The Incommensurability of Law to Justice

REFUGEES AND AUSTRALIA'S TEMPORARY PROTECTION VISA

Joseph Pugliese

Abstract. In this article, the author examines the effects of Australia's Temporary Protection Visa regime on the lives of refugees and asylum seekers. In the process, he stages a Levinasian reading on the ethical question of justice in the context of law and politics. This question of justice, he argues, is predicated on the relation with the Other and what Levinas terms a "non-transferable responsibility" to address the call of the Other in their moment of need.

Mr Wahedy, 46, died in a state of paranoia, convinced immigration officials were on his trail, tapping his phone and watching every move. His temporary visa was due to expire on April 11, and he believed he would die if he returned to Afghanistan, telling immigration officials at Port Headland [Detention Centre] three years ago that he would kill himself if he was sent home.

... Mr Wahedy, who leaves a wife and three children in Kabul, was from the ethnic Hazara community in Afghanistan, which the Sunni Muslim Taliban persecuted because of their faith.

... Father Tony Pearson, of the Catholic Otherway Centre in Adelaide, which helps Afghan refugees, said Mr Wahedy died of fear. "It was mental illness induced by the dreadful stress and strain of an educated man coming to Australia filled with hope, being locked up behind razor wire for six months then being released without security for the future."

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Silhouetted against the evening sky is the body of a man. An odd figure in the landscape, his body is floating in the air, supported by overhead power lines. From this safe height, he can survey with the pathos of distance his long, harrowing journey to this terminus. Afghanistan, Pakistan, Port Headland, Adelaide, Murray Bridge—a handful of disparate names now all geopolitically linked by the logic of war, displacement, and detention. On the outskirts of Adelaide, the overhead power lines at Murray Bridge offer Habib Wahedy, an Afghan refugee, a temporary resting place. Strange fruit hanging from power lines in this nondescript Australian suburb, his lifeless body evokes the image of a public lynching. Underscoring this evocation of a public execution is the fact that the body of Habib Wahedy will remain hanging from the power lines for twelve hours. This public exposure of his dead body places him within the signifying role of executed criminal as exemplum: the law publicly displays the corpse of the criminal as an object lesson to all incipient criminals in order to stage a triumphant display of its power. Further underscoring this image of Habib Wahedy’s electrocuted body as public theatre and spectacle is the fact that passers-by who look up at his hanging body repeatedly mistake it for a “dummy.” Among other things, this repeated misrecognition—where the body of the refugee is mistaken for a nonhuman figure, a mere manikin—articulates an unspeakable truth concerning our national perception of refugees and asylum seekers.

Enmeshed within the power lines, Habib Wahedy’s body is finally and inextricably connected to that quotidian Australian existence that he so desperately wanted to secure. Unbeknownst to thousands of Australians, for twelve hours Habib Wahedy becomes an electrical nodal point in their lives. As if consenting to his electrocution, precisely as they enact the chores and practices of their everyday lives—switching on a light, listening to music, cooking their dinner, watching the television—they are momentarily connected to the electrified specter of this refugee. In the context of a nation that has so rigorously thwarted, detained, incarcerated, and expelled its refugees, in this singular moment the refugee overthrows all borders, overflows the razor-wire barriers, and enters the very hearth of the Australian home.

The seared flesh of Habib Wahedy, his incalculable anguish, is transmuted into an energy field that enables the production of the Australian way of life. The comfort and security of the Australian way of life hangs on the balance of a sacrificial body suspended by a couple of overhead power lines. Habib
Wahedy literally enters the national grid as an electrified idiom: "refugee," in the Australian vernacular, embodies "fear," "threat," "disorder to," and "parasitism on" the Australian way of life. Repeatedly represented as the figure that will short-circuit the Australian way of life, in this extended moment, for the unbearable duration of twelve hours, the body of the refugee offers itself up to our national circuits of production and consumption, lighting our homes, fueling our stoves, powering our domestic lives.

Characterized by an absolute exteriority, quarantined from inhabiting the locus of nation, exiled to a cluster of isolated gulags of non-Australia (the Refugee Detention Centres of Woomera, Port Headland, Villawood, Baxter, Curtin . . .), the refugee, through the charged figure of Habib Wahedy, stages a haunting return to that locus of absolute interiority, to that most hospitable of places—the home—from which s/he has been banished. Our homes, in this instant, become domestico-funerary abodes, crypts haunted by the very figure so vehemently debarred and excluded from the nation. The ethical relation between two seemingly opposed orders—refugee/citizen, non-nation/nation, prison/home, exterior/interior—is, in Habib Wahedy's unforgettable moment of electrocution, indissociably fused. The haunting specter of the refugee enters our homes and illuminates the contours of this ethical relation, where ethics is a priori our relation to the other, our offer of hospitality to the seeker of refuge and asylum. In the shape of a contaminating and uncannily symmetrical form of paranoia, through the electrified body of Habib Wahedy, the spirit of the refugee installs itself everywhere: it takes up residence in every home connected to the national grid. The nation, finally, is compelled to play unconditional host to the refugee. Habib Wahedy thus gifts to the nation, through his death, the very spirit of hospitality it was incapable of offering, hospitality here understood in the best and truest sense of the word: unconditional, ubiquitous, and without reserve.

Strung across power lines, Habib Wahedy's body establishes a point of connection with all those other nameless bodies of refugees that have, in moments of utter despair, flung themselves from the roofs of detention centers onto the coils of razor wire that run the length of the walls and fences that imprison them. These suspended bodies, held in the torturous embrace of razor wire or transfixed by the force field of live electrical wires charged with 9,000 volts, supply the flesh that buttresses the borders of Fortress Australia. Suspended over the void, Habib Wahedy's body condenses the abyssal state of
the nation's refugees: dislocated and displaced, homeless and stateless, they have been relegated to a nonhabitable locus inscribed by violence, fear, and persecution.

The nonhabitable locus of non-Australia, as that abyssal space that absorbs the human detritus that transgresses both our laws and our borders, invisibilizes its subjects: traumatized and disfigured beyond recognition, they disappear behind razor wire fences and brick walls, where their mouths are sutured, their voices are silenced, and their flesh and blood bodies are decorporealized. All that remains are spectral figures suspended in the atemporal zone of the event horizon, fatal radius that circumscribes their detention centers and the newly legislated borders of non-Australia, where leaky boats are towed back to sea and human cargo drown.

