

Do Foreigners Have the Same Human Rights as the Rest of Us?

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Abstract

At the core of human rights is the axiomatic truth that human beings have inherent rights: that all human beings are equal and possessed of dignity and that violation of such rights is both morally offensive and legally impermissible. An alternative ordering of human relationships is mandated by exclusive national citizenship. Implicitly and explicitly national citizenship counsels the primacy of the privileged ‘citizen’ over the ‘non-citizen’ ‘other’. Everywhere we see the manifestation of this ordering in gross, systematic and widespread human rights violations: in our laws, practices, attitudes and media. Some of ‘us’ are the privileged beneficiaries of those violations: and we violate the human rights of foreigners as if it were the most natural thing in the world.

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Introduction¹

We live in a world which proclaims that all human beings are born free and equal in dignity and rights, that all are endowed with conscience and entitled without discrimination to certain fundamental human rights.

On the foundation of this idea an extensive edifice of laws, institutions and human endeavour has been built. Each of us is a beneficiary of this undeniable progress in human society. But we are beneficiaries unequally, for we also live in a world where 27 million people still live in slavery,² where 925 million are malnourished,³ where genocide punctuates history, where racism still plagues our relationships and political systems, where women are denied human rights to some extent everywhere and profoundly in some places and where the benefits of historically unimaginable technologies are available to billions but effectively denied to equal numbers.

Parallel to, but even more powerfully than, the legal and organisational structures of human rights, are the legal, administrative and military structures of the nation-state built upon and dedicated to the maintenance and promulgation of exclusive national citizenship and priority.

While these two structures have always been in tension, 'foreignness', and its abolition, is in the 21st century a pivotal human rights issue. By 'foreignness' we mean the treatment of our fellow human beings as 'foreigners': that is, violating their inherent human rights because they do not hold a citizenship status, or lesser right (such as residency), which we might recognise as entitling them to equal treatment. While human practices such as colonialism, slavery, segregation, gender discrimination and racism were the primary modalities of human oppression in previous centuries, in this century discrimination against non-citizens has displaced them as a primary justification on which hierarchies of privilege are constructed and in the name of which human rights violations are perpetrated.

The methods we seek to apply are those which come from the human rights movement. These methods teach us that insight is grounded in the experience of advocacy itself, leading, we hope, to action in the cause of human rights. While we could appeal to the words of the opening article of the Universal Declaration of Human Rights as authority for such an approach and say that all human beings are endowed with 'conscience' and 'should behave towards one another in the spirit of brotherhood', to seek written authority would be to miss the point: for men and women have struggled in the cause of human rights long before they were embodied in clearly stated language. They did not need a written document such as the Universal Declaration to have 'knowledge' of the need to struggle for the realisation of human rights.

¹ An outline of this paper was first presented at the Thirteenth Australian and New Zealand Society of International Law Conference, 24 June 2011.

² Free the Slaves, <http://www.freetheslaves.net/Page.aspx?pid=301>

³ Food and Agriculture Organisation, <http://www.fao.org/hunger/en/>

Looking to the history of the human rights movement – particularly the account of those who worked against colonialism, slavery and racism – brings inspiration. Yet human rights advocacy has always been about the possibility of an imagined future.

The future we imagine in this paper is one in which the human spirit has overcome the division between ‘foreigner’ and ‘native’ – where our national citizenship has no more moral or legal significance than our city of birth.

Returning to the roots of the human rights movement

In his oration *Race and the Right to be Human*, Paul Gilroy argues that we need to find a new genealogy of human rights – that we need to trace it to its roots in the struggle against colonialism and slavery. Gilroy reflects on the tools that those found in this alternative genealogy deployed – among them *shame* and *sentimentality*. He underlines the centrality of questions of race in the evolution of human rights – and the struggle to assert a shared and equal humanity against the barriers of race, gender and class that the evolution of human rights confronted. From this viewpoint, universal human rights emerge not so much from idealised western philosophy, or from the uninterrupted moral ascent of the liberal nation-state, but from the agony of human experience in the contact zones of colonialism, slavery and the struggle to vindicate racial equality. (Gilroy 5-7)

We need only to look to the historical agony immediately preceding the Universal Declaration of Human Rights (as recorded in its preamble) as support for such an alternative genealogy.

While we will not trace this alternative genealogy fully, even a cursory examination of the work of these early human rights advocates is illuminating.

Bartolome de las Casas

Bartolome de las Casas is little known among modern human rights workers.⁴ He lived in the Spanish Empire in the sixteenth century: the superpower of his time. He campaigned against the enslavement and colonisation of the American Indians. While he was initially a participant in the colonial process, arriving shortly after colonisation began, early in his time in the Americas he raised a rare European voice against what was happening. How he worked against such colonial practices is a case study in early human rights advocacy. He used his office as a Dominican priest (later bishop) and the indefatigable energy of a lifetime to undertake this work. In the appeal he makes to his own society against the profound moral abuses that colonialism involved, he begins with the fact of human suffering, its injustice and the venality motivating and enabling colonial exploitation and abuses.

So as not to keep criminal silence concerning the ruin of numberless souls and bodies that these persons cause, I have decided to print some, though very few,

⁴ Though he is undoubtedly better known among Spanish speaker.

of the innumerable instances I have collected in the past and can relate with truth, in order that Your Highness may read them with greater facility. ...

The daring and unreasonable cupidity of those who count it as nothing to unjustly shed such an immense quantity of human blood, and to deprive those enormous countries of their natural inhabitants and possessors, by slaying millions of people and stealing incomparable treasures, increase every day; and they insist by various means and under various feigned pretexts, that the said Conquests are permitted, without violation of the natural and divine law, and, in consequence, without most grievous mortal sin, worthy of terrible and eternal punishment. I therefore esteemed it right to furnish Your Highness with this very brief summary of a very long history that could and ought to be composed, of the massacres and devastation that have taken place. (Brevissima Relacion in MacNutt, 262-263)

Las Casas not only bears witness to tortures and atrocities that he himself witnessed, he also records, in hundreds of specific accounts, the character of the systematic exploitation and extermination of the Indian population, towns, cities and civilisation as a whole. His record is a horrifying account of human cruelty and devastation. The following, for example, is an account of typical method employed by the conquistadores.

[This great tyrant] began to commit the usual cruelties and wickedness as all there are in the habit of doing, and much more besides, to obtain the object they hold as God, which is gold.

11. He burnt the towns, captured the lords, tortured them—made slaves of everybody he captured and led numbers away in chains. Women just confined were loaded down with the baggage they carried for the wicked Christians and, not being able to carry their infants for fatigue and the weakness of hunger, they threw them by the roadside where numbers perished. ...

13. Among many other free people he unjustly caused to be marked as slaves, were four thousand five hundred men, women, and nursing children of a year old; others also of two, three, four and five years old, although they went forth peacefully to meet him; there were numberless others that were not counted.

14. When the countless iniquitous and infernal wars and massacres were terminated, he laid all that country under the usual, pestilential and tyrannical servitude to which all the tyrant Christians of the Indies are in the habit of reducing these peoples. In which he consented that his own major-domos and all the others, should use cruelty and unheard of tortures to extract gold and tribute from the Indians. (Brevissima Relacion in MacNutt, 309)

The foregoing perspective is not, needless to say, the usual account of European arrival in the Americas. Such violence and theft is ordinarily transmuted into courage and genius, the same facts applauded, sanitised, mythologised and voided of moral content.

Las Casas addresses an issue that remains central today – and central to the question of how we treat people identified as ‘foreigners’. He was addressing how groups of human beings should relate to each other – how, specifically, Spaniards and Indians should relate to each other, in this time and place when European colonialism began. His solution, informed not only by his world view, was that humanity is one:

All the races of the world are men, and of all men and of each individual there is but one definition, and this is that they are rational. All have understanding and will and free choice, as all are made in the image and likeness of God. Thus the entire human race is one. (Las Casas cited in Carrozza, 293)

To conclude that his view is particular, because informed by his Christian intellectual tradition, or to fail to appreciate that his conclusion was as much informed by his direct experience and admiration of the people of the Americas, would fail to appreciate the universality of the insight he expresses. The unimaginable toll of human suffering that has flowed from the opposing doctrines that have sought to divide humanity in different ways is so great as to beggar imagination. Colonialism continued for 400 years after Las Casas. Racism, reaching its peak in the scientific racism and anti-Semitism of the Holocaust, has caused modernity to lose faith in humanity itself. Women have struggled for more than a century to throw off the millennia-long subjection imposed on them.

Today the primary victims of the human tendency to divide into ‘us’ and ‘them’ are people labelled “non-citizens”, “foreigners”, “aliens”.

Las Casas is also of interest because of his pioneering work in the field of human rights advocacy. He is credited with framing the struggle for the welfare of the peoples of the Americas in terms of their rights. He was an early, if not the first, proponent of natural rights. His views were grounded in equality and a rejection of arguments for inequality advanced by his contemporaries. His position leads to both universality of rights and their inherence in the human person. (Carrozza, 291 et seq)

As Carrozza observes:

What distinguishes Las Casas from his contemporaries is his combination of speculation and experience, his engagement in practice with the struggle for justice. He never set out to reason in the abstract about the duties and rights associated with the Spanish presence in the Indies, but instead formed his understanding of the requirements of justice in the crucible of action and in the face of a lived necessity; in this way he also foreshadowed the typical dynamic of how human rights thinking developed in the 20th century. (Carrozza, 291-292)

Some abolitionists

Angelica Grimke was one of a generation of women activists in nineteenth century United States who worked for the abolition of slavery. Her work led her into the cause of the emancipation of women. In 1838 she wrote:

The investigation of the rights of the slave has led me to better understanding of our own. I have found the Anti-slavery cause to be the high school of morals in our land—the school in which human rights are more fully investigated and better understood and taught, than in any other. Here a great fundamental principle is uplifted and illuminated, and from this central light rays innumerable stream all around. Human beings have rights, because they are moral beings: the rights of all men grown out of their moral nature, they have essentially the same rights. (Grimke cited in Gilroy, 10)

Abbey Foster Kelley, another woman abolitionist, puts it more poignantly.

In striving to strike off his chains, we found most surely we were chained ourselves. (Kelley cited in Lauren, 49)

These activists offer the insight that learning and action need not be separate spheres, but rather that insight emerges from action in unanticipated and invaluable ways.

Thomas Clarkson, a leading British abolitionist, responding to the suffering of the slave trade, also refers to the idea of the moral nature of the human person – highlighting the denial of the idea promoted by the slave traders.

