

Departing Sovereignty | Consuming Borders:

From the border guard to the new edge of the contemporary nation

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Prologue: A parable of borders

In mid-December of 2001 John Howard's Government secretly excised four islands close to the Western Australian mainland from Australian territory in an attempt to thwart a boat of suspected asylum seekers.

Although the suspects turned out to be illegal fisherman from Sri Lanka, the move reflects a new strategy of seeking limited suspensions of territorial sovereignty in response to specific instances of transgression by sea. More permanent legislation has been blocked by the opposition controlled Senate twice, which attempted to excise around 4000 other islands. The legislation coins a new term to describe national territory, calling the Australian mainland and its territorial waters 'the Australian migration zone'.

The Age newspaper reported on 17 December 2001 that the excision came as a surprise to the two Western Australian councils responsible for the four islands which were excised, both based in the mainland coastal towns of Carnarvon and Geraldton.

The first of the two of the islands, Bernier Island and Dorre Island, are about 200 metres apart and are uninhabited, providing sanctuary to five of the 26 most threatened mammal species in Australia, including the Shark Bay mouse and banded hare wallaby.

Dirk Hartog Island, the largest of WA's islands, is the only permanently inhabited island, is only within a couple of kilometres of the mainland and is occupied by Kieran Wardle and his partner, who run 6500 sheep and provide accommodation for surfers and divers.

The fourth island, Faure Island, is tucked behind a peninsula and, Mr Wardle was reported in the *Age* as saying, it was so far from the open ocean "you would run into the mainland before you found it". It is run as a private nature reserve. The status of the islands in the wake of the legislation was distinctly odd: they were both part of Australian national space and outside it: they

had entered what Bernard Cohen has called 'un-Australia', the system of detention camps and migration centres that absent the nation-state from its responsibilities towards refugees and foreclose the 'non-citizen' (in the non-nation) from any recourse to a the framework of international human rights.

At the same time as these events have been taking place, a patent border technology has being trialled in Australia for Qantas aircrews: the SmartGate. Described as "automated border control system that undertakes the face-to-passport check usually undertaken by a Customs officer", the SmartGate kiosk uses face recognition technology to compare a live image taken at the border control point against stored images.

The way that the system links of knowledge of the individual body and citizen to new media and data technologies at the liminal space of the border, while at the same time detaching the territory from the juridical discourse is exemplary of an increasing set of pressures to contain the national self within boundaries challenged by global flows. Some travelers are obviously facilitated and made hypermobile, and some are patently slowed down and fixed in space. The border is no longer a uniform entity delineating a bounded community, but a kind of mobility machine, which is only accessible to those who are agents of global-scale space. The figure of the border guard is dematerialized in this machine, reconfigured as a screening program, just as the border itself is under erasure.

Introduction

So this paper poses a riddle. What is a border when it's not a point of contact between nations?

The answer to this riddle raises more questions: Where is the 'edge' of the nation, if the nation withdraws from its physical boundaries? Where and who are we when we're in the non-migration zone?

In this paper I survey a current trend among developed nations to invoke powerful tropes of hypermobility (tourism, migration and circulation of commodities), while 'excising' from their sovereign territory the sites at which unwanted migrants arrive. This new non-border space -- clearly legally defined by the state, yet indeterminately national and deterritorialised -- thus offers a solution to the conflicting objectives of the management of the demands of capital and sovereign nations.

These new zones offer a solution to the problems produced by the paradox of globalisation; that is, economic liberalisation against an increasingly selective and restrictive migration policy.

This paper, then, departs from the case of Australia's wandering borders to show how efforts to contain such extremes of transnationality within border zones have produced additional sites of statelessness and un-sovereignty. This study brings insights from cultural geography and transnational cultural studies to bear on a human rights problems, to show the spatial aspects of new border regimes relate to social transformations.