THE EXECUTION OF LAW AND THE SUSPENSION OF JUSTICE

"Injustice has too much power over us and is trying to kill us"
[voice of a refugee imprisoned in an Australian Detention Centre]

Habib Wahedy's death incarnates the execution of law and the suspension of justice. His death dramatizes the stark difference between justice and law. This article will examine this contradistinction between justice and law, and will draw upon the work of Emmanuel Levinas and Jacques Derrida to begin to address the critical differences between these two fundamental categories, precisely as they operate within the national context of our juridico-political treatment of refugees and asylum seekers.

Before proceeding any further, however, I want briefly to explain the significance of the title to this section of this article. The slogan that the Australian Prime Minister delivered to the electorate from podiums across the nation in 2001, "We decide who comes to this country and the circumstance in which they come," resonated as a type of declaration of war—war against the refugee, falsely represented by both the government and the media as threatening to overrun and conquer the nation. This seemingly hyperbolic suggestion that the PM's slogan was tantamount to a declaration of war achieved a type of empirical credence in the face of the violent, militarized apparatuses of exclusion and repression (including the use of the navy and the Special Air Services [SAS]) that were deployed against refugees entering the nation informally by
boat; riot police, tear gas, electric batons and water cannon have all been used against those refugees already in the detention camps. As Suvendrini Perera argues in her essay on Australia’s refugee detention camps, these camps are situated within “complex histories of racialised punishment and the prison-asylum” and are “thoroughly enmeshed within western military initiatives.”

In tracking these complex histories, Perera discloses “the merging of the asylum seeker into the terrorist and the representation of aspiring refugees as threats to national security”; this “legitimises a militarised response against the unarmed and defenceless.”

It is within this theater of war against refugees that, as in times of war, the law is executed with certain ends that result in the suspension of justice. And I draw on the various registers that are encoded in the phrase “execution of law”: “the action of carrying out or into effect; the performance or fulfillment of all formalities necessary to give validity to a legal instrument”; “the enforcement by the sheriff of the judgment of the court”; the “infliction of (esp. capital) punishment in pursuance of a judicial sentence”; to “put to death in pursuance of a sentence; hence to put to death, kill.”

Whilst encompassing this range of significations, my use of the phrase “execution of law” also suggests two other critical meanings: to deploy and exercise the law violently; and to execute or kill the spirit of law, a spirit that theoretically informs the legal institutions that are instrumental in the realization of justice.

In my use of the phrase “suspension of justice,” I want to bring into focus two things: justice as what is side-lined, travestied and withheld in the execution of law; and the literal effects of withholding of justice—in other words, in the context of the nation’s refugee laws, the fatalities and miscarriages of justice that are perpetrated against refugees in the name of the law. These miscarriages of justice must be seen as structurally produced as, on the one hand, they are the result of the current government’s violation of international conventions and protocols on the rights of refugees and asylum seekers and, on the other hand, they are also the result of the absence of any Bill of Rights in the Australian Constitution.

The Australian legal system is based on the British common law model, and there is no Bill of Rights enshrined in the Constitution (1901). Basic human rights are seen to be protected implicitly through adherence to the conventions of common law. The structural potential for failure to ensure basic human rights, through this sole reliance on the conventions of common law, becomes glaring precisely in the context of Australian refugee law. For example, the
Migration Amendment Act 1992, mandating the custody and indefinite detention of so-called “unauthorized” refugees and asylum seekers, fundamentally violates one of the cornerstones of common law: the presumption of innocence of the suspect and the right to apply to a court for release from detention pending the determination of the suspect’s claim. This is a right that is denied to all so-called “unauthorized” refugees and asylum seekers. As Marcus Einfeld, Justice of the Federal Court of Australia, has observed,

The severity of this denial of a fundamental right is emphasised by the fact that a significant number of our detainees have subsequently been granted refugee status, meaning that these persons have eventually been found, after investigation, to have been forced out of their own countries by persecution or to have a genuine and well-based fear of persecution if they return. After we have deprived them of their liberty for long periods, they have thus not even committed an immigration “offence.” In my view, administrative internment of the innocent for years in peacetime is barbaric treatment otherwise quite unknown in peacetime in our country and in others with similar legal traditions.\(^8\)

Throughout this article, I will be using the hyphenated term juridico-political. In the Australian context, refugee law has become thoroughly imbricated with politics. In fact, this hyphenated construction needs to be expanded to encompass ethics in order to articulate “the ethico-political-juridical question of justice.”\(^9\) I want specifically to address this question of justice in its relation to ethics, law, and the state in the context of the work of Emmanuel Levinas. When viewed in Levinasian terms, the possibility of justice immediately complicates the dual relation between the self and the other. We do not live in a world constituted solely by the relation between the self and the other; rather, “there is always a third party in the world”: the third party is also my neighbor.\(^10\) The “third party,” for Levinas, refers to the neighbor threatened by the other as “executioner” and, “in this sense, calls for violence and no longer has a Face.”\(^11\) The “Face” here encapsulates the ethical relation between the self and the other, where, in the Face of the other, I bear responsibility to offer hospitality and refuge. The processes that enable justice are concerned with questions of equity, of weighing up and comparison. These processes demand the establishment of authorities and institutions underpinned by the state: “If one speaks of justice, it is necessary to allow judges, it is necessary to allow institutions and the state; to live in a world of citizens, and not only in the order of the Face to Face.”\(^12\) The complicating and necessary figure of the third party, then,
is instrumental in establishing a judicial system of comparison, arbitration, and judgment in the dispensation of justice.

In articulating the necessity of the state and the institution of law as fundamental to the realization of justice within a society, Levinas immediately introduces a critical qualification: "But justice only has meaning if it retains the spirit of dis-interestedness which animates the idea of responsibility for the other." The spirit of dis-interestedness is what underlines the ethical relation to the other, where the relation is structured unconditionally by a for-the-other and not by my concern for what the other can do for me. The ethics of dis-interstedness as unconditional responsibility for-the-other are enunciated in this seemingly paradoxical formulation: "I understand responsibility as responsibility for the Other, thus as responsibility for what is not my deed, or for what does not even matter to me; or which precisely does matter to me": the other. Without this critical qualification, justice becomes merely interchangeable, and thus radically short-changed, with a law and politics driven opportunistically by polls, electoral considerations and political self-interest—a scenario that accurately describes the current politicized state of refugee law in Australia.

In his recent work, Jacques Derrida has turned his attention increasingly to Levinasian questions of hospitality, ethics, and justice, fruitfully elaborating on these concerns. In his deconstruction of hospitality, Derrida identifies and names the violent paradox that inscribes its very conditions of (im)possibility: "No hospitality, in the classic sense, without sovereignty of oneself over one’s home, but since there is no hospitality without finitude, sovereignty can only be exercised by filtering, choosing, thus by excluding and doing violence. Injustice, a certain injustice . . . begins right away, from the very threshold of the right to hospitality." The very intelligibility of hospitality, as offer of refuge and asylum, is conditioned by a certain violence that determines the parameters of one’s home, circumscribes the legal border of one’s threshold, and legitimizes the propriety that one has over one’s own place. This violence is instantiated in every act of conditional hospitality, underpinned by processes of screening and selection, of exclusion or expulsion.