They, who supported this wicked traffic, virtually denied, that man was a moral being. They substituted the law of force for the law of reason. (Clarkson, Chapter 10)

These ideas concerning the ‘moral nature’ of the human person, although apt to puzzle us in the 21st century, seem foundational to the universality and inherence of human rights. An idea we wish to draw forth here (as these advocates saw) is that human rights are integrally concerned with the nature of our humanity. It is a nature that cannot be understood simply by reference to reason; it is grasped in the human interactions in which we are all embedded, in the ‘conscience’ we possess and the capacity to build relationships on the mutual respect of each other’s human dignity.

Returning to Las Casas’ framing of human relationships, the abolitionists took the same stance. They expressed it in the question they posed to their societies in reference to the slave: “Am I not a brother and a man?” (Lauren, 34)

We encounter the question now in a world in which all practical and technological barriers to the free movement and equal rights of people have been removed, but in which obscene inequalities and profound human rights violations persist. The *idea* that we are *foreigners* to each other strikes at the very heart of human equality, dignity and solidarity. It is an idea so inimical to the bedrock on which the idea of human rights is built, that to ignore it is to risk the undermining of the entire body of human rights.

Violation

Everywhere we turn we see the human dignity and human rights of ‘foreigners’ violated. The Office of the UN High Commissioner for Human Rights report *The Rights of Non-Citizens* by Professor David Weissbrodt, former UN Special

Rapporteur on the Rights of Non-Citizens identifies the categories of ‘status’ affected by issues of non-citizenship: stateless persons, refugees and asylum seekers, non-citizen workers and their families and non-citizen children are among them. The distinction between citizen and non-citizen underlie them all.

Equal in dignity and rights

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

- Article 1, Universal Declaration of Human Rights

Article 1 of the Universal Declaration of Human Rights (referred to below as “the Universal Declaration”) reflects the “golden rule”, which is to be found in the teachings of every major religion and has been re-stated in various ways by philosophers through the ages.⁵ There is no principled basis for drawing any distinction based on national origin or parentage – those accidents of birth on which citizenship is based – when applying the golden rule.

Article 1 is the close descendant of similar egalitarian and rights language first embodied in a ‘national’ legal document in the slave-holding state of Virginia, and later in the ‘self evident’ truths of the United States Declaration of Independence: that “all men are created equal”. Opinion divided over whether these words necessarily implied an end to slavery with Northern states such as Vermont outlawing slavery in 1777 and Massachusetts court decisions in the early 1780’s achieving early emancipation. Other northern states followed by adopting laws for the gradual emancipation of the children of slaves. Both early abolitionists and the ideas of the American revolution contributed to these less acknowledged achievements. (Davis, 152-153)

Martin Luther King, Jr would call on these same words many years later – using the lie implicit within them to powerful rhetorical effect – “I have a dream that one day this nation will rise up and live out the true meaning of its creed: ‘We hold these truths to be self-evident: that all men are created equal’.”⁶

More than 100 years earlier, Elizabeth Cady Stanton, Lucretia Mott, and their collaborators had used the obvious omission in the declaration to powerful effect in her Declaration of Sentiments: “We hold these truths to be self-evident: that all men and women are created equal”.⁷ Then followed a powerful catalogue of the tyranny exercised by men over women.

⁵ See http://en.wikipedia.org/wiki/The_Golden_Rule.

⁶ Martin Luther King Jr *I have a dream*
<http://www.americanrhetoric.com/speeches/mlkihavedream.htm>

⁷ Declaration of Sentiments <http://www.fordham.edu/halsall/mod/Senecafalls.html> from Elizabeth Cady Stanton, *A History of Woman Suffrage*, vol. 1 (Rochester, N.Y.: Fowler and Wells, 1889), pages 70-71

Thomas Jefferson, is credited as being the first drafter of the U.S. Declaration of Independence. He was also during his entire life a slave owner. He believed slavery to be an evil, even early in life fought against it, but then subsided in compliance to the wishes of the powerful slave-owning elite, which defeated a significant movement seeking an end to slavery with the birth of the new nation. (David, 145-146 & 154-155) It would take 87 years and a civil war to end that form of oppression in the United States as a whole. For generations, behaviour clearly at variance with espoused principle, persisted, within a legal system based on both human equality and freedom.

We find the same contradictions in the international human rights system in respect of the issues of human rights violations against non-citizens. Indeed the conceptual contradictions are perhaps worse. For while human rights upholds ‘equality’, ‘dignity’ and ‘brotherhood’; international law enshrines ‘independence’, ‘domestic jurisdiction’, ‘sovereignty’, and the ‘nation’. The countervailing philosophy that impedes human equality and dignity is embedded in international human rights treaties themselves.

Such treaties are the product of ‘inter-national’ law – that is, law “existing, constituted, or carried on between different nations; pertaining to the relations between nations”⁸ – and thus built on a foundation of division and inevitably discrimination based on nationality. International laws inherently give preference to nationals over ‘foreigners’: that is they embed human *inequality*.

A serious question arises therefore whether human rights *law* itself, as expressed in treaties, is sufficient to the task of ending human rights violations against non-citizens.

The modern world finds itself very much in the same historical predicament as that of some southern planters at the end of the eighteenth century, who – although thinking themselves enlightened – could see no way to do away with the evil of slavery. We believe in human equality yet tolerate the systematic and gross denial of human rights on the basis of the arbitrary criteria of place of birth and parentage.

Freedom from discrimination

“We have taught the layman to worship the arch-fiction of the sovereign-state, and thereby have built a Maginot line against the invasion of new ideas in the international world, and behind the rampart the demagogue and the reactionary are enthroned.”

(Philip C. Jessup cited in Lauren, 192)

Article 2 of the Universal Declaration says that everyone is entitled to all rights and freedoms in the Universal Declaration without distinction “of any kind”, such as, among other things, national origin. The list is non-exhaustive, and one would search in vain for a principled exclusion of nationality from the prohibited kinds of discrimination. (Weissbrodt, 18)

⁸ Definition of “international”, *Oxford English Dictionary* (Second Edition, 1989).

Article 7 says:

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

The trouble is, as already stated, human rights treaties embody the inter-national paradigm. Thus for example, the “law” before which all are equal is necessarily the domestic law of a nation, and national laws very often fundamentally discriminate against non-nationals. Citizens of a country are privileged by its laws. The non-citizen typically has no say in them and his or her rights are a matter of little general interest.

As David Weissbrodt explained in his *Final report on the rights of non-citizens*:

One of the most common problems human rights treaty bodies have encountered in reviewing States’ reports is that some national constitutions guarantee rights to “citizens” whereas international human rights law would – with the exception of the rights of public participation, of movement, and of economic rights in developing countries – provide rights to all persons. (Weissbrodt, 24)

One need look no further than Australia. The Commonwealth Constitution was constructed on a bedrock of racism and rejection of “the other”: (See generally Rubenstein, 2002; Rubenstein, 1997; Williams) “[C]itizenship in the 1890s was a matter of exclusion rather than inclusion”. (Williams, 10) Fast-forward to recent history, and consider the recent introduction of the citizenship test, which was attended by “vague button-pushing and dog-whistling about Australian values”.⁹ The second reading speech emphasised the need for integration into “our way of life”.¹⁰ As Senator Kerry Nettle observed, the test was divisive – designed “to separate people into one group that is deserving of Australian citizenship and another group that is not deserving” and to send “a message about excluding people from being able to be citizens”.¹¹

National citizenship demands the equal and privileged treatment of citizens and consequently the *underprivileged* and differential treatment of non-citizens. For example, the *Migration Act 1958* is founded on discrimination between citizens and non-citizens. A non-citizen may be granted a visa allowing her to enter or remain in Australia. Without a visa, she cannot travel to Australia, she may be detained, even indefinitely,¹² or removed.¹³ Thus, abuse of human rights recognised by international agreement is allowed by Australia against human beings who are non-citizens.¹⁴

⁹ Commonwealth, *Parliamentary Debates*, Senate, 7 February 2007, 22 (Andrew Bartlett).

¹⁰ *Ibid.*, 6.

¹¹ Commonwealth, *Parliamentary Debates*, Senate, 13 August 2007, 65-66 (Kerry Nettle). (See also 7 February 2007, 25.)

¹² *Al-Khateb v Godwin* (2004) 219 CLR 562.

This discrimination influences constitutional law as well. For example, the High Court has derived a principle from Chapter III of the Constitution that “the 'exceptional cases' aside, the involuntary detention of a citizen in custody by the State is permissible only as a consequential step in the adjudication of criminal guilt of that citizen for past acts.”¹⁵

In *Ruddock v Vadarlis*,¹⁶ French J (with whom Beaumont J agreed) held that:

*... the Executive power of the Commonwealth, absent statutory extinguishment or abridgement, would extend to a power to prevent the entry of non-citizens and to do such things as are necessary to effect such exclusion. ... The power to determine who may come into Australia is so central to its sovereignty that it is not to be supposed that the Government of the nation would lack under the power conferred upon it directly by the Constitution, the ability to prevent people not part of the Australia [sic] community, from entering.*¹⁷

This discrimination contradicts the promise of articles 1, 2, 7 and 9 of the Universal Declaration: “[a]ll human beings are born free and equal in dignity and rights”; “[e]veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind” (including national origin); “[a]ll are equal before the law and are entitled without any discrimination to equal protection of the law”; everyone has the right to not be subjected to arbitrary detention.

The exclusionary project of national citizenship undermines the foundational promise of Article 1 of the Universal Declaration and of the golden rule. Just as Martin Luther King, Jr used the broken promise of the Declaration of Independence to call for its fulfilment in a better future, we need strong voices to use the broken promise of Article 1 of the Universal Declaration (and like statements of the fundamental promise of human equality) to call for a human rights conception that operates without distinction on the basis of nationality.

Sometimes, inherent discrimination on the basis of nationality is present on the face of the instrument itself. For example, although paragraph 1 of Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination defines “racial discrimination” to include a “distinction, exclusion, restriction or preference based on ... national ... origin”, this is immediately qualified in paragraph 2 (this Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens) and paragraph 3 (the Convention does not apply to laws about nationality, citizenship or naturalization provided they do not target a particular nationality).

¹³ *Migration Act 1958*, ss 29, 42, 178-181, and Divs 7 and 8, Part 2.

¹⁴ See, eg, *A v Australia* [1997] UNHRC 7; CCPR/C/59/D/560/1993 (30 April 1997).

