Ethics and Exclusion
The Placement of Asylum Seekers in Domestic Policy

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'The protection of our sovereignty, including Australia's sovereign right to determine who shall enter Australia, is a matter for the Australian government and this parliament' (Howard 2001).

This quote indicates how the logic of sovereignty as the 'right to exclude' drives domestic policy. This essay shall discuss how politics has produced an exclusionary understanding of what is normatively humane and how this ontology has rendered asylum seekers absent from societies consciousness. For the purpose of scope, Australia's domestic policy and political rhetoric is of particular relevance. This shall be linked to a broader discussion about the critical tension between foregrounding a nations security over a human security imperative. Analyzing the asylum policies of a comparative state shall follow this. The overall position being advocated is that when a state conflates the issue of asylum seekers a matter of national security it renders those most vulnerable, invisible.

Before proceeding, we must consider the vexed question of what an asylum seeker is. On a superficial level, an asylum seeker is recognized as an individual who is seeking international protection, but whose claim for refugee status has yet to be ascertained (Australian Government 2011: 2). Article 14 of the *Universal Declaration of Human Rights 1948*, *1951 Refugee Convention* and the *1967 Protocol Relating to the Status of Refugees* delineates that states have both a legal and ethical obligation to recognize that everyone has the right to seek and enjoy in other countries asylum from prosecution. However, empirical evidence suggests that these institutionalized protections are riddled with limitations. Given that the treatment of asylum seekers is left to the discretion of the state, there is a fundamental gap between praxis of international humanitarian law and its impression on domestic policy.

The lives of asylum seekers are innately precarious. Asylum seekers are individuals who require a new state of residence as a result of their own state failing to provide access to vital subsistence needs and physical protection (Gibney 1999: 171). Articulated by Hannah Arendt, asylum seekers are 'the most symptomatic group in contemporary politics' (1973: 277). Immigration policy explicates the notion that 'certain lives are perceived as lives, whilst others, though apparently living, fail to assume perception form as such' (Butler 2009: 3). These theorists draw to the epistemological problem of states producing exclusionary policies that have rendered asylum seekers absent from societies consciousness.

Normalizing the discourse of 'othering' has transmitted the idea that asylum seekers are people without rights and therefore outside the rule of law. Grounded in realist understandings of the state, the positioning of asylum seekers as a threat to the nation is consistent with the securitization framework (McDonald 2008: 25; Waever 1996: 56). This narrative is grounded in the assumption that through the exclusion of migrant populations, a homogenous community is achievable. Given that migrant populations encompass the identity of many states, the credibility of this argument is contested.

Asylum seekers are quintessentially victims of the state system. Asylum seekers are externalities to the continuing phenomenon of failed states. This alludes to the ultimate paradox. Whilst the state is seen as the fundamental purveyor of security, it often fails to fulfill its own security obligations; and at times is the source of the threat for its own people. Human security is contrasted to national security as it repositions the individual as the primary referent of security (Newman 2001: 239; Thakur 2004: 347). Whilst the logic of appropriateness may concede that we should prioritize humanitarian concerns, empirical evidence suggests that these issues are often made secondary to the logic of the state.

The question of asylum seekers in Australian domestic policy requires discussion. Since Federation, sovereignty has been conceptualized as the 'right to exclude'. Through the *Immigration Restriction Act 1901* specifically the 'White Australian Policy' the government has mobilized a widespread, visceral fear that Australia's national identity was 'under – attack' (Devetak 2007: 103). Popular rhetoric

mobilized by the state is augmented by vocabulary that dehumanizes individuals of varying race. Identifying legitimate asylum seekers as 'unlawful non – citizens' (Crock et al 2002: 1) 'illegal aliens' (Schuster 2011: 1329) and 'queue jumpers' (Tazrieter 2004: 272) indicates the xenophobic mentality that permeates Australia's domestic policy. These views imply that asylum seekers are not permitted to enter a state without prior authorization. The reality is that Article 31 of the *1951 Refugee Convention* enables individuals to seek asylum in another state. Additionally, evidence collated from 2013 suggests that 90 per cent of all claims received by Australia were valid (ASRC 2013A: 29). Former Secretary of the Australian Department of Immigration observes that the framing of asylum seekers was an intentional 'invention by bureaucrats in Canberra' (Maley 2000: 354). Further, the polity has constructed a reality that deems asylum seekers invisible from societies consciousness.