Having established the political realities of conditional hospitality, as a practice always already inscribed by a certain violence, Derrida, however, returns, throughout all his writings on hospitality, to Levinas’s concept of unconditional hospitality—as that ethical relation that must continue to inform and inspire the institutions of law and politics in order for them to claim the
right to represent themselves as institutions committed to justice. "While I realize," writes Derrida, that the concept of unconditional hospitality remains, from the point of view of politics, "an apolitical and irreceivable proposition, I nonetheless claim that a politics that does not maintain a reference to this principle of unconditional hospitality is a politics that loses its reference to justice. It may retain its rights (which I again distinguish here from justice), the right to its rights, but it loses justice. Along with the right to speak of justice in any credible way."16 Justice is lost precisely because it becomes entirely coextensive with a politics driven by a self-interestedness concerned with shoring up the borders of the threshold, with one’s propriety over the nation/home, with one’s sovereignty, and with a freedom unencumbered by the non-transferable demands and responsibilities that, in this context, the face of the refugee provokes.

The enormity of this provocation is evidenced by the manner in which, in the Australian context, it has generated fears and anxieties of truly national dimensions. The inextricable connection between refugees, hospitality, and national sovereignty are succinctly articulated in the Derridean aphorism "Hospitality is the deconstruction of the at-home."17 If, as outlined above, conditional hospitality is exemplified by concerns over the sovereignty of one’s home—the boundaries and limitations set in the welcome extended to the other—then, in the end, Derrida argues, conditional hospitality fails to realize hospitality as such. For hospitality to take place, one would have to have "the experience of the impossible": "the exercise of impossible hospitality, of hospitality as the possibility of impossibility (to receive another guest whom I am incapable of welcoming)"18—to welcome the unwelcome, the unauthorized, the unlawful, unintegratable, unassimilable seeker of asylum. This last series constitutes what Derrida terms an other who is not the "‘its other’ of dialectics,"19 that is, an other who cannot be simply dialectized and incorporated into the superordinate terms of the host/nation.

What Derrida calls "radical hospitality" throws into question every boundary, every law, and every institution shoring up the sovereignty of the at-home. The provocation in this welcome of the unauthorized other lies in its radical calling into question of the juridico-political categories of sovereignty and property that underpin the nation-state. As such, this provocation exposes those originary acts of violent colonial invasion and appropriation, conducted under the legal fiction of terra nullius,20 which found the at-home of the Australian
nation. Every unauthorized entry of a seeker of asylum, every Tampa-like boat, throws into crisis the comfort and security of the at-home, haunted by its own repressed illegitimacy and originary violence.

**COLONIAL GENEALOGIES, HISTORICAL TEMPLATES, AND ZONES OF TERROR**

The link that I have begun to establish between past colonial practices and histories and current anti-refugee policies and laws must be seen as structural and not simply as coincidental. In her essay “What is a Camp . . .?” Suvendrini Perera has traced the genealogy of the contemporary refugee detention camps back to the “penal camp and the mission” established by colonial authorities for the internment of Australian Indigenous peoples displaced and incarcerated “in the second stage of colonisation”: “Through the mechanism of the camp the native becomes that which is, by definition, set apart from the citizen.” In such camps, Indigenous people were systematically disenfranchised of the basic rights of the citizen.

I want briefly to elaborate on Perera’s critical linking of refugee camps to colonial practices and institutions by focusing on the unprecedented powers recently given to Australia’s domestic intelligence agency, the Australian Security Intelligence Organization [ASIO], under the recently legislated ASIO anti-terrorist bill—specifically, on the new power of indefinite detention of suspected terrorists.

Although the anti-terrorist bill apparently allows ASIO to detain for up to a week anyone suspected of having information about a terrorist offense, in fact, as Senator Bob Brown has argued, there is a loophole whereby ASIO can apply for an indefinite series of consecutive one-week detentions: “the government, for its part, is arguing the right to seven days’ detention under a single warrant, and then a further warrant for another seven days, and so on indefinitely, if necessary. In other words, indefinite detention without charge, plus continuing rolling periods of questioning.”

This law of indefinite detention without charge has already found its most graphic implementation in the indefinite imprisonment of refugees within Australia’s refugee camps, as they wait for their claims to be processed. In both cases, in the indefinite detention of refugees and of people suspected of terrorist links, people are imprisoned without trial. In its carefully orchestrated campaign of misinformation and misrepresentation, the federal government
has repeatedly and successfully attempted to collapse the distinction between refugees and terrorists, claiming most infamously (post 9/11) that “unauthorized” refugees coming on boats (not jets) were all potential terrorists who needed immediately to be detained and imprisoned. In the unforgettable words of Solicitor General David Bennett, arguing for unrestricted government power to block entry of “unauthorized” refugees into the country, “‘Today, invasions don’t have to be military. They can be of diseases, they can be unwanted migrants.’ The government must have power to protect Australia from the sort of people ‘who did what happened in New York yesterday [9/11].”25

The laws that have now been legislated under the ASIO bill, that imprison “potential terrorists” without trial, must be historically contextualized within the juridico-political frame of colonialism. Specifically, they take as their historical template the powers granted to the Inspector of Police, “under his authority as Protector of Aboriginals,” to remove “any [A]boriginals or half-castes” who in his opinion were ‘uncontrollable’ in an institution such as a prison, for an indefinite period.”26 As Thom Blake explains, “The definition of an ‘uncontrollable’ person was broad; it was someone who either was convicted under certain sections of the Criminal code or was a ‘menace to the peace, order and proper control and management of an institution.’ Thus an Aborigine deemed ‘uncontrollable’ could be imprisoned without trial for the term of his natural life.”27 As laws that worked effectively to control and suppress dissident Aboriginals who contested the violent regime of colonialism, indefinite detention without trial ensured that Indigenous people “confronted a system that presumed their guilt rather than their innocence.”28

I draw attention to this colonial template not to collapse differences between the past and present, between Indigenous peoples and refugees, but rather to re-mark particular strategies of law deployed by the nation-state to regulate and control racialized groups of peoples within the body of the nation, divesting them, in the process, of basic human rights such as their presumption of innocence and their right to a fair trial before imprisonment. Within the historical context of the indefinite detention of Indigenous peoples within penal camps, missions, and reserves, and the contemporary and ongoing detention of refugees within prison camps, the exercise of legal power becomes generative of its own regime of terror.