¹⁵ Emphasis added. *Fardon v Attorney General (Qld)* (2004) 223 CLR 575, 612 (Gummow J); *South Australia v Totani* [2010] HCA 39, [209] (Hayne J). See also *Chu Kheng Lim v MILGEA* (1992) 176 CLR 1, 29-31 (Brennan, Deane and Dawson JJ).

¹⁶ (2001) 110 FCR 491.

¹⁷ At 543.

Thus, racial discrimination is prohibited *except* against all those racially different people beyond the boundary of citizenship of the *racially* mythologized and constructed ‘nation’ state. This exclusion enabled a *lawful* and practical continuation of one of the key elements of pre-war racism: immigration restrictions - the removal of which had been sought by countries such as Japan, China and British India. (Lauren, 98, 122) .

Despite such inherent contradictions, it is a basic premise of many human rights treaties that citizens and non-citizens will be treated alike, subject to appropriate exceptions. (Weissbrodt and Meili, 37-47) For example, the “general rule is that each one of the rights of the [International Covenant on Civil and Political Rights] must be guaranteed without discrimination between citizens and aliens”.¹⁸ But many non-citizens still face discrimination, and non-citizens are particularly vulnerable to arbitrary detention.

To argue on the one hand that it is morally offensive to discriminate against someone because of the colour of their skin, their gender, their social status, their political or religious opinions, their ‘nationality’, but to treat someone as we treat foreigners, simply because of the physical (*jus soli*) or genetic (*jus sanguini*) space from which they hail, fails any rational moral test. The toll in human suffering such discrimination engenders is enough to demonstrate its incompatibility with a system of universal human rights.

Freedom of Movement

Freedom of movement is recognised as a universal human right. But it is recognised in a manner that fundamentally discriminates against foreigners. Article 13 of the Universal Declaration says:

- (1) *Everyone has the right to freedom of movement and residence within the borders of each state.*
- (2) *Everyone has the right to leave any country, including his own, and to return to his country.*

Similarly article 12(1) and (4) of the ICCPR say:

- (1) *Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.*
- ...
- (4) *No one shall be arbitrarily deprived of the right to enter his own country.*

¹⁸ Office of the High Commissioner for Human Rights, *General Comment No. 15: The position of aliens under the Covenant*, 11/04/1986, [2].

In the 21st century, such rules and the widespread closure of borders, beg the question, *where is it thought that people might exit to if they lack the right of entry?*

Interdicting Movement

The promise of Article 1 of the Universal Declaration is profoundly compromised by subjugating the right to freedom of movement to the dominion of the nation-state. The rule strikes at human equality – it provides the rationalisation which allows us to go from restrictions on movement to the creation of that new variety of human exclusion : “the unlawful non-citizen” – a person towards whom it is not required to act “in a spirit of brotherhood”¹⁹ – indeed a person who virtually has no right. This is a person whose life or death means little and whose freedom is unprotected. Such human beings become “illegal aliens” or more succinctly simply “illegals”. It is a language which led holocaust survivor Ellie Wiesel to observe:

“You who are so-called illegal aliens must know that no human being is ‘illegal’. That is a contradiction in terms. Human beings can be beautiful or more beautiful, they can be fat or skinny, they can be right or wrong, but illegal? How can a human being be illegal?”

Speaking of the direct impacts of this denial of freedom of movement, van Houton and Boedeltje highlight the differential valuing of human beings:

“[The Canary Islands] handle about 9.5 million tourists per year. ... The entire accommodation sector consists of roughly 172,000 hotel beds and roughly 242,000 overnight places other than hotels. These figures represent interesting multinational flows, links and connections, but seldom determine the media coverage. What has come to determine the news are the following figures. In the last few years, between 20,000 and 30,000 boat people have come to the Canary Islands from various parts of Africa and increasingly from Asia.

...

Now we ask the following. On what grounds do we make a holiday camp for the tourists and a deportation camp for the boat people? Why do we erect a monument when tourists die—the monument constructed for the Dutch fatalities of the 1977 air disaster on Tenerife is a good example—and not for the African and Asian travellers without papers who died on their journeys? What legitimizes this different valuation of human lives?” (Van Houton and Boedeltje, 1)

The Canary Islands are of course a microcosm of the world. Some of us must have our right to leisure in exotic parts of the world protected, others of us must at all costs be prevented from moving.

“Controlling border crossing has become a prime governmental concern under conditions of globalisation, leading governments of the Global North to introduce increasingly coercive border control measures ranging from visa

¹⁹ Article 1 proclaims that all human beings “are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”.

regimes to electronic surveillance and military fortification. These border defences operate at multiple sites of enforcement, both at and beyond the physical border, creating 'functional borders' which are not merely lines on a map, but are located wherever and whenever border protection functions are performed." (Weber, 35)

The range of measures taken by states to prevent movement are astonishing. Some are obvious, others less so.

Many nations have built separation barriers. Historical examples are the Great Wall of China and the Berlin Wall. In modern times, Israel has constructed a separation barrier along and within the West Bank, which in the opinion of the International Court of Justice is contrary to international law.²⁰ There are however many recent, current and proposed examples specifically aimed at those who seek to enter a country for the purpose of peaceful migration.²¹ In 2006, US Congress passed the *Secure Fence Act of 2006*, aimed at building a 700 mile fence along the US-Mexico border. India has fenced about 70 percent of its 2,544-mile border with Bangladesh.²² Greece is planning to build a fortified fence with watch towers along 12 kilometres of its border with Turkey.²³ In its African enclave of Ceuta, Spain has built a high security fence at the cost of 48 million euros, with two rows of fences, motion detectors, video cameras and 17 watch towers. Melilla, another Spanish enclave, has been equipped with similar barriers. (Alscher, 11-12)

The European Union has established a special agency, 'Frontex', the mission of which is euphemistically referred to in its press pack as 'border security', by which it means (as quickly becomes clear when one reads on) measures to prevent immigrants entering Europe.²⁴ Frontex is involved in the coordination of operations at sea, land and air borders to hinder people movement.²⁵

Countries of the 'global north' adopt visa policies that distinguish those who can enter without visa (or with only cursory approval processes) from those whose entry will be carefully scrutinized. Even a cursory examination of these visa policies begins to outline the global boundaries of exclusion. Counter-intuitively countries on the other side of the global exclusion boundary follow similar visa policies to the countries of the global north, with the result that citizens of the global north may travel freely, and movement by the most excluded in the global south is hindered, controlled and interdicted.²⁶ Such visa policies, for instance in the case of the EU, are effective in preventing refugees from gaining protection. (Stoyanova, 51)

²⁰ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion)* [2004] ICJ Reports 136, 201 [163].

²¹ See, eg, http://en.wikipedia.org/wiki/Separation_barrier.

²² See, eg, <http://www.slate.com/id/2276362/>.

²³ *Greece following Spanish model for Evros fence*, Kathimerimi 24 May 2011 http://www.ekathimerini.com/4dcgi/_w_articles_wsite1_22916_24/05/2011_392100 downloaded 2 June 2011

²⁴ Frontex press pack downloaded from http://www.frontex.europa.eu/download/Z2Z4L2Zyb250ZXgvZW4vZGVmYXVsdF9vcGlzeS8xMzMvMS8x/presspack_2011-05__final.pdf 2 June 2011

²⁵ *Ibid*

²⁶ A search for 'visa policies' on Wikipedia enables a quick sense of the parts of the world whose freedom of movement is guaranteed and those parts of the world which are not. Both nations in the

Both air carriers and shipping companies face fines if they carry the undocumented where they are not permitted to arrive. At airports these barriers are effectively policed by the carriers themselves. For shipping carriers the fines are enough to lead to murders. The crew of the freight ship *Wells Pescadores* murdered 3 stowaways seeking to enter the United States, because they knew their carrier would face huge fines. They in turn would lose valuable bonuses which would be paid for arriving stowaway-free.²⁷

Countries cooperate to prevent *exit* of individuals from a country. For example, Italy entered a deal with Libya worth billions to ensure the non-arrival of migrants and asylum seekers by, among other things, keeping them in Libya. (Human Rights Watch, 2009) This transaction not only violates the human rights to exit, it supplied financial resources to a regime now collapsing because of its own violation of human rights. The Libyan case is part of a broader European strategy of cooperation with North African countries to interdict migrant movements thousands of miles from the European border. (Migreurop, 17 et seq).

At the time of writing Australia has engaged in negotiations with Malaysia to trade 800 asylum seekers with refugees in Malaysia.

Death

Article 3 of the Universal Declaration says, “Everyone has the right to life, liberty and security of person”. By 4 May 2011, United for Intercultural Action had documented 15,181 deaths of asylum seekers and migrants connected with border controls at the European border.²⁸ At the United States-Mexico border estimates of the death toll range from 3,861 to 5,607 in the last fifteen years.(Himenez, 8) In Australia’s case more than 1000 deaths have been reported by media outlets since 2000.²⁹ No official statistics of deaths are kept, as far as we are aware, by either the Australian government or the European Union. The estimates by NGOs, by the very nature of the fact that undocumented travel is carried out in a clandestine fashion, are very likely considerable underestimates of the true death toll. (Weber, 40)

‘global north’ and the ‘global south’ guarantee or facilitate freedom of movement to citizens of the global north, through their visa policies and deny such freedom to citizens of the global south. Examples are Australia, Canada, the European Union, Japan, Colombia, Jordan, Venezuela and Indonesia. Those who have their movement regulated, unsurprisingly tend to come from nations which in the modern world are primary generators of refugee and undocumented migrants.

²⁷ Although some of the crew were convicted of murder in Panama, a United States District Court rejected a claim for compensation on jurisdictional grounds: *OLGA DE LEON, ET AL., PLAINTIFFS, v. SHIH WEI NAVIGATION CO., LTD., ET AL., DEFENDANTS*.

http://tx.findacase.com/research/wfrmDocViewer.aspx/xq/fac.%5CFDCT%5CFDCT%5CSTX%5C2007%5C20070710_0000853.STX.htm/qx. The case evokes memories of the notorious Zong case involving the murder of slaves by a ship’s captain in an insurance scam in the 18th century, that did much to inspire abolitionist action.

²⁸ United for Intercultural Action <http://www.unitedagainstracism.org/pdfs/listofdeaths.pdf> downloaded 22 May 2011

²⁹ See <http://www.abolishforeignness.org/blog/fortress-australia-asylum-seeker-and-migrant-death-and-detention-statistics>. On the Abolish Foreignness website are collated reports of asylum seekers deaths in detention or in the approaches to Australia since 2000. Currently 1056 deaths are reported.