The policies of Australia indicate the explicit disenfranchisement of asylum seekers. Section 198 of the *Migration Act 1958* regulated the government's duty of care to act in the best interests of asylum seekers. The *Migration Legislation Amendment Bill 2012* expunged this obligation. Repudiating its obligations as a signatory nation, the inclusion of s198AA amended the prior statute to provide the Minister the discretion to designate processing responsibilities to an alternate country, regardless of their domestic policy or their international obligations. This Bill was not accompanied by a *Statement of Compatibility,* which assesses whether the legislative instrument is compatible with international human rights treaties. Obiter expressed in *Plaintiff M106 v Minister for Immigration* voiced concern as to whether asylum seekers would be treated appropriately. Despite this, the statute prevailed under parliamentary sovereignty.

Nonetheless, it is inferred that the legislative reform in 2012 of s 198 of the *Migration Act* was removed on the basis of the government constructing a reality that rendered asylum seekers invisible. Evidence from 2011 validates this claim. Statistics indicate that approximately 60 000 tourists and temporary migrants who overstayed their visas, willfully failed to approach authorities to regularize their status as migrants living within Australia's territory (DIC 2011A: 152). Within the same year only 11 491 asylum seekers sought the protection of Australia's security (DIC 2011B: 3).

Paradoxically, political rhetoric during this context suggests an alternate, albeit factitious reality. This example explicates how policy is socially constructed, malleable to the majority beliefs of the state (Gibney 2004: 175; Weiner 1992: 103). As 'culture permeates policy decisions' (Palmer 2008: 307) a culture of 'othering' transmitted by the polity garnered enough impetus to reform policy and further disenfranchise asylum seekers.

The construction of alterity has reproduced a narrative that seeks to place the nation as the primary referent at the expense of the agency of 'others'. This is explicit in statements made concurrent to the introduction of Australia's first offshore processing policy. Statements made in Parliament as 'Australia…being overrun with large numbers of asylum seekers' (House of Representatives 2002: 3597) indicate the misconstrued framing mobilized by the polity. As Australia accepts a disproportionately smaller number of asylum seekers in comparison to other states, this argument lacks persuasion (ASRC 2013B: 23; Koser 2011). Human Rights Watch stated that Australia 'has damaged its record and its potential to be a regional human rights leader by persistently undercutting refugee protections' (2014: 292). Maley responds to these critiques by articulating the sobering reality that 'politicians who demonize asylum seekers are playing with people's lives' (2000: 192). Further with more than 60 per cent of asylum seekers detained displaying high levels of psychological distress (Silove 2000: 606) it is questionable whether omitting the calculation of human rights in domestic policy is of any utility.

Proponents justifying Australia's present asylum policies may respond to these claims by arguing that accepting an increased number of asylum seekers would place an unreasonable onus on Australia's judiciary by diverting tax-payer money to services ancillary to the immediate benefit of its citizens. However this claim lacks validity. There is no clear correlation between a state accepting an increased number of asylum seekers and a decline in the quality of services provided to its onshore citizens (Yu 2003: 14). Statistics rather suggest that offshore processing is a more expensive procedure than processing asylum seekers on the mainland (ASRC 2013A: 33).

Proponents may also suggest that asylum seekers may pose security risks to Australia's population. Evidence suggests an alternate truth. Whilst asylum assessments represent a mere 0.8 per cent of all security checks undertaken by ASIO (ASRC 2013A: 9) findings within a ten – year period indicate that out of all asylum seekers assessed, only 0.003 per cent were deemed a security risk (ASRC 2013B: 2). It is valid to conclude that the probability of asylum seekers posing a security threat to Australia is 'infinitesimally small' (McKinley 2009).

The Coalition's 'Operation Sovereign Borders' and past offshore processing solutions, such as the 'Pacific Solution' and the 'Bali Process' were justified as providing a policy framework that combatted the people smuggling trade, concomitantly deterring people from making the dangerous journey to Australia. Whilst this reasoning is of some merit, it remains unsound to repudiate Australia's international obligations and export legitimate asylum seekers to another country. Not only is towing a vessel containing asylum seekers, a significant incursion on another nations sovereignty; but it also rejects the international norm of non – refoulement. Whilst it is within a states jurisdiction to mobilize immigration policies, the negative externalities arising from disenfranchising asylum seekers encumbers the rule of law.

The counter argument to these claims recognizes that the state must manage both internal and external threats. Accordingly, section 61 of the Australian Constitution provides that the Government has the right to determine the movement of non – citizens throughout its borders. This thinking has barred asylum seekers access to Australia's territory. Describing the state as an autonomous center of political authority (Reus – Smit 1999: 159) would be to adopt a reductionist understanding of the present international order. Processes of globalization have challenged the suitability of the Westphalia conception of sovereignty, whereby the international community is demarcated by territorial boundaries. If Australia welcomes the movement of goods, services and capital, it would be inconsistent to restrict the movement of those most vulnerable.