This project seeks to counterpose, or bring into dialogue, two highly interdependent and analogous, yet qualitatively different spatial practices: on the one hand, the practices of economic globalisation, migration and tourism which produce the external border of the transnational state in the consumption and leisure spaces of the theme park, airport, resort and convention centre; while on the other, the procedure of punishment, detention and correction which produce internal border in the prison, the detention centre, and the systematics of citizenship.

The legally-defined extraterritorial zones - in which the figure of the stateless person has materialised - are a sign of the need for other transnational places such as global trade centres and airport cities. However, these ambiguous extraterritorial zones produce equally ambiguous extraterritorial subjectivities.

These subjects inhabit a dialectic of inclusion and exclusion, expressed in terms of useful human subjects and waste. The discourse of 'border protection' demonstrates that by invoking second-order metaphors of 'virus detection' in the national body of data, the nation state increasingly must play out this conflict, must discriminate between real and fake identities, purely 'economic' and purely 'political' migrants. By explaining and delving into the relationships between these sets of spaces and the figures that inhabit them, the contingent and historically specific nature of this fascination with border control might be uncovered. It is hoped that this might undo the continued disavowal of the ways in which these subjects are interlocked in the traditional framework of nationalism.

The border excision is part of a wider suite of policies dubbed the 'Pacific solution', which involved taking the arrivals to 'un-Australia' to sites run by the International Organisation for Migration and protected by the Australian Federal Police for processing 'offshore' in Nauru. This 'solution' arises from a disjuncture between what Arjun Appadurai, calls the 'financescape' & the 'ethnoscape' of the contemporary transnational situation.

Appadurai has suggested five categories of flows, which go beyond the space of the traditional nation-state in his widely cited essay "Disjuncture and Difference in the Global Cultural Economy" which was first published in 1990. These are a) ethnoscaples, b) mediascaples, c) technoscaples, d) financescaples, and e) ideoscaples.

These different forms of flow, when taken together, offer a framework for examining the "new

global cultural economy a complex, overlapping, disjunctive order that cannot any longer be understood in terms of existing center-periphery models” (32).

These various “scapes” suggest an alternative spatial rendering of the present, one that is not “fixed” as a typical landscape might be, but which are of various, disjunctive sizes, amorphous, and flowing. They are the “building blocks,” Appadurai suggests, of contemporary imagined worlds. If the imagination is associated with the individual and with agency, “the individual actor is the last locus of this perspectival set of landscapes, for these landscapes are eventually navigated by agents who both experience and constitute larger formations, in part from their own sense of what these landscapes offer” (33).

Australia

The Migration Amendment (Excision from Migration Zone) Act 2001 designates Christmas Island, Ashmore Reef and Cartier Islands, the Cocos (Keeling) Islands, and Australian sea and resources installations as “excised offshore place[s]” deemed outside the country’s “migration zone.” A new protection, humanitarian and refugee visa regime for asylum applications was also created as part of this legislation. Under the law, persons who enter these offshore places are defined as “offshore entry persons” and are unable to make visa applications, including requests for asylum, unless the minister exercises his discretion on their behalf. Asylum seekers who are not given authority to present their claims may be taken “to a place outside Australia” including to a country with a declaration in force regarding access to asylum procedures.