This tactical inversion, where Indigenous peoples and refugees are the victims of terrorism rather than its agents, is articulated in Eugene V. Walter’s
profound analysis of the politics of terrorism. In *Terror and Resistance*, Walter asks the reader to confront the possibility that democratically elected governments, founded on the premise that they must be “instruments to protect the community against violence,” might actually be agents that deploy violence and terror against its own people: “We refuse to imagine a durable government based on consent that uses continual violence as a regular technique—not as a last resort—on its own people. We identify order with consent, but we also equate violence with the absence of order. Therefore, from the self-evident half-truth that order is based on consent, we move confidently to the half-false converse that violent governments are not based on consent.”

Walter’s critique of the notion that “violence and consent necessarily exclude each other” was cogently illustrated by the events surrounding the Tampa crisis. In August 2001, as the Norwegian cargo ship Tampa, moored in Australian territorial waters and loaded with four hundred and thirty-three refugees rescued from a sinking boat, was refused permission to dock at an Australian port and was stormed by SAS troops, an A.C. Nielsen poll was conducted: “Seventy-seven per cent of respondents supported the government’s decision to refuse asylum seekers entry to Australia. Seventy-one per cent agreed with the government policy of keeping refugees in indefinite detention.”

Elaborating on his thesis that “it is not true that all violent systems are ‘naked,’ for some of them are covered by the full panoply of legitimacy,” Walter identifies “visible zones of terror” that target particular groups and “within which the violence and fear are confined.” I can think of no more powerful term to describe Australia’s refugee prisons and, coextensively, the persecutory regime of the Temporary Protection Visas, than “zones of terror,” juridico-politically authorized and deployed to instrumentalize refugees into weapons of deterrence. Cloaked by the “full panoply of legitimacy” and authorized by the imprimatur of majority consent (“seventy-one per cent”), the Australian government proceeds coolly to deploy violence against a select minority. The zones of terror ensure that our refugee populations signify—as so many graphic signs advertising to all other potential seekers of asylum—the fact that this nation will not offer refuge from violence and persecution.

I draw attention to Australia’s historico-colonial template of indefinite detention and its contemporary reconfiguration and redeployment in order, genealogically, to disrupt teleological, triumphalist accounts of the nation that construct seamless narratives driven by the progressive march of reason and enlightenment. What I want to bring into focus, through these analogical
relations, are the ongoing strategies of control and violent suppression legally exercised against the nation's subordinated communities. And I underscore the importance of this historico-colonial template in order to contest the dominant notion that something like the ASIO bill is merely a contingent response to a current threat or crisis. Precisely by genealogically outlining previous historico-colonial templates for the management and control of targeted minorities in the Australian context, I want to question the sort of ingenuous—because unhistorical—surprise expressed by some social commentators at the fact that legislated strategies of brutal coercion and violence are being deployed in the context of a seemingly enlightened and progressive democratic state. Walter Benjamin, writing against the rising tide of Fascism in 1930s Europe, cogently summarizes this position: "The current amazement that the things we are experiencing are 'still' possible in the twentieth century is not philosophical. This amazement is not the beginning of knowledge—unless it is the knowledge that the view of history which gives rise to it is untenable."33

TEMPORARY PROTECTION VISAS AND THE PSYCHOSIS OF LAW

"This place is not for human being. This is refugee zoo. . . . This is no justice. They want to make me crazy. Now I'm crazy. Dead is much better than this zoo"

[voice of a refugee imprisoned in an Australian Detention Centre]34

There is no hospitality, tautologically, no ethics, in the categorization of refugees and asylum seekers as "unauthorized" "people who arrived illegally."35 The possibility of ethics is inscribed in the act of extending welcome to those very seekers of asylum who embody the category of the "unauthorized." As will be argued below, the terms of the Temporary Protection Visa, as structurally and permanently conditioned by an ongoing qualification that refuses to offer permanent refuge to the "unauthorized" refugee, exemplify law’s betrayal of ethics and the consequent dereliction of justice.

Banished, incarcerated, and reviled under a raft of anti-refugee laws, the spectre of the refugee returns. This spectral figure, in the shape of Habib Wahedy, crosses our unwelcoming thresholds and calls into question our claim to justice and our self-representation as a just society. "[T]he relation with the Other," writes Levinas, "that is, to justice."36 The entirety of justice—
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its system of conceptuality, its conditions of possibility, its historical determinations and instantiations—is encoded in this relation. Justice is predicated on “the uprightness of the welcome made to the face” of the Other/refugee seeking asylum within our nation. The contradistinction between justice and law is articulated by those laws that violate the “uprightness of the welcome” to refugees and asylum seekers. I refer here specifically to the legislative changes made in 2001 to Temporary Protection Visas, changes that led, indirectly, to the death of Habib Wahedy. Because of changes to refugee laws made in September 2001, holders of Temporary Protection Visas are caught in an uncertain process of repeated application for renewal of their visa.

The acute fear and anxiety that Habib Wahedy experienced while living under the jurisdiction of the Temporary Protection Visa was amplified by his heritage. As a Hazara, he belonged to an ethnic minority in Afghanistan that has been, over the centuries, persecuted, “killed or buried alive” by the dominant Tajiks and Pushtuns. As one Hazara refugee writes, “The majority of us [claiming refugee status in Australia] are Hazaras, the ethnic group deprived, oppressed, outcast, enslaved, and persecuted by the different regimes in Afghanistan in the last century.” This history of persecution explains the fear generated by the government’s insistence that it is now safe for Hazara refugees to return to Afghanistan. “I am really awkwardly sited,” writes another Hazara refugee, “I have some strong and reasonable reasons that I can’t go back to my country. But they [the Australian government] didn’t accept me. They believe that we are quite safety if we go back. But I’m Hazarah. I can’t trust the new government in Afghanistan.”

Habib Wahedy lived and died under the lawful regime of the Temporary Protection Visa. Haunted by a psychosis of persecutory voices that was politically enunciated, legislatively instituted, and juridically enacted, he took his own life on February 3, 2003. This psychosis of fear, anxiety, uncertainty, and persecutory voices is defined by the legal regime of the Temporary Protection Visa. As a legal regime underpinned by what Walter has termed the “full panoply of legitimacy” and the imprimatur of consent, this regime “induces a general psychic state of extreme fear, which in turn produces typical patterns of reactive behaviour.”