The manner in which people have lost their lives on their journey to Europe is painstakingly recorded by United Against Racism.³⁰ Most drowned while trying to cross the sea, but others lost their lives in other ways. On 8 April 2011, Kambiz Roustayi, fearing deportation from the Netherlands, died after setting himself on fire. On 20 December 2010, a man (name unknown) froze to death crossing the Greek-Turkish border. On 1 December 2010, a 16-year-old Afghan boy suffocated as a stowaway on a truck. On 29 November 2010, a man from Mali died after being shocked with a taser while being deported by police in France. On 10 November 2010, an Eritrean was beaten to death with sticks by traffickers in the Sinai desert for trying to escape his group. On 15 August 2010, three men from Cameroon died of thirst in the Algerian desert while trying to reach Europe.

The SIEV-X, an asylum seeker boat on its way to Australia, sank with the loss of 353 lives including 146 children. (ACSSHW, 18) A survivor recorded the tragedy:

I boarded the boat with 15 other members of my family. Nine drowned and six survived. We clung on to a wooden plank for 20 hours, drifting in the water. Something I witnessed left a very strong impression: a baby with its umbilical cord still attached to the mother was amongst those who drowned. There were 150 children on board – only four are still alive. (ACSSHW, 18)

Denial of Liberty / Mandatory detention

Article 9 of the Universal Declaration says, “No one shall be subjected to arbitrary arrest, detention or exile.”

And yet, all over the world, people are locked up indefinitely and with impunity only because they are foreigners. In his report, Weissbrodt said:

All individuals, including non-citizens, must be protected from arbitrary detention. States are obligated to respect the human rights of detainees, including legal protections, whether or not they are in the territory of the State in question. So-called “international zones” administered by States to detain non-citizens, and where such non-citizens are denied legal or social assistance, are a legal fiction and a State cannot thereby avoid its international human rights responsibilities by claiming that such areas have extraterritorial status. States may arrest or detain non-citizens against whom action is being taken with a view to deportation or extradition, regardless of whether such detention is reasonably considered necessary, for example, to prevent those non-citizens from committing offences or fleeing. States may not, however, consciously facilitate the detention of non-citizens in a planned operation for the expulsion of non-citizens by encouraging them to report to authorities on the basis of a pretext. Conditions in refugee shelters and conditions of detention faced by undocumented migrants and asylum seekers should meet international standards. (Weissbrodt, 27)

³⁰ United Against Racism *List of 15181 documented refugee deaths through Fortress Europe* <http://www.unitedagainstracism.org/pdfs/listofdeaths.pdf> downloaded 2 June 2011

In 2004, one of us spent a week in Nauru, interviewing about 150 refugees in order to assist them in applying for asylum in Australia. Because they had not reached mainland Australia, they were forced to apply for “offshore” visas. The contrast between the Australian citizen, who could fly in for a week and then leave just as freely, and those young men and families from Afghanistan, Iraq and Iran – stuck in a camp in the middle of a tiny island surrounded by the vast ocean – was remarkable and left a lasting impression.

On 25 May 2011, following a visit to Australia, the United Nations High Commissioner for Human Rights, Navi Pillay, said at a press conference:

In my discussions with the Prime Minister and the Minister for Immigration and Citizenship, I have reiterated the long-standing concerns expressed by UN human rights treaty bodies that Australia’s mandatory immigration detention regime is in breach of Australia’s international human rights obligations. Australia’s mandatory detention policy has for many years cast a shadow over Australia’s human rights record. Thousands of men, women and – most disturbingly of all – children have been held in Australian detention centres for prolonged periods, even though they have committed no crime.

When detention is mandatory and does not take into account individual circumstances, it can be considered arbitrary, and therefore in breach of international law. Mandatory detention is also a practice that can – and has – led to suicides, self-harming and deep trauma. While recognizing that there have been some improvements in recent years, I have also raised concerns regarding the length of detention, as well as delays in processing security checks and in releasing children and families into the community.³¹

In a report released on 26 May 2011, the Australian Human Rights Commission detailed its observations and concerns following on from visits to the Villawood Immigration Detention Centre in February 2011. It said:

The Commission’s longstanding concerns about Australia’s immigration detention system have escalated over the past year, with ongoing troubling incidents across the detention network. These have included six deaths in detention (five of which appear to have been the result of suicide), suicide attempts, serious self-harm incidents including lip-sewing, riots, protests, fires, break-outs and the use of force against people in detention on Christmas Island by the Australian Federal Police. These incidents have occurred in the context of a detention network that is under serious strain due to a number of factors, but most importantly because thousands of people are being held in detention facilities for long periods of time.

As of 11 March 2011 there were 6819 people, including 1030 children, in immigration detention in Australia – 4304 on the mainland and 2515 on Christmas Island. More than half of those people had been detained for longer

³¹ <http://www.un.org.au/UN-High-Commissioner-for-Human-Rights-visit-to-Australia,-press-statement-news399.aspx>.

than six months, and more than 750 people had been detained for longer than a year.

The Commission has repeatedly raised concerns about the detrimental impacts that prolonged and indefinite detention has on people's mental health, and has repeatedly recommended reforms to bring the immigration detention system into line with Australia's international obligations.

In the Commission's view, there is an urgent need for the Australian Government to end the current system of mandatory and indefinite detention, and to make greater use of community-based alternatives that are cheaper, more effective and more humane than holding people in immigration detention facilities for prolonged periods. (AHRC, 2)

One man the Commission spoke to said, "the mental torture kills you from the inside". (AHRC, 20) Of the three recent suicides, a detainee said, "No one came to kill themselves. They came here to live. Because of the situation they are pushed to suicide". (AHRC, 22)

The Commission's first recommendation – made not for the first time – was that the Australian Government "should end the current system of mandatory and indefinite immigration detention." The second was that:

The Australian Government should comply with its international human rights obligations by providing for a decision to detain a person, or a decision to continue a person's detention, to be subject to prompt review by a court. To comply with article 9(4) of the ICCPR, the court must have the power to order the person's release if their detention is not lawful. The lawfulness of their detention is not limited to domestic legality – it includes whether the detention is compatible with the requirements of article 9(1) of the ICCPR, which affirms the right to liberty and prohibits arbitrary detention.

Seeing the young men trapped on Nauru, it was impossible to understand how an accident of birth meant that one person could be so free and another so hopelessly imprisoned.

Across the globe the number of places of detention and numbers detained is staggering. In the United States alone, there are 370 places of detention and approximately 400,000 people are detained each year. (Detention Watch Network, 7) Around the same number were deported in 2010.³² It is easy to miss the significance. This is a population of half a million each year denied the freedom to choose where to live. How many millions are involved across the globe?

Migrant workers

Article 23 of the Universal Declaration says:

³² Peter Slevin, Washington Post, *Deportation of Illegal Immigrants Increases under Obama Administration* 26 July 2010, accessed 5 June 2011

- (1) *Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.*
- (2) *Everyone, without any discrimination, has the right to equal pay for equal work.*
- (3) *Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.*

Each of these rights is often violated for non-citizens. We assume 'equal pay for equal work' to be a well-established principle. However, when we think of this right we unconsciously add words that are not there: such as 'for everyone in our country'. When we think of free choice of employment we do not think that extends to free choice *anywhere*. We tend to think it natural that 'local workers' have priority over 'foreigners'. When we think of the right to work, we do not imply the right to travel *across borders* to find work. When we think of *an existence worthy of human dignity*, we are prepared to live in a world which denies such dignity to billions of 'workers' beyond our borders.

Of the major human rights treaties promoted by the UN human rights system, the most neglected is the International Convention on the Protection of the Rights of All Migrants Workers and their Families (the **ICRMW**). In the recent Universal Period Review of Australia's human rights performance, a number of countries recommended to Australia that it consider ratifying the ICRMW. Australia's response was that it views the protection of migrant workers as 'adequate'.³³ Such a view is difficult to understand when one reflects upon the reality facing migrant workers, but it is consistent with the global lack of priority accorded to the human rights of migrant workers.

This can be seen in the global pattern of non-ratification of the ICRMW. Tom K Wong has carried out an analysis of that pattern. He demonstrates that countries with high immigrant populations are, statistically, significantly less likely to extend basic human rights to irregular migrants and other non-citizens through ratification of the ICRMW. In other words, those who espouse human rights reserve to themselves the absolute discretion to accord or withhold rights to migrants, in the process see such migrants primarily as tools for the attainment of national economic goals rather than as equal human beings who have equal human rights.

Even within this two-tiered system of rights, layered human-rights violations abound.

In 2004, the International Labour Organisation stated:

... a significant number [of migrant workers] face undue hardships and abuse in the form of low wages, poor working conditions, virtual absence of social protection, denial of freedom of association and workers' rights, discrimination and xenophobia, as well as social exclusion. Gaps in working conditions, wages and treatment exist among migrant workers and between

³³ Human Rights Council Seventeenth session Agenda item 6 Universal Periodic Review Australian response to recommendation 31 May 2011 A/HRC/17/10/Add.1

migrant and national workers. In a significant number of cases, unemployment rates, job security and wages differ between regular migrant workers and national workers. (Taran, 150)

These conditions have been described in terms of forced labour and slavery-like situations. (Taran, 150) To the situation in the workplace may be added a hostile political climate and the even more vulnerable position of irregular migrants. While informally tolerating irregular migrant labour, governments continually reinforce controls against it, generating a situation of exploitation and vulnerability: a shadow world from which workers are unable to escape. Stigmatization and violence is faced by migrants,

“as if ‘illegal migrants’ were an enemy in a war-like confrontation”. (Taran, 156)

Such conditions are by no means limited to the ‘global north’. Human Rights Watch has documented widespread violation of migrant workers in Thailand:

Thai government officials and police, and private employers, enjoy widespread impunity in abusing the rights of Burmese, Lao and Cambodian documented and undocumented migrant workers in Thailand. Human rights abuses faced daily by an estimated two to three million migrant workers in Thailand include violent attacks and killings by government security forces and private individuals, extensive use of torture and ill-treatment in detention, sexual abuse, widespread labor rights abuses, and pervasive extortion. In every region we visited, from the remote provinces on Thailand's borders to major industrial zones near Bangkok, abuses of migrants were systematic and those filing grievances faced immediate, violent retaliation from a nexus of local police, officials and employers. Severe restrictions on migrants' rights to establish trade unions, to legally organize groups or associations, and to assemble and express views further reinforce the vulnerability of migrants to abuses.³⁴

On 23 November 2010, Human Rights Watch wrote to the governments of Saudi Arabia, Sri Lanka and Indonesia, calling on them to take action against abuse of domestic migrant workers and to implement reforms to prevent future incidents. Their letter referred to the cases of Kikim Komalasari, a 36-year-old Indonesian domestic worker whose body was found with signs of extensive physical abuse; Sumiati Mustapha, a 23-year-old in hospital with severe physical injuries and burns; and LD Airyawathie, a 49-year-old Sri Lankan domestic worker who had 24 nails removed from her body on returning to Sri Lanka.³⁵ Migrant Rights, a website maintained by MidEast Youth, addresses the situation of migrant workers in the Middle East, who in some states make up 80% of the population. They document case after case of abuse, degradation and slave like conditions faced by migrant workers.³⁶ Dubai is described by one observer as a bankrupt dictatorship built on slave labour.