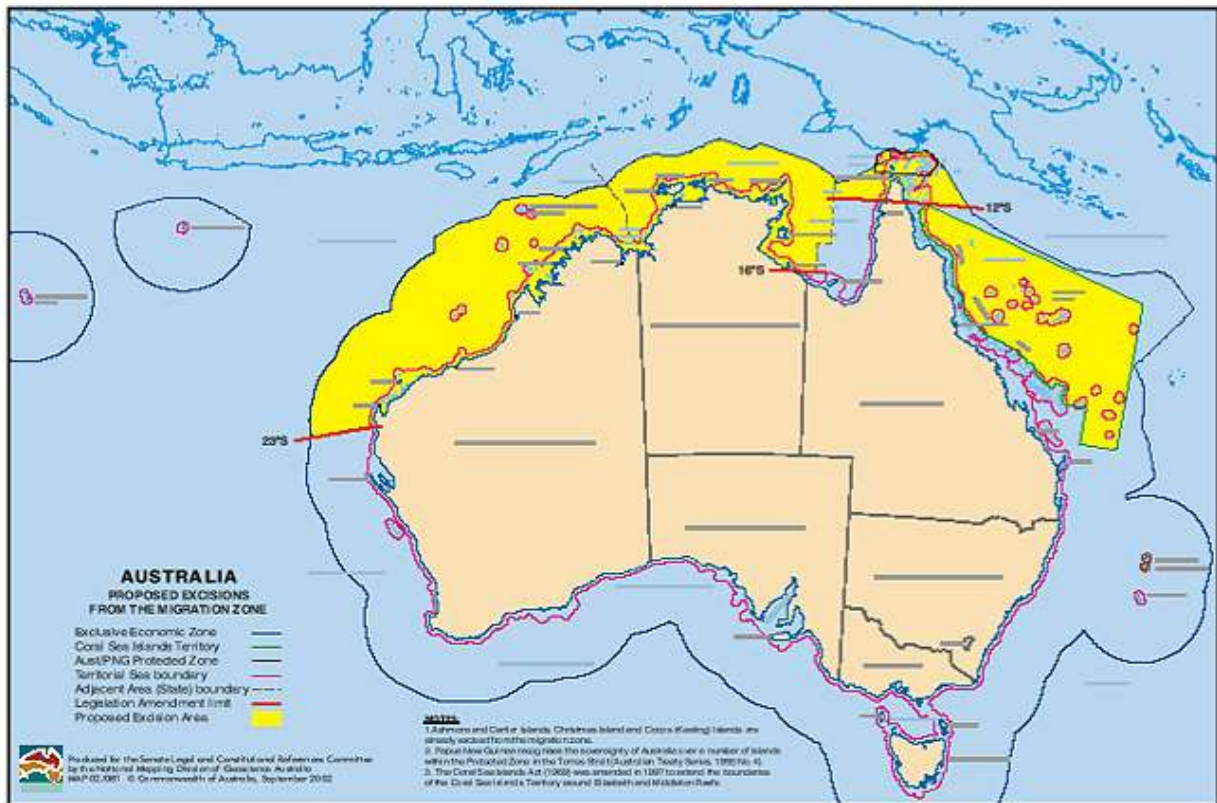


Figure 1

Figure 1., map of excision zones from Senate Committee Report 2002, Chapter 2, p. 9.

Human Rights advocates such as Human Rights Watch were greatly disturbed by Australia's decision on October 19, 2001 to return an Indonesian fishing vessel containing asylum seekers to international waters, in furtherance of the new law, after the vessel reached the "excised" Australian territory of Ashmore Reef. The most serious concern was that the new legislation, by permitting "offshore entry persons" to be excluded from Australia without access to asylum determinations, undermines Australia's international obligation of nonrefoulement. A letter from Human Rights Watch to the PM of Australia on 31 October 2001 argued that

The obligation of nonrefoulement must be upheld in all of Australia's territories, regardless of whether such actions take place within or outside of the "migration zone." Until the law is amended to conform to international standards, ministerial discretion must be exercised to ensure that each refugee arriving in Australia (whether inside or outside the "migration zone") is protected from direct or indirect return to a place where his or her life or freedom would be threatened.