The medico-legal dimensions of this “general psychic state of extreme fear” have been formally articulated by Dr. Zachary Steel, School of Psychiatry, University of New South Wales, and Gordon Barrett QC, South Australian
Refugee Advocate Services. In his study of detainees, Dr. Steel has argued that "a high number of detainees suffer post-traumatic stress disorder, a condition normally associated with returned soldiers but instead of having 'flashbacks' as veterans do, refugees have 'flashforwards'."43 The failure of detainees to respond to medical treatment is seen by Dr. Steel as a direct result of the constant state of anxiety and uncertainty generated by the regime of the Temporary Protection Visa: "Their post-traumatic reactions were not about the past, they were about the future. It's the effect and consequence of the policy [of the Temporary Protection Visa]."44

Gordon Barrett has also remarked on the psychological effects of the legal regime of the Temporary Protection Visa on detainees: "The worst and most onerous condition is first of all that it's temporary, that you are perpetually only given protection for three years, and then you have to apply again after that time for a renewal of that protection. In the meantime, and the worst aspect of it in the meantime is that you can't have any family reunion at all."45 Habib Wahedy left a wife and three children in Kabul, and the terms of the Temporary Protection Visa prohibited him from traveling back to Afghanistan to visit them, while simultaneously prohibiting his family from coming out to Australia to visit him.

In his final testament, a tape transcribed by Hassan Parisi of the South Australian Afghan Multi-Ethnic Association, Habib Wahedy took leave of his family with these closing words: "Father and mother forgive me, my children forgive me, my wife, I love you, I love you, I love you."46 In explaining to his family the reason for his suicide, he says on the tape: "Because I am under pressure I have done this. All the time someone is following me and I cannot go on."47 Father Tony Pearson of the Catholic Otherway Centre, Adelaide, who had on numerous occasions helped Habib Wahedy, witnessed first-hand his mental disintegration: "It was mental illness induced by the dreadful stress and strain of an educated man coming to Australia filled with hope, being locked up behind razor wire for six months then being released without security for the future."48 Hassan Parisi, one of Wahedy's friends, points to the arrival of a letter from the Department of Immigration as part of its "Reintegration Packages," outlining an offer of $2000 and a ticket back to Afghanistan, as what finally pushed Habib Wahedy over the edge: "The reason why he did that, it's very clear. He made the point that he become sick from the uncertainty and darkness about his future in Australia."49
“NO-EXIT": INTERDICTED FUTURES

“I have abolished the word ‘future’ from my vocabulary: there is no future for me”
[voice of a 22-year-old refugee imprisoned in an Australian Detention Centre, Nauru]90

I have spent some time documenting the views of the diverse range of people—doctor, lawyer, priest, friend—who knew Habib Wahedy and who all attest to the destructive effects of the regime of the Temporary Protection Visa. In all these attestations, there is one constant, one term that is reiterated: “future.” For Habib Wahedy, the violence of the Temporary Protection Visa—as a technology of governance, regulation, and control—could only be stopped through the violent act of self-termination. Habib Wahedy’s moment of escape from this violence could only be secured through a non-negotiable contract with the law: persecution, its capillary reach into your psyche, will only cease in exchange for a future. The law, as encoded in the Temporary Protection Visa, structurally precludes the possibility for refugees to project their lives into the future. The futurity of life cannot be contemplated: the word “future” is literally abolished.

In foreclosing the possibility of projecting one’s life into the future, the law of the Temporary Protection Visa circumscribes the strict parameters of life as such; refugees cannot orient themselves to a time to come. Consequently, they can only dwell in the constrictive frame of a present inscribed with the ever-present risk of deportation. In this context, the present assumes the dimensions of an asphyxiating totality. The present weighs down life in its own immovable immanence, where the only hope for movement resides in flashbacks, backward to the very traumas that the refugee had so desperately desired to escape. Symmetrically, to flash-forward into the future is to generate more trauma, specifically the fear and anxiety of deportation back to the persecution from which the refugee had originally fled. The refugee’s life is violently circumscribed by these two polar bookends: the trauma of the past/the trauma of the future.

The flash-forward produces trauma not only because it opens up a vista of uncertainty whose horizon is tramelled by the fear of deportation; the flash-forward also generates trauma because it entails, structurally, a transgression of the law that founds and animates the Temporary Protection Visa. This law, in its specificity, determines the critical foreclosure of the future as such. The
future as such is what has been juridically interdicted. It is what must remain unrepresentable and, literally, unimaginable. Any clandestine projection toward the future is psychically punished. In this juridico-political schema, the future is another domain from which the refugee has been exiled. The refugee’s life is rigorously bound between exile from the past/homeland and exile from the possibility of a future/home.

Under the merciless logic of this regime, the present functions, for the refugee, as another form of imprisonment from which they cannot escape. The synchrony of the present, in its bounded totality, violently temporarizes refugees on Temporary Protection Visas: it functions to constitute their essence. The present comes to occupy the gamut of one’s everyday experience and, as totality, the present tautologically signifies another form of violence. Under the jurisdiction of the Temporary Protection Visa, the refugee is riveted to the structure of what Levinas calls “the definitiveness of the present,” where what is denied is the promise of a time to come—that “elsewhere” that enables a “recommencement of being, and a hope in each recommencement of its non-definitiveness.”51 There is no recommencement of being without the promise of a time to come that establishes the possibility for change and the hope of starting a new life removed from the violence that the refugee has fled. Viewed in this light, Temporary Protection Visas are psychic prisons imposed upon the detainees on their release from the razor wire prisons of the detention centers.

Habib Wahedy didn’t simply “go mad”: psychosis is inscribed in the very premises of the law of the Temporary Protection Visa because of the suffocating regime it institutes and reproduces. The Temporary Protection Visa must be seen as producing an unrelieved psychosis in which the horizon of the future has been interdicted and within which the present comes to signify an absolute point of termination, the present-as-endpoint that can only project forward toward absolute closure: suicide, death. This is the condition that Levinas describes so graphically in terms of the “no-exit.” Faced by the persecutory fears generated by a brutalizing regime, Levinas speaks of the flight to an interiority that offers no relief: “That inside in which there is fear is still the only refuge. It is the no-exit. It is the no-place, the non-place.”52