³⁴ Human Rights Watch Statement to the 17th session of the UN Human Rights Council, <http://www.hrw.org/en/news/2011/06/06/thailand-oral-statement-hrc-regarding-abuses-against-migrant-workers> downloaded 12 June 2011

³⁵ Human Rights Watch letter <http://www.hrw.org/en/news/2011/06/06/thailand-oral-statement-hrc-regarding-abuses-against-migrant-workers> downloaded 12 June 2011

³⁶ <http://www.migrant-rights.org/> Migrant Rights

The people who really built the city can be seen in long chain-gangs by the side of the road, or toiling all day at the top of the tallest buildings in the world, in heat that Westerners are told not to stay in for more than 10 minutes. They were conned into coming, and trapped into staying.

In their home country – Bangladesh or the Philippines or India – these workers are told they can earn a fortune in Dubai if they pay a large upfront fee. When they arrive, their passports are taken from them, and they are told their wages are a tenth of the rate they were promised.

They end up working in extremely dangerous conditions for years, just to pay back their initial debt. They are ringed-off in filthy tent-cities outside Dubai, where they sleep in weeping heat, next to open sewage. They have no way to go home. And if they try to strike for better conditions, they are beaten by the police.

I met so many men in this position I stopped counting, just as the embassies were told to stop counting how many workers die in these conditions every year after they figured it topped more than 1,000 among the Indians alone.³⁷

Last year, 72 migrants from South and Central America were murdered in Mexico after being kidnapped by an armed gang on their way to the United States. A witness said they had been shot after refusing to work for the gang. Such migrants are frequently targeted by criminal gangs.³⁸

In the United States conditions faced by workers in the Florida tomato industry are described as ‘modern day slavery’.

In the chilling words of Douglas Molloy, chief assistant United States attorney in Fort Myers, South Florida’s tomato fields are “ground zero for modern-day slavery.” Molloy is not just talking about virtual slavery, or near slavery, or slavery like conditions, but real slavery. In the last fifteen years, Florida law enforcement officials have freed more than one thousand men and women who had been held and forced to work against their will ... Workers were “sold” to crew bosses to pay off bogus debts, beaten if they didn’t feel like working or were too sick to work, held in chains, pistol whipped, locked at night into shacks in chain-link enclosures patrolled by armed guards. Escapees who got caught were beaten or worse. Corpses of murdered farm workers were not an uncommon sight in the rivers and canals of South Florida.³⁹

³⁷ Johann Hari *A morally bankrupt dictatorship built by slave labour* The Independent 27 November 2009 downloaded 12 June 2011 <http://www.independent.co.uk/opinion/commentators/johann-hari/johann-hari-a-morally-bankrupt-dictatorship-built-by-slave-labour-1828754.html>

³⁸ Julian Miglierini, *Murdered bodies found in Mexico 'were migrants'* BBC <http://www.bbc.co.uk/news/world-latin-america-11090563>

³⁹ David von Drehle *A Dispatch from 'TomatoLand'* <http://swampland.time.com/2011/06/11/a-dispatch-from-tomatoland/#ixzz1P3BcRa3t> 11 June 2011, downloaded 12 June 2011

By 2010, there were an estimated 214 million migrants in the world. If gathered in one country they would be the 5th most populous nation in the world.⁴⁰

Refugees: Queues and Warehouses

Article 14 (1) of the Universal Declaration says, “Everyone has the right to seek and to enjoy in other countries asylum from persecution”.

Despite much lip service paid to the protection of refugees, the behaviour of nation-states leads unavoidably to the conclusion that they have little interest in respecting the right of refugees to asylum. Rather, enormous efforts are pursued to ensure non-arrival at a country’s border (whether a person is an irregular migrant or asylum seeker).

UNCHR has complained about the inadequacy of the 80,000 places officially offered by the small number of states that offer resettlement places at all. This is one tenth of the resettlement needs estimated by UNHCR in 2011 of 805,000. Three countries – Australia, Canada and the United States – take over 90% of the refugees resettled under this program every year.⁴¹

But these figures entirely understate the humanitarian need.

In 2009, a coalition of NGOs called for an end to ‘refugee warehousing’, which they described as follows:

*Of the nearly 14 million refugees in the world today, nearly 9 million are warehoused, confined to camps or segregated settlements or otherwise deprived of these basic rights, in situations lasting 10 years or more. Warehousing refugees not only violates their rights but also often reduces refugees to enforced idleness, dependency, and despair.*⁴²

In the latest figures from UNHCR, there were an estimated 15.2 million refugees in the world: a small fraction of the 43.3 million forcibly displaced people in the world, 27.1 million of whom were internally displaced people. 26 million people were receiving protection or assistance from UNHCR.⁴³ As UNHCR put it:

“... in 2009, UNHCR presented more than 128,000 refugees for resettlement consideration by States, the highest in 16 years. Unfortunately, the number of refugees in a protracted situation remained high at over 5.5 million spread across 21 countries.”

⁴⁰ International Organization for Migration, *Facts and Figures* <http://www.iom.int/jahia/Jahia/pid/241>

⁴¹ Andrej Mahecic, *UNHCR highlights shortage of resettlement places* <http://www.unhcr.org/4c31f3826.html> 5 July 2010 downloaded

⁴² *Statement calling for an end to Warehousing of Refugees* US Committee for Refugees and Immigrants and other NGOs September 2009 http://www.uscritefugees.org/2010Website/3_Our%20Work/3_2_2_1_BestWorstPlaces_RecentProgress/Statement_Calling_for_Solutions_to_End_Warehousing.pdf downloaded 12 June 2011

⁴³ *2009 Global Trends Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons* UNHCR <http://www.unhcr.org/4c11f0be9.html> downloaded 12 June 2011

On UNHCR figures, one third of the total numbers are in camps: that is, 14.4 million people.⁴⁴

The numbers do not quite gel, but it is reasonable to conclude that resources are available to keep people in camps. They are not available to bring refugees into national communities. Funding and maintaining camps, keeps people far from national borders.

How the situation of refugees is to be described is a matter very much alive in political rhetoric. In the Australian case, the public is presented with the image of ‘queues’ and ‘queue jumpers’. The latter tag – intended to invoke moral repugnance – is attached to those who have the temerity to present themselves at the frontier to claim their right of asylum. Such rhetoric has re-emerged in recent Australian discourse, in connection with Australia’s negotiations with Malaysia to swap asylum seekers who arrive in Australia with refugees in camps in Malaysia. But as many have remarked, there is no queue, no orderly system by which an offshore asylum applicant may arrive in Australia. For “queue” may be substituted a more appropriate metaphor: a human warehouse where the unwanted are stored, or more accurately, very often simply forgotten.

The laws of oppression – US case

The policies of mandatory detention that are pursued in Australia are, by comparison with the United States, an uncomplicated matter. The small numbers that arrive are imprisoned in remote locations far from all help.

Such a solution is not available in countries which are not *girt by sea*. The United States, as many commentators have noted, both invites and rejects undocumented immigration. There are an estimated 11.1 million undocumented migrants in the United States. (HURRICANE, 8) In 2003, a national plan was adopted to remove “*all removable aliens*” – presumably this means (preferably) the mass deportation of this entire population. (HURRICANE, 8) The period since has been described as one of unprecedented immigration enforcement at the national level.

Never before in the history of the United States has the government removed so many noncitizens in so short a time frame. Between 2003 and 2008, the U.S. government removed 1,446,338 noncitizens from the United States. For every noncitizen who receives a formal order of removal, another four depart “voluntarily” as a result of their encounters with the immigration enforcement bureaucracy. At the same time, federal prosecutions of immigration crimes in criminal courts have reached an all-time high. Over the past five years, immigration crimes have risen to the top of the list of federal prosecutions, and now make up more than half of the federal criminal docket. (Chácon, 1565)

⁴⁴ 2009 *Global Trends Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons* UNHCR <http://www.unhcr.org/4c11f0be9.html> downloaded 12 June 2011

From 1900 to 1990, average deportations from the United States remained around the figure of 20000 per year. Between 1990 and 1995 the average increased to 40 000. From that date the figure has sky-rocketed to almost 359,000 in 2008. Around 91% of those deported are from Mexico and Latin America. (Hagan, 1808-1809) The ethnic-cleansing character of this mass deportation is almost rendered invisible, by labelling those deported ‘illegal’ or ‘criminal’. Hagan et al document the devastating economic and social impacts, and the climate of fear and exclusion, created in Latino communities where the deportations were pursued. (Hagan, 1813; US Human Rights Fund, 39 et seq)

The last two years have seen a growing movement within the United States for the adoption of legislation at State level which targets “illegals” on the basis that the Federal government ‘is not doing enough’. The first of these was Arizona bill, SB 1070. It has inspired a slew of copy-cat efforts in other States. Florida, Virginia, Alabama, Georgia and Texas are among those states where bills have either been introduced or successfully adopted as law.

SB1070 is explicit about its aims: it intends to deter and expel.⁴⁵ It becomes an offence of ‘trespassing’ for an alien to be in Arizona without proper Federal documentation.⁴⁶ “Law enforcement officials, agencies of the state, city, town or county” are required to determine a person’s immigration status if they have a “reasonable suspicion” that the person is an alien unlawfully present in the United States. Such officials must then make reasonable efforts to determine the immigration status of the person. The legislation appears to anticipate that officials may be unwilling to actually implement its provisions and accordingly goes to some lengths to ensure that they are compelled to do so.⁴⁷

This is more than suspicion. It in fact reflects a desire to oppose a widespread *local* movement within the United States to provide *de facto* inclusion of undocumented migrants as “local citizens”. Over 50 municipalities in the United States have adopted such policies enabling undocumented members of these communities to access local services. As put by Nyers, in these localities membership is “treated as a matter of social fact rather than legal status”. (Nyers, 137) Access to day-to-day needs such as driver licences, in state tuition rates for schools and colleges and the right to vote in local elections are among the kinds of access provided. In effect such communities, known as “sanctuary cities” pursue a “Don’t ask don’t tell” policy, of not communicating with Federal authorities on immigration status. (Nyers, 137) It is just these kinds of inclusion that the state legislation prohibits and seeks to suppress. SB1070 not only targets the undocumented, it targets the decisions of local citizenry who take a different view to those at state level.