As you are aware, the Universal Declaration of Human Rights provides in Article 14 that "everyone has the right to seek and enjoy in other countries asylum from persecution." This principle of international human rights is undermined, often together with the principle of non-refoulement, when individuals are prevented from accessing fair and efficient asylum determination procedures. (Senate Committee Report 2002, Chapter 4)

In the Australian case, the Howard government's legislative excision of a 'migration zone' from its

northern-most territories located in its Exclusive Economic Zone (EEZ) bordering Indonesia in 2001, teamed with a plan to airlift potential refugees to remote Pacific Islands is the culmination of years of policy construction of an elaborate 'anti-asylum seeker fortress' (De Jonge 2002, p. 37). [Australia has one of the largest EEZ's in the world, with total sea area under Australian jurisdiction exceeding total land area.] The Senate Select Committee investigating the legislation noted concern about the cost of managing offshore the processing facilities at Nauru and Manus Island, as well as Christmas Island. By the end of May 2002, \$56.2 million had been spent on Nauru and Manus. Another \$138 million was allocated to build the facility at Christmas Island, out of a total Budget allocation for 2002-03 of \$353 million for 'unauthorised boat arrivals'. The Committee considered that the so-called 'Pacific Solution' was not a cost-effective way to deal with this issue (Senate Committee Report 2002, p.88).

The international human rights monitor, Human Rights Watch, singled this policy out for special mention in its 2002 World report:

Under the legislation, it "excised" various Australian territories, such as Christmas Island, Ashmore and Cartier Islands, and the Cocos Islands, from its "migration zone" and refused to consider asylum applications from anyone arriving at those places. Instead, the asylum seekers were transported to other non-Australian Pacific island states while their refugee claims were assessed, or simply sent back to sea. (Human Rights Watch 2002)

This policy, while legally flawed, has been highly successful in managing the tensions discussed above. The subject of detailed analysis by expert lawyers and a High Court legal challenge, the policy is argued to be in contravention of the *1951 Convention Relating to the Status of Refugees* (Refugee Convention) (Hunyor 2000). The inclusion of requirements that asylum seekers seek protection in other countries that they might pass through before they enter Australia is problematic mainly because many of the boats which arrive in this zone transit via Indonesia, which is not a party to the 1951 Refugee Convention and lacks laws and procedures for determining refugee status. Historically, the beach has been an important trope of a vulnerable limit space for national sovereignty in Australia (and the place of arrival of eighteenth century colonial explorers and settlers). The excision of the zone, and the designation of 'boat people' as exceptional, illegal, unwanted non-citizens stands is also clearly iniquitous when compared with the far higher numbers of tourists and travellers on temporary work permits who overstay visas or work illegally. [1999/2000 and 2000/2002 were the only years since 1995 in which unauthorised arrivals by sea exceeded those by air.]

Europe: UK

In the UK, recent anxiety over the breach of national borders have brought about similar attempts to extraterritorialise immigration zones. In mid-2001, British immigration authorities sent British officers to the Czech Republic's main international airport to increase checks on Czech nationals seeking to travel to Britain. The checks were designed to screen out Czech-Romany asylum

seekers before they boarded the plane in Prague. According to news agencies, these checks were dropped by October, because the would-be refugees had successfully been discouraged from travel. The European Documentation Centre for the Rights of Romanies is bringing a lawsuit against Britain because of the airport checks ('Britain suspends asylum seeker checks at Prague airport' 2001).

Closer to British territory, the Channel Tunnel, in particular its freight train service yard at Frethun, near Calais, has posed the most visible and enduring 'illegal' entry point. After freight services were restricted in November 2000 while security measures were sorted out, a delegation of European parliamentarians visited the depot on 27 March 2002 to inspect security procedures. While the delegation was in attendance, 150 asylum seekers rushed the trains to try and enter Britain. While both French and British officials were embarrassed by the actions of the asylum seekers, some were pleased that the politicians had experienced the problems first-hand. Graham Smith, planning director for English, Welsh and Scottish railways, was reported as saying (employing an appropriately homely analogy for the edge of the British nation): "The fence they have is something that would grace your garden but is not very good at repelling asylum seekers." ('Chunnel asylum seekers invade as MPs check security' 2002) The location of the Red Cross refugee camp housing 1200 people at Sangatte, described as a "notorious staging post for illegal entry to the UK... a vast hanger [sic] only three miles from the Channel tunnel entrance" continues to trouble both French and British governments, and looks like requiring UN intervention to resolve (Beattie 2002).