Existence under the regime of the Temporary Protection Visa is marked by the traversing of a limit: from reason to a persecutory, haunting psychosis inscribed with its own anguished logic. The grammar of this anguished logic is constructed from the terms and conditions of the Temporary Protection
Visa. The Temporary Protection Visa must be seen as a juridico-political extension of the detention camps. Its key point of differentiation from the camps is that the Temporary Protection Visa maintains a regime of incarceration that is largely psychological, where the prison bars are invisible yet palpably tangible for the refugee enclosed in the psychic grip of its vice. In contrast to the fixity of the concrete walls and razor wire fences of the detention camps, the Temporary Protection Visa establishes an incarceration regime that is mobile and portable: it follows every move of the refugee as they traverse the civic spaces of our society. Refugees on Temporary Protection Visas are required to notify the Department of Immigration of every change of address so that it can keep track of their movements.\textsuperscript{53} In addition, "[c]ompared with the permanent protection visa, the TPV provides no rights for unauthorised arrivals to: bring their families into Australia; return if they leave Australia; access the generous settlement services provided to refugees who enter Australia lawfully; or access the mainstream social welfare system to obtain pensions and Newstart allowance."\textsuperscript{54}

The Temporary Protection Visa, as a formal and rational articulation of Australian law, is in fact inscribed at its core by its own inadmissible psychosis. Everything in this law is mobilized to regulate and control the very thing that haunts and animates it: the refugee, who threatens the nation’s psychic sovereignty and generates statistically unfounded paranoiac fears of invasions. Remarking on the public fear fuelled by the federal government and the media that Australia is in the grip of a refugee invasion, Heather Tyler supplies the following statistics: "To date, there have only been 13,475 unauthorised boat arrivals since 1989. In 2000 we processed 8,000 asylum applications in total, while the UK fielded 50,000, Germany 100,000, the United States and Canada 420,000."\textsuperscript{55}

In arguing that the law of the Temporary Protection Visas is constituted by its own inadmissible psychosis, I am attempting to disrupt that binary logic that would produce the following predictable equations: refugee = irrational; law = rational—as though Habib Wahedy’s psychosis were somehow simply innate. To categorize Habib Wahedy as innately or congenitally "mad" is to abstract him from the juridico-political system that was instrumental in his incarceration and consequent subjection to the generative instability and insecurity of the Temporary Protection Visa.

The Temporary Protection Visa exemplifies the psychosis of Australian refugee law, as a juridico-political corpus emotionally disconnected from the
violent effects it perpetrates on its targets. Viewed in this context, Australian refugee law no longer resembles "law," as that institutional body committed to ensuring, through due process, the realization of justice. Rather, Australian refugee law resembles an apparatus principally constituted by a disembodied assemblage of so many legalisms and juridicisms: "In particular, the Regulations . . . amend Part 866 of Schedule 2 to the Regulations to overcome an anomaly, so that a former Subclass 785 (Temporary Protection) visa holder whose visa was cancelled will only be eligible for the grant of another Subclass 785 (Temporary Protection) visa, and not a Subclass 766 (Protection) visa, provided that all of the criteria for grant of the Subclass 785 (Temporary Protection) visa are satisfied."56 The "anomaly" "overcome" in this amendment refers to the fact that asylum seekers who enter Australia without the requisite official documentation are now precluded from applying for a Permanent Protection Visa, unlike, for example, visitors to Australia who arrive on a holiday, student, or working visa, and who are automatically entitled to apply for a Permanent Protection Visa. The very overcoming of the "anomaly" establishes an asymmetrical legal system where the most needy and destitute of people, fleeing war and persecution, are penalized for seeking refuge and asylum.

In other words, even as Australian law proclaims the Enlightenment doctrine of universal sameness as its cornerstone, it reproduces, in practice, unequal relations of power that regulate and control equity of access and outcome. What are listed simply as a set of prohibitions must be seen in terms of a collection of punitive laws that ensure the reproduction of loss (of visits from or to family), of permanent dislocation (a citizen of no country, divested of basic human rights), and psychic damage (no permanency, no future). In the face of this regime of legalisms and juridicisms, law emerges as an apparatus that metes out punishment to the most disenfranchised of all subjects: refugees and asylum seekers.

This legal regime, in its subjection of refugees, resembles nothing less than the Kafkaesque harrow, the apparatus in the penal colony that literally executes the law by engraving its sentence on the back of its subjects. Precise and nuanced in its legalisms, ornamented with the flourishes of so many juridicisms, the harrow "appears to do its work in a uniform manner,"57 when in fact it is deftly calibrated to differentiate between the wealth and race of its subjects. As Habib Wahedy shimmied up the power pole with a car seat belt, before launching himself onto the power lines, "There were no discordant sounds to disturb the working of the machine. Many no longer watched but
lay in the sand with their eyes closed; everyone knew: The wheels of justice were turning.” 58 As Habib Wahedy remained suspended from the power lines, “How we drank in the transfigured look on the sufferer’s face, how we bathed our cheeks in the warmth of that justice.” 59 A mere dummy caught in the wires of the juridico-political system, Wahedy’s body was harrowed by the literality of the sentence of the Temporary Protection Visa, his body an electric conduit, conducting the remainder of his energy into our homes, fuelling the “relaxed and comfortable” existence promised by our prime minister: monstrous normality.

The monstrous normality of the current raft of laws deployed against refugees and asylum seekers maintains the logic and rationality of its operations precisely because it achieves its normality through the juridico-political dissimulation of its monstrosity. “A monstrosity,” writes Jacques Derrida, “never presents itself; or else, if you prefer, it only presents itself, that is, lets itself be recognized, by allowing itself to be reduced to what is recognizable; that is, to a normality, a legitimacy which it is not, hence by not letting itself be recognized as what it is—a monstrosity. A monstrosity can only be ‘mis-known’ (méconnue), that is unrecognised and misunderstood. It can only be recognized afterwards, when it has become normal or the norm.” 60 Retrospectively, after so many refugee deaths, we are finally in a position to recognize the monstrous normality of Australia’s refugee laws. The deaths of Habib Wahedy, Fatima Erfani, Puontong Simaplee, Mohammed Saleh, Alvaro Moralez, Ahad Bilal, and the nameless other refugees who have died in and out of Australia’s detention bear witness to this fact.

