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Justine Poon

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# How a Body becomes a Boat: The Asylum Seeker in Law and Images

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**Abstract**, Asylum seekers arriving in Australia by boat to seek protection have been the catalyst for significant legal reform and the proliferation of political discourses. The paper analyses the metaphor of the boat as being a common trope in the legislative category of the “unauthorized maritime arrival” and in the government images that advertised this legal change. The figure of the boat effaces the asylum-seeker’s body from the frame of law and discourse and constructs a myth about sovereignty and borders that enables coercive control over asylum seeker bodies.

**Keywords**, critical legal theory, legal metaphor, asylum seekers, bodies, borders, government advertising, sovereignty

## INTRODUCTION: BODIES AT THE BORDER

Thresholds and liminal spaces are productive sites of contested meaning and power plays, and the Australian border has become such a site in the state’s response to people attempting to enter it and seek asylum. The national border is a marker between inside and outside, a place between different national and international orders of law, which attracts intense policing and control and where norms about state power and the limits of community are always in flux.<sup>1</sup> Although borders are often presented as stable political realities, if not strictly geographical ones, they need to be constantly performed and reiterated through technologies of power and law that create an image of stable simplicity over a scene of intense complexity.<sup>2</sup> In the Australian context, the simple image is that of an island nation, whose border when compared with other countries appears as a relatively straightforward division between ocean and land with the state as the final authority on who is allowed to make landfall.<sup>3</sup> This provides the stable reference point, which justifies other legal strategies that create additional borders within the border, such as through the excision of territory,<sup>4</sup> and gives more power to the executive in order to maintain the inside/outside relation that the border represents and enforces.

Whilst this is suggestive of the importance of spatial relations in thinking about the border, we also need to think about the centrality of bodies within these spaces as intrinsic to the study of borders within borders – particularly the significance of excluded bodies. Giorgio Agamben’s concepts of the “state of exception” and that of the *homo sacer* are useful here in delineating how the resurgence of a more explicitly sovereign form of power in the state emerges through the real and symbolic casting out of people attempting to seek asylum in Australia. It is bodies that are first cast out of recognition of their personhood by law, and then captured by sovereign power, and it is bodies that are capable of travelling into the threshold of exception.<sup>5</sup> They are captured by law and yet excluded from its full protection. It is bodies that are cast as being “illegal” and taking on the role of the *homo sacer* – the Roman figure of bare life who can be killed with impunity and who has lost the protection of law, as well as the ability to make law.<sup>6</sup> Compared with citizen bodies, who cannot be killed or punished without the proper adjudication in a court of law, bare life barely registers as political life. They are the threshold – the point at which the acts of the sovereign become indistinct from law.<sup>7</sup> Sovereignty is performed and affirmed in the act of deciding who will be cast outside of the law through the use of law itself.<sup>8</sup> In the Australian refugee policy context, the contrast between this view of an immutable border when it comes to the physical arrival of people seeking asylum and with the accelerating practices of globalization that effectively makes the border a zone of frictionless movement for the sources of capital goes some way to explain how the exclusion of some people is necessary to performing the continued control and power of the state.<sup>9</sup>

This paper looks at asylum-seeker bodies and what happens to them in law and in discourse when they cross the border, focusing on the legislative category of the “unauthorized maritime arrival” and two advertising campaign images launched by the Australian government in a public relations attempt to deter asylum seekers from coming to the country by boat. These are used as a point of departure for raising some of the theoretical implications that arise out of the contact between asylum seekers and the maritime border. The exclusion of asylum-seeker bodies in the Australian context is intrinsic to producing and maintaining the idea of the border. Through looking at the legislative definition and the advertising images that accompanied its enactment, we can trace the contours of this “borderscape” and begin to unpick the multidirectional practices of law, image, and metaphor that work together to produce the exclusion.<sup>10</sup>

The demarcation of borders would be meaningless without these mobile bodies and the perceived threat they embody.<sup>11</sup> One example of this convergence between bodies and borders is the renaming of the Australian immigration department as the Department of Immigration and Border Protection in 2013 by a government that won power arguing for strong border protection and equivocating this with “stopping the boats.”<sup>12</sup> When refugees cross borders seeking asylum, the state’s response can be to attempt to stop this movement. The interception, holding,

detention, and encampment of refugees are some of the strategies undertaken to put a stop to this flow of people. Legal changes that give the state power to do these things proliferate, such that the legal environment is hyper-regulated.<sup>13</sup> Alongside the coercive abilities of the state and the law that authorizes the use of state force, discourses that support the possibilities of state coercion and violence that the new laws open up evolve, promoting tropes and narratives about law, national space, and sovereignty as reified structures with an absolute right to protection and the use of any means to enforce that protection.<sup>14</sup>

