.
- 21) Paul Ricoeur, *Le Juste*. Paris: Seuil, 1995. 86. Cf. Ricoeur, "John Rawls: de l'autonomie morale à la fiction du contrat social." *Revue de Métaphysique et de Morale*, 95e Année, No. 3 (Juillet-Septembre 1990), pp. 367-384.
- 22) Jean-Pierre Dupuy. *The Mark of the Sacred*. Trans. M.B. Debevoise. Stanford, California: Stanford University Press, 2013. 4-5.
- 23) Gillian Triggs. "Mental Health and Immigration Detention." *Medical Journal of Australia*. 199.11 (2013): 721-722.
- 24) One possible way of re-working the UNHDR is to look at the way in which the Organisation of African Unity has framed its own charter, where the rights of asylum seekers is not played off against modified conceptions of national sovereignty, and the principle of non-refoulement is putatively upheld. See: <http://www.au.int/en/history/oau-and-au>
- 25) "L'injustice dont ils souffrent est une *violence par omission*, qui relève bien des conduites humaines, même si elle n'est très souvent le fait de personne en particulier." Paul Dumouchel, *Le Sacrifice Inutile: Essai sur la violence politique*. Paris, Flammarion: 2011. 70.