In 2001 there were three deaths in Villawood. A lawyer told me of a young Asian woman who choked to death on her own vomit while in the throes of heroin withdrawal. Detainees described how one man hanged himself in Stage Three the day he arrived, there were witnesses to the death of a young Vietnamese woman with a history of mental disability, who “fell” from the first-floor accommodation quarters in Stage Two. The witnesses—too afraid to be identified—said she had thrown herself out the window and landed on her head. 61

When asked, in a recent television interview devoted to examining the death of Habib Wahedy, to explain why Temporary Protection Visas have been designed to produce an ongoing state of insecurity amongst refugees, Minister for Immigration Philip Ruddock replied with a serviceable brutality: “That was very deliberate. What we are saying is, there is a right way to come
and a wrong way to come, and the Temporary Visa is about saying, ‘Yes, we honour our obligations but if things change at home and you can go back, then you’ll be going back.’” 62 The language of this serviceable brutality instrumentalizes the human subjects against whom it is deployed: it transmutes human subjects into legal objects. This process of instrumentalization and objectification is graphically evidenced in a recent remark by Ruddock in his discussion of asylum seekers exiled to offshore camps through the so-called “Pacific Solution”: “almost 80 per cent of the caseload from the offshore processing centres has now been resolved.” 63 Through the objectifying language of “caseloads” and “processing centers” the human subject is politically invisibilised and transmuted into so much “cargo” that needs to be processed and dispatched. The serviceable brutality that has become something of a signature of this government in its legislative treatment of refugees is also underscored by the current implementation of what the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) euphemistically terms the “reintegration” of asylum seekers back to the countries from whence they fled.64 As the deaths of Alvaro Moralez and Ahad Bilal and the disappearance of Nadar and Nasser Sayadi-Estahbanati attest, forced “reintegration” of refugees back to the countries from which they escaped persecution (Colombia, Pakistan, and Iran, respectively) often results in nothing less than murder.65

The moral categories of “right” and “wrong” that the Minister mobilizes in his justification of the regime of the Temporary Protection Visa enunciate the very failure of ethics. And, as I have argued elsewhere, I place morals in contradistinction to ethics.66 Morals are those doxic, normative categories thoroughly inscribed by political expediency, for example, the lies, dressed up as so much moral posturing and moral condemnation of refugees, that were disseminated by the prime minister in the so-called “children overboard” scandal. Consciously distorting the truth that refugees were compelled to jump into the sea with their children because their rickety boat began to fall apart and sink, the prime minister, in claiming that the refugees willfully threw their children overboard, proceeded to occupy the moral high ground and declare that “I don’t want people like that in Australia. Genuine refugees don’t do that. . . . They hang onto their children.”67 The media frenzy that ensued, and the public condemnation of refugees that followed, raises the sardonic Levinasian question as to “whether we are not duped by morality.”68

Viewed in Levinasian terms, ethics stand in contradistinction to morals. The ethical relation to refugees, in their moment of need and their request for
refuge and hospitality, is prior to all moralizing postures and politically expeditious moral categories. Encoded in this relation, a priori, is what Levinas terms a “non-transferable responsibility” to address the call of the other in their moment of need and destitution.69 The moral categories of “right” and “wrong” serve to construct and rationalize the spurious concept of the “illegality” of the refugee in their call for asylum. The juridico-political articulation of this morality in the form of the Temporary Protection Visa functions to occlude the violent breach of ethics that such laws instantiate and reproduce.

IN MEMORIAM: HABIB WAHEDY

I have inscribed the conclusion to this article as a memorial to another “invisible death” in the catalogue of deaths of asylum seekers that now constitutes the historical chronicle of this nation. My dedication is underscored by a more complex acknowledgment of the sort of disavowed complicity in his death that I tried to mark in the opening pages of this article, a complicity founded in that asymmetrical relation whereby my freedom and domestic comfort is purchased on the back of his sacrificial body—“As if the invisible death which the face of the other faces were my business, as if that death had to do with me.’ The death of the other man implicates and challenges me, as if through its indifference, the I became the accomplice to, and had to answer for, this death of the other and not let him die alone.”70 As if that death in the violent embrace of the power lines were not our business; as if we had not mandated, electorally, that singular death that charged our everyday lives with a fragile luminosity before it was quickly extinguished.

The singularity of Habib Wahedy’s death lies not in the nature of his death but in its very facticity. I emphasize the singularity of Habib Wahedy’s death as a way of contesting the reduction of his death to a mere cipher in the transitory, everyday reportage of the media, where the demand for newsworthiness inevitably consigns every death to a type of serial forgetfulness. In the face of this structural amnesia, I want to resituate Habib Wahedy’s death in the openness of a space in which the wound of loss and mourning has not yet healed, where, in Levinas’ profound words, “each death is the first death.”71 Habib Wahedy’s death, his singular suicide, demands the disruption of that serial logic and its attendant amnesia: each death is the first death in its uniqueness and absolute irreplaceability.
Habib Wahedy’s death defies our collective demand for refugees to remain invisible as it illuminates the incommensurability of Australian refugee law to justice. In the context of the generative violence of this law, as exemplified by the Temporary Protection Visa, justice remains outside its legal jurisdiction: justice is precisely what it fails to realize. Habib Wahedy’s frenetic shimming up a telegraph pole and his lunging onto power lines dramatizes the refusal of law to heed the call of the other in their request for refuge, security, and dignity, that is to say, justice. The provocation of the refugee’s death high up in the power lines serves to expose our “freedom to the judgement of the other. It is a disalignment which has authorized us to catch sight of the dimension of height and the ideal in the gaze of him to whom justice is due.”72 In Habib Wahedy’s death, the disalignment and asymmetry between the Australian citizen and the refugee was graphically reproduced: from the harrowing dimension of height, Habib Wahedy has brought to consciousness the violent suspension of justice in the execution of our refugee laws.

That the torment of an exile could lead to such a death surprised us, despite the fact that this death was programmatically enabled by the laws that govern our illegal aliens. That his nominal body could assume the individuating singularity of a proper name—Habib Wahedy—might compel us to rethink the status of the refugee, as a subject inhabiting the category of the human.

If, as I argued above, the animating logic of the Temporary Protection Visa lies in its prohibition of the future—specifically, in the interdiction it places on the possibility of the refugee inhabiting a time to come—then this logic systemically precludes the very possibility of justice, as that which is a priori predicated on “the coming of the other (who comes), without which there is no justice.”73 This triangulated relation—constituted by three cardinal points: justice, the other, and the future—explains the structural failure of the Temporary Protection Visa to realize justice: “Justice remains to come, it remains by coming (la justice reste à venir), it has to come (elle a à venir), it is to-come, the to-come (elle est à venir), it deploys the very dimensions of events irreducibly to come.”74 Encoded in this Derridean meditation on justice is the understanding that justice would be both exhausted and terminated if it failed to address the futurity of the other, precisely where the other is the unauthorized figure of the refugee and asylum seeker whose very coming instantiate the possibility of justice, even as it interrogates the lawfulness of our laws, as laws that should be committed to the realization of justice in their just address to the call of the other.
The regime of the Temporary Protection Visa demands a contraction of the refugee’s existence down to the leaden sentence of an absolute present. This sentence is a condemnation of existence to a present that, because of the legal interdiction of the future, cannot begin to comprise an extension and projection into the future. For the refugee existing under this sentence, there can be no imminence (a time to come), only an unrelieved immanence. The destructive power of the Temporary Protection Visa impacts with the most devastating precision on the lives of its targets, as it legislates against the very thing that gives meaning and hope to refugees: the future. In attempting to escape the persecution and suffering of the past and the dislocation and ongoing persecution of the present, the refugee is the figure who most acutely thirsts for a time to come that will finally instantiate a break from this violent continuum. Without this projection of life into the future, the past can never be relegated to the past: it is only the movement forward into the future that enables the past, finally, to become past. In the failure of the Australian legal system to deliver justice in the form of the promise and hope of a future, of a time to come, there is, for the refugee, “a future never future enough.”