This paper is concerned with how a body becomes a boat in legislation and in government advertising and the work that the trope of the boat does in configuring asylum seekers as forbidden and threatening objects. I will show how in the legislation and the advertising images, the metaphorical and metonymic image of the boat emerges as a signifier and a symbolic trope that disembodies the actual asylum seeker targeted and compresses the complexity of negotiations between space, bodies, law, and national sovereignty into a simplistic story about the interdiction of boats. Images are not merely a reflection of law, but create or set the scene in which violence can be unleashed with the authority of law.<sup>15</sup> Metaphors and images have played a central role in complicity with law in enacting the disappearing of the actual asylum seekers and constructing an emptied legal subject whose presence is registered just enough by the law in order to capture it within a system of state coercion, movement, and detention but with a diminished figuration that becomes a blank slate for the state to write its narrative upon.<sup>16</sup>

The paper is structured as follows. The next section explores the theory of material metaphors and considers how metaphors work when it comes to law. The legislative background to the category of the “unauthorized maritime arrival” is then outlined, followed by a look at the government advertising that accompanied and reflected this legal change. I will then unpick some of the meanings and effects that the metaphor of the boat produces, arguing that it diminishes the legal subject of the asylum seeker under law through the creation of a border myth in order to implement radical legal changes.

## METAPHOR AND LAW'S MATERIALITY

George Lakoff and Mark Johnson's influential theory on metaphor is that they are conceptual and so pervasive and fundamental to how we communicate through language that they disappear as metaphors and are seen to be natural descriptors.<sup>17</sup> They argue that our experience of the world is mediated through language and that metaphor is the oft ignored device that makes concepts and abstract thinking possible, and orders particular metaphorical ways of experiencing the world according to culture.<sup>18</sup> Metaphors ground experience by connecting different conceptual realms together and these conceptual realms are often based in material worlds and experiences.<sup>19</sup> For example, the concept of warfare represents material experiences of

combat, strategy, and the divide between friendly and enemy bodies. When this concept is borrowed by using war as a metaphor for how policy and law enforcement deals with the use of illicit drugs, responses are limited to those structured by the Manichean implications of war. The different sides are inserted into the idea of real wars with sides and winners and losers. Harm-reduction strategies are less likely to be adopted under such a metaphorical understanding of the subject.<sup>20</sup> Even without considering the physical processes of connection happening within the brain,<sup>21</sup> metaphor's materiality emerges out of its shaping of experience.<sup>22</sup> *We live by metaphors* and they are attached to phenomenal experience and ontology – the metaphoric description of how things *are* is not neutral or natural, but shaped by culture and power and shapes how we experience the world. Metaphors function simultaneously through resemblance and difference and generates a new meaning distinct from the “original” subject and the metaphor used.<sup>23</sup> The “truth” revealed by metaphor is held in the tension between the subject and the metaphor in a process of play that keeps the different concepts connected.<sup>24</sup>

However, law's metaphors work differently.<sup>25</sup> Legal categories are metaphors that transfer the subject into the legal realm but tends to enact an erasure of the original subject and its context, rather than keeping it in play and in tension with the category.<sup>26</sup> The fully embodied flesh of beings is represented in law by abstractions, reductions, and masks.<sup>27</sup> Sensation and affect – those twin animators of flesh, body and life – meet law's hostility to their incalculability and are winnowed down to the relevant facts to the case at hand.<sup>28</sup> A person becomes a legal person – that great legal fiction that is useful precisely because of its generality and lack of flesh.<sup>29</sup> Only that which is emptied of pre-existing life can be taken as a legal device to be applied to something else completely different to what it has been applied to before. Thus, we find that the mask of the legal person fits both a natural person and a corporation and everything else in between equally well, which is not at all, except to the extent that it is useful to see the mask as fitting.<sup>30</sup>

Law's metaphors are different because law's material is different. The conceptual system of law is already an abstracted language that erases difference and performs an effacement – substituting the thing for the legal concept and keeping the legal concept dominant and fixed whilst excluding alternative formulations and other possible relations to law.<sup>31</sup> The abstractions and textual conceptions of law are a fundamental part of law's efficiency. Law simplifies the complexity of the world and all the relationships and interrelationships within it. Through the creation of legislative and judicial definitions, commensurable categories and through limiting the scope of its vision to only that which is legally relevant, law provides a measure by which vastly different things can be compared.<sup>32</sup> This usefulness of law in its simplification of the world is also what gives rise to its exclusionary character. Positive law – the institutional iterations of law through legislation, courtroom judgments, legally authorized acts and the rules that govern these – is haunted by what gets left out of law.<sup>33</sup> Law works in language and is its own language.<sup>34</sup> It is a

seemingly closed system of rules that determines difference – between what is iterable *as* law and what is sensible *to* law and what is deemed outside of and irrelevant to law. In the transition of a material subject into its legal category, the subject becomes dematerialized.<sup>35</sup> Legal metaphor in the form of legal categories appears to work not through the connection of and tension between different concepts, but through a complete transition of the subject into an enclosed legal experience.