The Arizona example has produced a number of successful and unsuccessful attempts to achieve the same result in other states.

⁴⁵ “The legislature declares that the intent of this act is to make attrition through enforcement the public policy of all state and local government agencies in Arizona. The provisions of this act are intended to work together to discourage and deter the unlawful entry and presence of aliens and economic activity by persons unlawfully present in the United States.” Preamble Arizona State Bill 1070

⁴⁶ SB 1070 Sec. 3

⁴⁷ SB 1070 Sec. 2

A similar bill proposed by the Florida Governor has so far been unsuccessful after being opposed by legislators. Despite claiming that the legislation did not target racial minorities, the legislation explicitly exempted Canadians and Europeans from application of the law on producing their passports. This exemption was introduced (purportedly) to protect the winter tourism market. Florida however, it turns out, attracts 52% of its tourists from Latin America.⁴⁸

The Virginia legislature saw the introduction of a package of 16 bills targeting undocumented migrants. These bills proposed measures such as revoking driving licences, blocking immigrant children from attending public colleges and universities, tracking undocumented children in schools. The immigration status of anyone taken into custody would need to be ascertained. Parents enrolling children in schools would have to disclose their immigration status. Employers would have to enrol in the Federal 'e-verify' program to certify new employees.⁴⁹

The case of equivalent Alabama legislation, which was adopted, is similar. It requires schools to check the immigration status of children, and both their parents. It becomes a crime to rent an apartment to an illegal immigrant if the landlord knew or ought to have known of the illegal status. A contract with someone known to be an undocumented migrant cannot be enforced in a court of law.⁵⁰ It is a crime to knowingly give an illegal immigrant a ride. Employers are required to use the e-verify system to verify immigration status.⁵¹

Georgia has also adopted a similar law which, like the other laws, is being challenged by civil rights groups.⁵²

On 15 June 2011, the Texas Senate passed its own anti-immigrant legislation. Like those in other states its focus is on rooting out the 'illegals' in the community. One Senator asked 7 of his Latino colleagues, elected Senators to stand up. "This Bill will force them to prove their citizenship (if pulled over for a traffic violation)... This is a sad day."⁵³ One of the members of the Senate, Leticia Van de Putte, said the Bill broke her heart.

"Today we are going to pass legislation that would treat my children differently, because I have children with blue eyes and sandy hair and they look like their Belgium ancestors. And I have sons with proud brown skin and

⁴⁸ http://blogs.miaminewtimes.com/riptide/2010/10/floridas_arizona-style_immigra.php
<http://news.change.org/stories/floridas-sb-1070-all-immigrants-must-carry-papers-except-canadians-and-europeans>

⁴⁹ Frederick Kunkle *House GOP announces program against illegal immigration* Washington Post 18 January 2011

http://voices.washingtonpost.com/virginiapolitics/2011/01/house_gop_announces_program_ag.html

http://www.salon.com/news/immigration/?story=/politics/war_room/2011/06/11/alabama_immigration_law

⁵¹ <http://www.cbsnews.com/stories/2011/06/09/politics/main20070334.shtml>

⁵² <http://www.ajc.com/news/georgia-politics-elections/civil-rights-groups-file-965219.html>

⁵³ *Texas passes Arizona-style Immigration Bill Amidst Anti-Latino Statements*
<http://news.change.org/stories/texas-passes-arizona-style-immigration-bill-amidst-anti-latino-statements> downloaded 19 June 2011

eyes and hair and they look Mexican-American.” said Van de Putte, her voice cracking. “And if we’re passing legislation that treats brothers so very differently, how can that be right?”⁵⁴

The ‘R’ Word

The newspapers of America have a circulation in proportion as they abuse abolition, and deprecate interference with the ‘peculiar institution’⁵⁵

In public discourse in Australia to label any policy as ‘racist’ or even ‘racially discriminatory’ is to invite condemnation. The ‘R’ word has effectively been banned. Some politicians will deny the existence of racism among their constituents.⁵⁶ Some politicians exploit that racism or fear of foreigners for their political advantage.

Between 1996-1998 the Australian government undertook an inquiry into racism in Australia. The results have never been released despite multiple FOI requests. (Dunn, 2) In a decade-long research project on racism in Australia, Kevin Dunn found that while most Australians are comfortable with cultural difference, 41% have a narrow view of who belongs in Australia. A surprisingly high proportion hold ‘classically’ racist views:

About one-in-ten Australians have very problematic views on diversity and on ethnic difference. They believe that some races are naturally inferior or superior, and they believe in the need to keep groups separated. These separatists and supremacists are a destructive minority. (Dunn et al, 2)

The same team however shows that an even more surprisingly high proportion of Australians believe there is racial prejudice in Australia (84.4%) and furthermore 85.6% believe something should be done to minimise or fight racism in Australia. (Dunn et al, 2)

Racists are a small minority, but a racialised debate of fear and xenophobia dominates public discourse concerning migration and refugee issues through national media and political figures. A leading Australian politician put it this way (while claiming to encourage people to ‘speak freely’):

⁵⁴ *Dems Blast Sanctuary Cities Bill, Hispanic Senators Cite Personal Experiences with Discrimination*, <http://blog.chron.com/texaspolitics/2011/06/dems-blast-sanctuary-cities-bill-hispanic-senators-cite-personal-experiences-with-discrimination/> downloaded 19 June 2011

⁵⁵ *Free Blacks and Slaves Would Immediate Abolition be a Blessing A Letter to the Editor of the Anti-Slavery Advocate by a Cambridge Man* London 1853

⁵⁶ Some years ago, one of the authors working on human rights met a politician which had earlier returned a candidate whose primary election platform had been to ‘stop Asian immigration’. The politician was firmly of the view that racism was not an issue in his electorate.

"For people to say they're anxious about border security doesn't make them intolerant. It certainly doesn't make them a racist. It means that they're expressing a genuine view that they're anxious about border security."⁵⁷

Identifying such fears with racism or xenophobia is not permissible speech. The same politician, rather than seeking to dispel such fears affirmed their validity as justification for measures to 'manage borders' and 'manage asylum seeker flows':

"I do understand the anxiety and indeed fears that Australians have when they see boats, they see boats intercepted. It does make people anxious. I can understand that, I really can. And I can understand that Australians therefore say to their government that they want to know what we are doing to manage our borders and what we are doing to manage asylum seeker flows."⁵⁸

On 15 December 2010, an estimated 50 men women and children died when their small boat was smashed on the shores of Christmas Island. Like many before them, they had sought to cross the ocean between Indonesia and Australia. They drowned within site of shore, and within earshot of distressed residents of the islands who did all they could to save them. For a brief time the focus of media was on the loss and tragedy of needlessly wasted lives and the heroism of their fellow human beings (Australians) who sought to save them.⁵⁹

Soon enough, the media shifted back to the oppressive narratives of fear, border security, keeping back 'queue jumpers', 'illegal immigrants', and stopping the 'people smugglers'. At the time of writing the fare includes material such as the following from the Herald Sun: "*Millions Spent on deporting undesirables. EXPELLING dangerous criminals and illegal immigrants is costing Australia taxpayers millions of dollars in charter flights.*" Despite the fact that the article is about expulsions of those who have arrived by air, and starts with a European sex offender, the accompanying graphic shows a boat typically used by Afghan and Sri Lankan asylum seekers to reach Australia from Indonesia.⁶⁰

Examples of vilifying language abound; one reported on the website Abolish Foreignness, is striking:

In March, Brisbane's Sunday Mail ran a front page headline THEY'RE HERE, for a story which ran in several other News Ltd. papers ... Was the story about cane toads? Terrorists? Perhaps poltergeists? (If you know the film, you'll remember the line).

⁵⁷ Read more: <http://www.theage.com.au/national/border-fears-not-racist-pm-20100704-zvte.html#ixzz1P71vJc7G> downloaded 13 June 2011

⁵⁸ <http://www.asiantribune.com/news/2010/06/25/new-australian-pm-julia-gillard-may-be-soft-asylum-seekers-sri-lanka> downloaded 13 June 2011

⁵⁹ Clare Brennan, *Government Should Take a Lesson from Christmas Islanders* <http://www.abolishforeignness.org/blog/archives/688>, Al Jazeera *Plight of Desperate Asylum Seekers*, <http://www.youtube.com/watch?v=83iv-KPcl40> accessed 5 June 2011

⁶⁰ Steve Lewis, Herald Sun, *Millions Spent on deporting undesirables* 4 June 2011 <http://www.heraldsun.com.au/news/world/booting-out-crims-blows-our-budget/story-e6frf7lf-1226069006221> , accessed 5 June 2011

No, the story was about asylum seekers, now on Australian soil because Christmas Island was overflowing. Two photographs illustrated who ‘they’ were. One was a generic shot of an overloaded boat carrying asylum seekers; the other, a woman wearing a headscarf, pushing a shopping trolley, with her two daughters beside her. The ‘suspected immigration detainees’ were caught by the photographer on ‘a shopping excursion’ which, as Piers Ackerman later spelled out for those who missed the implication, was ‘courtesy of the Australian taxpayer’.⁶¹

In her visit to Australia, UN High Commissioner for Human Rights, Navi Pillay, also addressed the use of harmful language by politicians, saying:

The consequence of the constant political refrain that Australia is being “flooded” by people who are “queue jumpers” has resulted in a stigmatization of an entire group of people, irrespective of where they have come from or what dangers they may have fled. I urge the leaders of all Australia’s political parties to take a principled and courageous stand to break this ingrained political habit of demonizing asylum-seekers.⁶²

Julian Burnside discussed this political “doublespeak” (albeit in respect of an earlier government) in his book *Wordwatching*:

Like all doublespeak, ‘illegals’ is used for a purpose: these people are immediately locked up without trial. No doubt it seems less offensive to lock up ‘illegals’ than to lock up innocent, traumatised human beings.

They are also disparaged as ‘queue jumpers’: a neat device that falsely suggests two things. First that there is a queue, and second that it is in some way appropriate to stand in line when your life is at risk.