**POSTSCRIPT**

In the silence that followed the deposition of Habib Wahedy’s body, the unauthorized foreigner was removed from the sovereign corpus of the nation. The outward trajectory from Afghanistan to Australia was propelled by the hope of a time to come. The return journey back to Afghanistan was inscribed by the mourning of a body bereft of hope, repatriated in a coffin, finally put to rest in the war-torn soil of Kabul.

Yet, even as we demand the comfort of a death with no remainders—no corpse, no flesh, no bones to contaminate the soil of the nation with the unsettling trauma of the other—this death cannot simply be deported. Habib Wahedy’s death, on the contrary, has been ineradically inhumed in the very quotidian fabric of this nation. Even as we continue in the comforting routines of our everyday lives, we are shadowed by a haunting spectrality: with every tremulous flicker of the lights that illuminate our homes, the fatal shudder of Habib Wahedy is reproduced. Irreducible to silence, exceeding the lead-lined seal of his casket, and refusing our demand for him to be rendered invisible, every spike will, recursively, re-animate the specter of Habib Wahedy’s death and its interrogation of our legislated denial of welcome.
Between Kabul and Murray Bridge an indelible point of connection: a plea for asylum suspended from power lines.

2. Id.
5. Id.
8. Marcus Einfeld, "Detention, Justice and Compassion," in Crock, *Protection or Punishment, supra* note 7 at 42. Although there has been debate about the absence of a Bill of Rights in the Australian Constitution for quite some time, the violation of basic human rights under the legislated regime of mandatory detention has brought the issue into sharp focus. For example, in her analysis of the case of *Lim* (1992) 176 CLR (Chu Kheng Lim was a Cambodian refugee who arrived to Australia informally by boat and sought refugee status), Mary Crock draws attention to the fact that the High Court, in handing down its judgment, "conceded that the detention provisions in question would not have been tolerated for a moment had they been directed at Australian citizens or residents. In the absence of a Bill of Rights, the Constitution afforded the plaintiffs little protection." Crock, *Immigration, supra* note 7 at 45. Regardless of the fact that Australia is a signatory to a raft of United Nations Protocols and Conventions committed to the protection of Human Rights, as John Kidd argues, "The traditional approach which still prevails is that rules of international law are not in any direct sense part of Australian law. They might bind Australia in its external relations with other States or international organizations but in the absence of incorporation or translation into domestic law, they have no binding force in Australian courts." John Kidd, "Can International Law Protect Our Civil Rights? The Australian and British Experience Compared," *18 University of Queensland Law Journal* 305–317 (1995), at 306. See also, David J. O’Callaghan,


11. Id., at 105.

12. Id.


14. Id.


17. Derrida, supra note 9 at 364.

18. Id., at 364, 365.

19. Id., at 363.

20. On the doctrine of terra nullius, the legal fiction that declared Australia, at the time of colonial invasion, unoccupied and devoid of any system of law, thereby nullifying Indigenous claims to the continent, see Peter Butt, Robert Eagleson, and Patricia Lane, Mabo, Wik and Native Title (Annandale, NSW: The Federation Press, 2001), 21–26; and Scott Bennet, Aborigines and Political Power (St. Leonards, NSW: Allen and Unwin, 1987), 47–48.


25. Quoted in David Marr and Marian Wilkinson, Dark Victory (Crows Nest, NSW: Allen and Unwin, 2003), 145. Throughout this article, I place the terms “unauthorized” and “illegal” within quotation marks to contest the government line that refugees and asylum seekers who enter Australia informally are criminals. As Julian Burnside, QC, observes: “It is dishonest to call asylum seekers ‘illegals.’ It is the great lie on which government policy rests, because it carries the suggestion that asylum seekers are criminals, and locking up criminals is okay. Significantly, informal arrivals are not charged with an offence by arriving as they do: instead, they are simply put in detention. People who come here informally are not ‘illegal.’ They have a right under international conventions to seek asylum in any place they can reach. They commit no offence by arriving without papers, without invitation, seeking our protection.” Julian Burnside, “Background to Australia’s Refugee Policy,” in Amor and Austin, supra note 7 at 186.

26. Thom Blake, A Dumping Ground (St. Lucia, QLD: University of Queensland Press, 2001), 47.

27. Id.

28. Id., at 46. See also Chris Cunneen, Conflict, Politics and Crime: Aboriginal Communities and the Police (Crows Nest, NSW: Allen and Unwin, 2001), 42–43.
30. *Id.*, at 30.
34. Amor and Austin, *supra* note 7 at 104.
35. Department of Immigration and Multicultural and Indigenous Affairs [DIMIA], “Fact Sheet No. 68: Temporary Protection Visa Holders Applying for Further Protection,” 2 July 2003, [http://www.immi.gov.au](http://www.immi.gov.au) (accessed September 29, 2003). In the face of its flagrant campaigns of lies and disinformation regarding refugees and asylum seekers (see, for example, the “children overboard” scandal, Marr and Wilkinson, *supra* note 25), DIMIA has attempted to shore up the shaky credibility of the information it disseminates by naming its information pages “Fact Sheets”—as though the invocation of this most positivist and empiricist of terms (“fact”) could somehow obscure the systematicity of its mendacity and its support of government campaigns of public deceit on these issues.
37. *Id.*, at 82.
38. Amor and Austin, *supra* note 7 at 154.
39. *Id.*, at 87.
40. *Id.*, at 145.
42. Queen’s Council.
44. *Id.*
45. *Id.*
46. *Id.*
48. *Id.*
55. Tyler, *supra* note 3 at 215; see also McMaster, *supra* note 7 at 110.
58. *Id.*, at 141.
59. *Id.*

61. Tyler, supra note 3 at 181.

62. Sexton, supra note 43.

63. Quoted in Banham, supra note 23, at 5.


67. Marr and Wilkinson, supra note 25 at 189.

68. Levinas, supra note 36 at 21.


70. Levinas, supra note 10 at 186.

71. Levinas, supra note 69 at 72.


73. Derrida, supra note 9 at 236.

74. Id.

75. Levinas, supra note 36 at 217.