Asylum seekers travelling to Australia by boat are defined by the legislative category of the “unauthorized maritime arrival” and this metaphorical shift then defines how the rest of the legal system and its actors view them and the limits of what can be done to them. The way that this legal metaphor operates demonstrates the danger of abstract legal metaphor in creating the conditions for state violence.<sup>36</sup> Whilst the legal category may be emptied of meaning, context, and flesh, it is precisely this abstraction that allows the state to expand the limits of its force because the metaphor keeps us at a distance from seeing what is really happening and from seeing the alternatives to law’s impoverished subjects.<sup>37</sup> The next two sections outline the legislative history of this legislative category and of the political images representing asylum seekers as boats that arose in conjunction with the category’s enactment in law. Although there is a stylistic contrast between the dry and boring language of legislation and the symbolic and melodramatic tableau of political advertising, both legal metaphor and political metaphor work to construct a forbidden subject that excludes the actual people seeking asylum from being represented and from agency before the law.

## HOW ASYLUM SEEKERS APPEAR IN LEGISLATION: THE UNAUTHORIZED MARITIME ARRIVAL

In Australia, the legal changes motivated by the state’s desire to regulate the border and prohibit asylum seekers from arriving by boat have been well documented.<sup>38</sup> The years after the TAMPA incident – the rescue of 438 asylum seekers from the sinking *Palapa* by a Norwegian commercial tanker ship that resulted in a standoff with Australian authorities when they refused to allow the ship to dock at Christmas Island – saw a rapid succession of legislative change followed by challenges in the High Court contesting those changes, followed by further amendment to the law.<sup>39</sup> This has resulted in legal transformations, including the concept of “excised territory,”<sup>40</sup> where specific islands in the north were deemed to be beyond Australian territory<sup>41</sup> for the purposes of the Migration Act 1958, and indefinite detention of asylum seekers.<sup>42</sup> Some of these changes have been deeply radical and not without controversy and yet rather than provoking mainstream political debate, the positions of the two major political parties in Australia narrowed into bipartisan consensus.<sup>43</sup> The subject has almost become mundane and yet when we remember what is now possible in law – indefinite detention without judicial adjudication, boat turn-backs at sea,<sup>44</sup> and offshore detention that Australia is not accountable

for, despite being instrumental to the funding and operation of detention centers in Nauru and Papua New Guinea<sup>45</sup> – it bears examining how these radical changes to our understanding of the limits of the law have come about.

Before 1994, asylum seekers were included under the broad category of “illegal entrant.” After 1994, with the introduction of the comprehensive visa and points system regulating migration, asylum seekers became “unlawful non-citizens,” a term meant to get rid of the criminal implications of the “illegal entrant” tag, in line with the Refugee Convention. An unlawful non-citizen was simply any foreigner who was in Australia without a visa. At the same time, mandatory detention was introduced for all unlawful non-citizens until they were granted a visa.<sup>46</sup>

The term “offshore entry person,” which arose out of the spate of 2001 amendments to the Migration Act,<sup>47</sup> explicitly states that the subject of law is a person and that they have “entered” into Australian territory, but because they entered in excised territory, are taken to not be within the migration zone for the purposes of the Act.<sup>48</sup> Entry implies that the subject has come from somewhere – you enter a place from another place. There is a continuous journey from the outside to the inside of the territory, with the sea border of the excision zone as a gateway into a particular category of legal status where the regular operation of the migration law is suspended. The definition of the “offshore entry person” also had to be read in conjunction with the definition of the areas defined as being excised from the Australian migration zone, focusing the law on geography.<sup>49</sup> The status of being an “offshore entry person” severely limited access to the visa application processes and made it a matter of ministerial discretion to allow a valid application to be made.<sup>50</sup>

In 2013, the term “offshore entry person” was replaced with the category of the “unauthorized maritime arrival.”<sup>51</sup> Now, the person has disappeared and the implied journey carried by the word “entry” has been erased. The effect of this legislative amendment was not just to change the term but was to have the effect of excising all remaining Australian territory from the migration zone to those who have arrived unauthorized by boat. This was done by making the body the object of excision through focusing solely on their means of arrival by boat as the determining factor in attracting the legal status. The status of the person arriving by boat was no longer constructed from examining the geographic details of their entry into the national space but inhered at the moment of arrival in Australia by sea. Law’s definition of the “unauthorized maritime arrival” effectively draws the boundaries of national law onto the body.