When the ‘illegals/queue jumpers’ arrive, they are ‘detained’ in ‘Immigration Reception and Processing Centres’. This description is false in every detail. They are locked up without trial, for an indefinite period – typically months or years – in desert camps that are as remote from civilisation as it is possible to be. They are held behind razor wire, they are addressed not by name but by number, and they slowly sink into hopelessness and despair.” (Burnside, 76)

While we have focussed on one country, the same racial elements are at work in public discourse in places such as Europe and the United States.

Such discourse, and such actions, are profoundly racist. To ignore the racial and xenophobic elements in the treatment of non-citizens is to ignore the root of the problem. That root is the persistence of the false premise that human beings are irremediably separated by race and culture or that they cannot and should not live together in peace and harmony. It is coupled with another, more sinister falsehood:

⁶¹ Roger Hendrix (pen name) *Only Water in a Stranger’s Tears* 29 October 2010, <http://www.abolishforeignness.org/blog/archives/562>.

⁶² Statement by the UN High Commissioner for Human Rights, Navi Pillay, Canberra 15 May 2011 <http://acthra.anu.edu.au/Federal/Statement%20by%20the%20UNHCHR%20250511.doc>, <http://www.un.org.au/News.aspx?category=1&element=48&PKID=405>

that we are entitled to violate the human rights of those who are different to us, because ‘we’ are more important than ‘they’, and simply because they do not have the right paperwork.

Universal rights - universal citizenship

The first draft of the Universal Declaration was prepared by John Humphries. He learnt of human rights through the experience of disability. He was the Director of the newly established United Nations Division of Human Rights. The first draft he prepared stated “*The preamble ... shall enunciate ... that man is a citizen of both his state and the world ...*” This idea was lost in the drafting process. As the world is currently ordered, with the exception of emerging regional citizenships such as in the European Union, citizenship is largely exclusive and disjunctive. I am a national citizen of A, but generally not a citizen of B. To change this citizenship is difficult or impossible for the excluded who are always intended to remain beyond the border.

Plutarch said:

*... nature has given us no country as it has given us no house or field.
... Socrates expressed it ... when he said, he was not an Athenian or a Greek,
but a citizen of the world (just as a man calls himself a citizen of Rhodes or
Corinth).* (Plutarch, 18-19)

Plutarch and Socrates urged their audiences to become conscious of a wider reality and to exercise their imagination to overcome a narrow, localised conception of their identity.

Similarly, Thomas Paine wrote “my country is the world” (Paine, 472) Bahá’u’lláh, the founder of the Bahá’i faith, said “The earth is but one country, and mankind its citizens”. (Bahá’u’lláh, 250) Many other leaders and philosophers have argued likewise.

In a famous address to the United Nations on 4 October 1963 – part of which was later made into a beautiful song by Bob Marley – Emperor Haile Selassie said:⁶³

When we talk of the equality of man, we find, also, a challenge and an opportunity; a challenge to breathe new life into the ideals enshrined in the Charter, an opportunity to bring men closer to freedom and true equality and thus, closer to a love of peace.

The goal of the equality of man which we seek is the antithesis of the exploitation of one people by another with which the pages of history and in particular those written of the African and Asian continents, speak at such length.

⁶³ Emperor Haile Selassie 1 address to the UN General Assembly 6 October 1963
<http://www.africaspeaks.com/reasoning/index.php?topic=6871.0;wap2>

Exploitation, thus viewed, has many faces. But whatever guise it assumes, this evil is to be shunned where it does not exist and crushed where it does.

On the question of racial discrimination, the Addis Ababa Conference taught, to those who will learn, this further lesson:

That until the philosophy which holds one race superior and another inferior is finally and permanently discredited and abandoned;

That until there are no longer first-class and second class citizens of any nation;

That until the colour of a man's skin is of no more significance than the colour of his eyes;

That until the basic human rights are equally guaranteed to all without regard to race;

That until that day, the dream of lasting peace and world citizenship and the rule of international morality will remain but a fleeting illusion, to be pursued but never attained...

But what is it that prevents us from reaching beyond our national identity?

The usual objection to opening borders – that people with less opportunity would come to our country – is founded on the premise that we and our fellow citizens are entitled to enjoy better living conditions than our neighbours. But the argument that each wider concentric circle of citizenship necessarily evokes a lesser set of citizenship duties is not morally justifiable. We acknowledge that some have argued otherwise. However, in our view such arguments are no more tenable than the arguments of those who advocated the privilege of the slave owner over the slave, the colonial over the colonised or man over woman. Any value that exclusivity might confer on the citizen cannot justify the global injustice perpetrated in the name of such exclusive and discriminatory citizenship.

Only 3.1 per cent of the world's population reside outside their country of birth.⁶⁴ Citizenship of a "lucky country" is therefore an incredibly valuable commodity, but is acquired by most of us on the basis of a set of criteria without moral justification. National *jus soli* and *jus sanguini* citizenship laws "perpetuate and reify dramatically differentiated life prospects".⁶⁵

Ayalet Shachar, in her book *The Birthright Lottery: Global Citizenship and Global Inequality* (2009), compellingly analyses citizenship as a form of property, transmitted at birth. She draws a striking analogy between the birthright of citizenship in the modern world and the birthright of property under the English

⁶⁴ International Organization for Migration, "Facts and figures, global estimates and trends" – downloaded from <http://www.iom.int/jahia/Jahia/facts-and-figures/global-estimates-and-trends>

⁶⁵ Ibid, 10

feudal system. She powerfully invokes William Blake: “Some are born to sweet delight, Some are born to endless night”.⁶⁶

The scale and nature of human rights violations in the name of citizenship are so profound that it must inevitably lead us to reflections as to how such a state of affairs may be reformed. If national citizenship is to become just, it must be disconnected from birthright privilege and must cease to be exclusive. Further, any such expanded notion of citizenship would be of little value if not also connected with the issue of freedom of movement and the right to cross borders. Without such a right, the situation would remain largely as it is now.

Beyond the Border: Poverty and the Denial of Rights

Citizenship in Western liberal democracies is the equivalent of inherited feudal privilege – an inherited privilege that greatly one’s life chances. Like feudal birthright privileges, restrictive citizenship is hard to justify when one thinks about it closely.
(Joseph Carens cited in Bader, 32)

Thomas Pogge, in his book *World Poverty and Human Rights* (2008), argues that favouring one’s compatriots is a global form of nepotism, and that it is as morally unacceptable as a public official favouring her child. (Pogge, chapter 5) What he calls “explanatory nationalism” – an approach which explains that national governments are ultimately responsible for global inequality – allows us (the lucky) not to see any connection between our actions and global poverty. (Pogge, 147) “How”, he asks, “can our ever so free and fair agreements with tyrants give us property rights in crude oil, thereby dispossessing the local population and the rest of humankind?” (Pogge, 148, 182-5) Morally, they cannot. By these and other actions of our governments, we are, he argues, deeply implicated in the harms caused by tyrannical regimes. As he says, “[b]y helping to impose the present global institutional order, we are participants in the largest human-rights violation in human history.” (Pogge, 264)

The easiest focal point for global inequality is poverty. (Bader, 31-2) 1 billion children worldwide are deprived of services essential to survival and development; in 2008, 8.8 million children died worldwide before their fifth birthday.⁶⁷ In 2009, global military expenditure was \$ US 1531 billion;⁶⁸ the same year, the G8 countries provided only \$US 82.175 billion in development funding.⁶⁹

⁶⁶ William Blake, *Auguries of Innocence* (c 1807).

⁶⁷ UNICEF, *The State of the World’s Children* (2009) - downloaded from http://www.unicef.org/rightsite/sowc/pdfs/SOWC_Spec%20Ed_CRC_Main%20Report_EN_090409.pdf.

⁶⁸ Stockholm International Peace Research Institute, Chapter 5 (summary), *SIPRI Yearbook 2010* (2010) - downloaded from <http://www.sipri.org/yearbook/2010/05>.

⁶⁹ Under the Official Development Assistance Scheme – see Executive Summary, *Muskoka Accountability Report: Assessing action and results against development-related commitments* (2010) - downloaded from

Pogge finishes his book with these two sentences: “[world poverty] kills one-third of all human beings born into our world. And its eradication would require no more than 1 percent of the global product.” (Pogge, 264)

In a recent research paper for the World Bank, Branko Milanovic analysed income data from 120 countries. (Milanovic) 80 per cent of variability in incomes around the world is determined by (i) place of birth and (ii) parental income. Once a person’s income class is determined, their country of residence accounts for 95 per cent of variability in their income. In many countries, the mean income is so low that the wealthiest class earns less than the poorest class in a more affluent country. For example, India’s income distribution runs from \$PPP 200 to \$PPP 2,000; the United States’, \$PPP 2,000 to \$PPP 70,000. Such averages of course may obfuscate variance, and should not allow us to forget the existence of very large wealthy and privileged elites beyond the border, who are as much part of the ‘global north’ as populations geographically located within it. And of course poverty and economic exclusion is not confined to the ‘global south’. Milanovic has also analysed the changes in global inequality between 1820 and 2002. (Milanovic) He found that global inequality increased from 43-45 Gini points⁷⁰ in the early 19th Century to 65-70 today. And “[e]ven more remarkable is that the composition of global inequality changed from being driven by class differences within countries to being driven by locational income differences (that is, by the differences in mean country incomes)”. (Milanovic, 24)

Globalisation has increased and entrenched global inequality. This is despite two recent changes making global inequality even more difficult to justify: practically, the opportunity cost of shifting global income distribution to eradicate poverty is much less than it would have been fifty years ago; philosophically, moral universalism has replaced colonial and imperial attitudes to rights.

“Radical inequalities” – that is, “global inequalities that are absolutely extreme, relatively extreme, persistent, pervasive, and avoidable” – are inherently objectionable, and place a moral obligation on those at the top of the pile to do something. (Milanovic, 165) They call us to action. As Nelson Mandela said recently:

Like slavery and apartheid, poverty is not natural. It is man-made and it can be overcome and eradicated by the actions of human beings.

And overcoming poverty is not a gesture of charity. It is an act of justice. It is the protection of a fundamental human right, the right to dignity and a decent life.

*While poverty persists, there is no true freedom.*⁷¹

http://www.g8.utoronto.ca/summit/2010muskoka/accountability/muskoka_accountability_report_executive_summary.pdf.

⁷⁰ The Gini co-efficient is a measure of equality.

⁷¹ Speech for Make Poverty History Campaign, 3 February 2005, downloaded from http://news.bbc.co.uk/2/hi/uk_news/politics/4232603.stm (emphasis added).