Adding to the complexity of this situation, the UK has tried to push the EU to adopt a modified version of the Australian policy. We need to more fully explore the far-reaching implications of this withdrawal from borders and concomitant control of mobility. I suggest that this uneven distribution of mobility in our transnational century needs to be rethought alongside the existing nation-based discourse of human rights.

Europe: Germany

The most efficient solution, rather than increased physical barriers and removal of unsightly camps, seems to be indicated by the German example. Since 1993 Germany's main international airport, Frankfurt-Main, has been a legally declared detention zone:

The airport's transit area has the legal status of an extraterritorial zone. Refugees arriving by plane are held there to prevent them from entering upon "German territory", and thus being able to fight more effectively for their asylum and right to stay in Germany. (Zimmermann 2000)

The suicide of a 40-year-old Algerian asylum seeker, Naimah H., in May 2000 highlighted the predicament of many refugees, who can be detained indefinitely in the transit camp if their applications are complicated or unsuccessful in the first instance. Naimah H. had been in and out

of prison and detention for over one year. On May 12, the *Frankfurter Rundschau* declared that:

For asylum-seekers the airport remains what it was under (former CDU minister Manfred) Kanther: an internment camp at the portal of the Republic; on the fringe of legality. It is a place which makes people ill and - as is apparent from the case of Naimah H. - drives them to suicide. (Zimmermann 2000)

Uncomfortably contrasting with the image of the highly mobile tourist/citizen, the deportation program whereby international airlines cooperate with governments in transporting deportees to their country of origin has encountered problems after several asylum seekers died in transit at Frankfurt airport during the 1990s. According to an Amnesty International report, the 1999 death of a 30-year old Sudanese asylum-seeker, Aamir Ageeb, during such a deportation:

is not the first case of an asylum-seeker having died after being restrained during forced expulsion at Frankfurt am Main airport. In August 1994 a Nigerian national, Kola Bankole, died of heart failure during his forced deportation from Frankfurt am Main airport. He was restrained, sedated and gagged with a device made by one of the police officers at home from socks and a belt from a window blind. ('Death of Sudanese Asylum-seeker' 1999)

The airport detainee, or 'offshore excised person' is a figure embodying dialectical tensions stemming from the uneven distribution of contemporary mobility. The challenge remains to rework current models of sovereignty and citizenship in order to work loose the fixed boundaries between citizen and non-citizen. No amount of the kinds of territorial excisions discussed above will resolve the contradictions of the 'open society'. Any resolution must entail a global response to local conditions, and link such abdications of national sovereignty with the transnational impulse.

In this power matrix of transnational space, in which economies rework intimate relationships between identity and location, the national subject has much at stake. The challenge here is formulate a way of belonging, without reaching back to a notion of a national home as a site of transparent connections and pure attachments. The end point of this process is figured in the fall back to origins that is commonly offered in conservative politics: a realisation of 'being', one's identity thus ontologised and finalised. The site of the local in an alternative transnational imaginary should instead figure citizenship as a moment that concretises dialogic processes. This imaginary, in contrast to conservative impulses, constructs citizenship as a site of *becoming*.

Conclusion

In this paper I have briefly explored the ways in which the contemporary nation is an

assemblage of forces that has produced a new kind of space that is neither of itself or of the other, from the perspective of human rights. I have described some important cases in which the border - far from being a place of firm and fixed identities and clear negotiations between self and other -- is increasingly being vacated by national sovereignty.

This ambiguous local in the global serves as an after-image with which to grasp some ethical questions: how can we redistribute mobility more equitably? What would the consequences of such a truly 'open society' be? This is a most pressing question if the nation state is giving up its role as a mediating force between local and global and now sees its function instead as both a travel agent for national culture and its privatised security guard.

This paper has argued that it is only through a fuller engagement with the implications of such postnationality that the discourse of human rights, which is grounded in the theory of the nation-state, will be able to confront the impulse to depart sovereignty I have outlined here.

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