Further these conclusions have limited application, as they have been consequential on the policy analysis of just one state. As the processes of a state are sufficiently amorphous, it would be imprudent to assume that the aforementioned inferences could suggest a universal trend.

This essay shall now analyze the asylum policies of a comparative state, Pakistan. Classified as a developing nation, this state is exponentially larger in population, yet substantially smaller in geographical size and GDP. Despite this, Pakistan operates a more exemplary asylum policy than Australia. UNHCR published data earlier this year indicating Pakistan as the largest host country to refugees worldwide (2014). This evidence implicitly problematizes the assumption that a correlation exists between the financial capacity of a nation and their willingness to assist asylum seekers. Rather, it is instead asserted that the political impetus of the state to recognize and prioritize the rights of asylum seekers is the catalyst for maintaining the human rights of these individuals.

Contending arguments would posit the importance of recognizing that the situation in Pakistan is not analogous to that of Australia. With the exception of the southern coastline, Pakistan is a land – locked nation, not facing the increased security threat that Australia as an island, with a larger land mass and coastline must face. Comparative to Australia, Pakistan receives considerable donor support from the broader international community to assist with domestic asylum policies (CDG 2014). Australia is one of these contributing nations, providing an estimated 81 million each year to supplement development strategies (OECD 2013). Given the financial contribution of the international community, it is credible to postulate that the state would be more inclined to assist non – citizens. Not only that, but Pakistan concurrently contributes to the plight of individuals. In June earlier this year, 450 000 citizens fled the nation to neighbouring Afghanistan (Dominguez 2014). Moreover, this example illustrates how domestic policy is relative to the circumstances of the state and how the polity chooses to frame certain issue.

To understand the placement of asylum seekers in domestic policy, it is necessary to consider the theoretical framework that guides the normative ontology of states. Whilst it is impractical to conceive the multifarious processes of nation states in static

terms, to assist comprehension for this essay it is necessary to assume that state processes can be categorized into simplistic entities. The following shall first identify what the realist perspective is, followed by providing a feminist critique to this theory.

Whilst all theorists prescribe to a varying construction of reality, definitions tend to revolve around determining the primary referent security object. States operating within a realist construct would prioritize national security (Buzan 2010: 432; Krasner 1996: 115; Waltz 2000: 7). A feminist lens would critique this ontology as reductionist, highlighting how the realist processes of state diplomacy disadvantage the marginalized individuals within society (Sylvester 1997: 14). Reaffirmed by Holmqvist (2013: 538) and John Herz (1950: 157) who maintain that the self – help attempt of states to prioritize their security needs, largely neglects the human experience. Krasner interprets this behavior of states as 'organized hypocrisy' (1983: 3) where the presence of a vulnerable individual is peripheral in a states domestic policy. Politics have produced and maintained an exclusionary conception of what is normatively humane and to this account implicates who is afforded the rights and protection of the state system. Further the transmission of the 'othering' of asylum seekers in political rhetoric and domestic policies has had significant ethical and political implications.

This conclusion, whilst normalized by domestic policy is hinged on the flawed assumption that the concept of national security and ethical calculations are mutually exclusive. This realist ontology is fundamentally reductionist. We are not operating within an 'ethically and uniquely Hobbesian world order' (Odysseos 2002: 405). International institutionalized efforts, whilst limited in efficacy, are implicit of a larger multilateral effort to prioritize the rights of the individual. Instead, it is necessary to recognize the capacity of the polity in framing a particular narrative. Upon these grounds, it is critical that states are complacent with their human rights obligations and seek emancipatory policies that identify the rights of asylum seekers who have been disenfranchised by the state system. The approach for states to sensibly take is to recognize that policies ought to embrace humanitarianism, recognizing that national and human security imperatives are operative together. Corroborated by Kaldor 'human security compliments state security' (2007: 196).

This essay has demonstrated how the production of exclusionary asylum policies has rendered asylum seekers invisible from societies consciousness. By drawing to Australia's legislation and political rhetoric it was demonstrated that conflating asylum seekers as a matter of national security, disregards the rights of those most vulnerable. The example of Pakistan was utilized to highlight the ability of politics to transmit a particular reality. Only when ethical considerations are recognized as a supplementary calculation to national policy, can those who were previously disenfranchised by the state system be emancipated and brought into the fore and out of the shadows of politics.

Word Count: 2517

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