In the face of this powerful moral call to action, what is it that maintains the status quo? In his last public speech before he was killed, Dr Martin Luther King Jr reflected on the parable of the Good Samaritan. The Levite and the priest passed by a man who had been severely beaten by robbers without stopping, but a Samaritan – a foreigner, of a despised and persecuted minority – stopped and helped the unfortunate victim. Dr King speculated why the Levite and priest did not stop:

... you know, it's possible that the priest and the Levite looked over that man on the ground and wondered if the robbers were still around. Or it's possible that they felt that the man on the ground was merely faking. And he was acting like he had been robbed and hurt, in order to seize them over there, lure them there for quick and easy seizure. And so the first question that the priest asked, the first question that the Levite asked was, "If I stop to help this man, what will happen to me?"

But then the Good Samaritan came by, and he reversed the question: "If I do not stop to help this man, what will happen to him?" (Carson, 363)

Dr King is another example of a human rights campaigner whose questions about a failure to respect human beings for a specific reason led him to a broader inquiry.

A work in progress

The work of human rights, which is that of the vindication of equality, community and dignity of us all is a work in progress.

In the past that work confronted and overcame powerful forces: forces of vested interest which time and again sacrificed human beings for personal gain. Allied to those forces of vested interest are theories of superiority or special entitlement. In the past such interests and theories combined in support of colonialism, slavery, segregation and the oppression of women. Today those interests and theories are focussed on citizenship and borders. Whereas in the past we made 'slaves' of our fellow human beings, or 'untermensch', or 'the colonized', today we make them 'foreigners'. So often, the practical results are the same.

Human Rights Watch undertakes excellent human rights work. In its report on immigration reform in the United States it recommends many measures that should be pursued. Yet it is to be compelled to begin its report by suggesting that "states have a right to protect their borders", "that there is no recognized human right to migrate to another country". (Human Rights Watch, 2010, 1) Such statements are clearly correct as a matter of human rights law, nor are they unusual in a human rights context. The Committee under the International Covenant on Civil and Political Rights, expresses the same view.⁷² Yet we argue that inter-national laws that allow discrimination against non-citizens can no more be justified than national laws which violate human rights. In the 21st century, equality and human dignity requires the removal of citizenship discrimination from human rights law itself. There is an understandable

⁷² General Comment 15, para 5

reticence to go beyond the human rights ‘law’ framework – for it is a powerful normative tool, and a site of consensus. Yet in this case, it is essential to go beyond it – to critique the law by reference to the principles at its foundation. Those principles become impotent in the protection of the rights of all human beings if State interests allow the violation of human rights.

There is already an enormous body of advocacy undertaken by effective and committed organisations around the disparate issues identified by Weissbrodt. He suggests the need to bring advocacy silos together to address the common theme of the rights of non-citizens as a whole. There is also, it appears to us, a need to break out of national and regional silos, which parochially divide what is fundamentally a global issue.

We argue that there is a need to take the kinds of insights that are offered by the moral philosophers on questions of citizenship into the sphere of practical human rights advocacy.

But our paper is not intended to be a work of scholarship; rather, it is intended as a call to practical measures to address a profound and unresolved human rights problem, and we will measure its success by the extent to which it induces action.

So we ask: *Will ‘foreigners’ have the same human rights as the rest of ‘us’?*

Whether in collaboration with ourselves or others, or in your own way, we appeal to you to take action to address this burning human rights issue of our time.

Abolish Foreignness

<http://www.abolishforeignness.org>

References

1. ACHSSW (Australian Council of Heads of Schools of Social Work) *We’ve Boundless Plains to Share: The First Report of the People’s Enquiry into Detention*
http://achssw.org.au/images/pdf/PIDFirstReportNov_2006Final.pdf
2. AHRC (Australian Human Rights Commission) *Immigration Detention at Villawood – May 2011*
http://www.hreoc.gov.au/human_rights/immigration/idc2011_villawood.doc
3. Stefan Alscher, *Knocking at the doors of “Fortress Europe” Migration Control in Southern Spain and Eastern Poland* Working Paper 126 November 2005 The Centre for Comparative Immigration Studies, University of California, San Diego.
4. Veit Bader *Citizenship and Exclusion*, Macmillan Press, 1997
5. Bahá’u’lláh, *Gleanings from the Writings of Bahá’u’lláh* (1976), Translated by Shoghi Effendi, Baha’i Publishing Trust
6. Nicholson Baker, *Human Smoke, The Beginnings of World War II, the end of Civilization*, Simon and Schuster 2008
7. Julian Burnside, *Wordwatching - fieldnotes from an amateur philologist*, Scribe Publications, 2004

8. Paul Carrozza, *From constitutions to constitutions, retrieving a Latin American tradition of the idea of human rights*, *Human Rights Quarterly*, 25 (2003) 281–313
9. Jennifer M. Chácon, *A Diversion of Attention? Immigration Courts and the Adjudication of Fourth and Fifth Amendment Rights*, 59 *DUKE L.J.* 1563, 1565 (2010).
10. Thomas Clarkson, Volume 2, *The History Of The Rise, Progress, And Accomplishment Of The Abolition Of The African Slave-Trade By The British Parliament* (1808) available at <http://www.abolishforeignness.org/materials/ClarksonVol2.pdf> and www.gutenberg.org
11. Clayborne Carson (ed), *The Autobiography of Martin Luther King, Jr* (2000)
12. David Brion Davis, *Inhuman Bondage: The Rise and Fall of Slavery in the New World* Oxford University Press 2006
13. Detention Watch Network, *Year One Report Card Human Rights & the Obama Administration's Immigration Detention Reforms* October 6, 2010, <http://www.detentionwatchnetwork.org/sites/detentionwatchnetwork.org/files/ICE%20report%20card%20FULL%20FINAL%202010%2010%2006.pdf>
14. Kevin Dunn, *Attitudes towards Immigration and Immigrants a) Perspectives Findings of a survey on racist attitudes and experiences of racism in Australia*, Kevin M. Dunn http://www.uws.edu.au/__data/assets/pdf_file/0013/27112/NEWDIRECT_PD F.pdf
15. Kevin Dunn et al, *CHALLENGING RACISM: THE ANTI-RACISM RESEARCH PROJECT National level findings*. http://www.uws.edu.au/__data/assets/pdf_file/0007/173635/NationalLevelFindingsV1.pdf downloaded 13 June 2011
16. Paul Gilroy, *Race and the Right to be Human*, Treaty of Utrecht Chair Inaugural Address 3 December 2009 http://www2.hum.uu.nl/onderzoek/lezingenreeks/pdf/Gilroy_Paul_oratie.pdf
17. Jacqueline Hagan, Brianna Castro, Nestor Rodriguez, *The Effects of US Deportation Policies on Immigrant Families and Communities: Cross-Border Perspectives*
18. Maria Himenez *Humanitarian Crisis: Migrant Deaths and the US-Mexico Border* ACLU of San Diego & Imperial Counties, Mexico's National Commission of Human Rights 1 October 2009
19. Human Rights Watch, *Pushed Back, Pushed Around Italy's Forced Return of Boat Migrants and Asylum Seekers, Libya's Mistreatment of Migrants and Asylum Seekers*, Human Rights Watch Report September 2009
20. Human Rights Watch, *Tough, Fair, and Practical A Human Rights Framework for Immigration Reform in the United States* 2010
21. HURRICANE, *Injustice for All: The Rise of the U.S. Immigration Policing Regime: A human rights report on U.S. government abuses against immigrant families, workers, and communities*. HURRICANE: The Human Rights Immigrant Community Action Network An initiative of the National Network for Immigrant and Refugee Rights (NNIRR), December 2010,
22. Paul Gordon Lauren, *The Evolution of Human Rights Visions Seen* Penn University of Pennsylvania Press, Philadelphia 2003 Second Edition

23. Francis Augustus MacNutt, BARTHOLOMEW DE LAS CASAS; HIS LIFE, APOSTOLATE, AND WRITINGS, Cleveland, U.S.A. The Arthur H. Clark Company 1909 e-book published via www.gutenberg.org
24. Migreurop, *European Borders, Controls, Detentions and Deportations* 2009/2010 Report
25. Branko Milanovic, *Global inequality of opportunity: How much of our income is determined at birth?* (2009) - downloaded from <http://siteresources.worldbank.org/INTDECINEQ/Resources/Where8.pdf>.
26. Peter Nyers, *No One is Illegal Between City and Nation* Studies in Social Justice, Vol 4, Issue 2, 127-143, 2010
27. Thomas Paine, *Rights of Man* (1792)
28. Thomas Pogge, *World Poverty and Human Rights*, Polity Press, (2008)
29. Plutarch, *Plutarch's Morals: Vol 3* (corrected and revised by William Goodwin, 1878)
30. Kim Rubenstein, *Australian Citizenship Law in Context* (2002), [2.2.1];
31. Kim Rubenstein, "Citizenship in the Constitutional Convention Debates: A Mere Legal Inference?" (1997) *Federal Law Review* 295
32. Vladislava Stoyanova, *The Smuggling of Asylum Seekers: the cost of having no alternative* Masters Thesis 2009 Central European University http://www.etd.ceu.hu/2010/stoyanova_vladislava.pdf
33. Patrick A. Taran, *The need for a rights-based approach to migration in the age of globalization* in Paul de Guchteneire *Migration and Human Rights: The United Nations Convention on Migrant Workers' Rights* ed de Guchteneire, Cambridge UNESCO 2009
34. U.S. Human Rights Fund, *Perfecting our Union. Human Rights Success Stories from Across the United States* March 2010
35. Henk van Houtom and Freerk Boedeltje, *Europe's Shame Death at the Borders of the EU*, *Antipode* Vol 41, No. 2, pp 226--230, 2009}, Wiley Online Library
36. Leanne Weber, *Knowing-yet-not-knowing About European Border Deaths* *Australian Journal of Human Rights* 2010 Vol 15(2) p 35
37. David Weissbrodt, *Working Paper on the Rights of Non-Citizens* (1999) (U.N. Doc. E/CN.4/Sub.2/1999/7)
38. David Weissbrot and Stephen Meili, "Human rights and protection of non-citizens : wither universality and indivisibility of rights?" (2009) 28(4) *Refugee Survey Quarterly* 34
39. John Williams, "Race, Citizenship and the Formation of the Australian Constitution: Andrew Inglis and the 14th Amendment" (1996) 42 *Australian Journal of Politics and History* 10.