This denial of legal presence despite physical presence, through the enactment of complex definitions of the asylum seeker legal subject in law, is named by Guy Goodwin-Gill and Jane McAdam as one of the “creative” strategies some nations are taking to prevent the engagement of their international obligations.<sup>52</sup> In dealing with arrival, what we are dealing with is law’s dominion over the things that are present in its territory. The legal subject that might be able to assert a claim under international law becomes an object whose only significance is its presence within

the territory. It is the subject with political life that disappears and an object, a pure presence upon which the law acts, which emerges.<sup>53</sup> The legislative consequences of being an “unauthorized maritime arrival” is immediate exclusion from being able to engage the provisions of the Migration Act and being barred from making a valid protection visa application.<sup>54</sup> Through the operation of provisions that allow detention and removal from Australia to be made by authorized officers of the Commonwealth, the unauthorized maritime arrival is effectively conveyed into Executive control.<sup>55</sup>

The category of the unauthorized maritime arrival is of such generality that it could apply as much to an asylum seeker, or literally any object that passes through the sea border and finds itself on the Australian side between national and international legal orders. This definition is engaged in an active process of emptying the subject it signifies of all content except the fact of its presence. This fact of presence is sufficient to trigger the executive’s coercive responses that are designed to police the border. Here, fact predetermines judgment and the “unauthorized maritime arrival” invokes strict liability for its appearance. The legal structure of strict liability compresses fact, responsibility and judgment into one and the same.<sup>56</sup> The underlying aim of deterrence means that exclusion must be absolute or, as the political rhetoric suggests, it will not work.<sup>57</sup> The “unauthorized maritime arrival” is then a vessel for policy, the legal manifestation of a political discourse of border control where all objects that come into the state’s immanent view of its maritime surroundings will be tracked and captured.<sup>58</sup> The paradigmic “unauthorized maritime arrival” is not in fact the figure of the human asylum seeker, but a boat.

## HOW ASYLUM SEEKERS APPEAR IN IMAGES: BOATS AT THE BORDER

The legislation defining asylum seekers who arrive in Australia by boat as “unauthorized maritime arrivals” was passed by the Australian government in May 2013.<sup>59</sup> In July 2013, after a memorandum of understanding had been agreed to with Papua New Guinea that asylum seekers coming to Australia would be resettled there, an advertising campaign was launched picturing a boat on the water with text announcing that those who “come here” by boat without a visa would not be settled in Australia (Figure 1). This is the “By Boat, No Visa” campaign. The then Labor government was voted out in September 2013 and the new Liberal–National coalition government launched the “No Way” advertising campaign in support of “Operation Sovereign Borders,”<sup>60</sup> which again depicted a boat on the water telling potential asylum seekers that they “will not make Australia home” if they arrive by boat (Figure 2).

In the “By Boat, No Visa” image, the boat has been firmly captured within the Australian frame – the message is that you may come, but your presence on such a boat will bar settlement in Australia. The spatial positioning here is that the boat has “come here,” that is that it has arrived in the national space but its passengers





Figure 1. The "By Boat, No Visa" campaign.

Source: Department of Immigration and Border Protection. Reproduced under a Creative Commons Attribution 3.0 Australia license.



Figure 2. The "No Way" campaign.

Source: Department of Immigration and Border Protection. Reproduced under a Creative Commons Attribution 3.0 Australia license.

will be denied their assumed goal of settlement in Australia, bringing up evocations of “economic migrants” as opposed to the desperate need of “good” refugees who can be framed as only seeking safety and nothing more.<sup>61</sup> Its temporal frame includes the past (the asylum seekers and the boat have come from somewhere), the present, and the future (*now* that you are here, your situation *will not* be improved by managing to get within the borders).

In the second image the boat is now a much smaller figure, on the horizon of a choppy ocean. The image here is flatter – Australia itself is out of reach. The message is that you may reach the edge of the horizon of the national space but you will not get any closer and Australia itself is banned from you, with the image of Australia inside a prohibition sign, resembling “No Smoking” signage. Australia’s coat of arms is stamped at the top to give the appearance of an official message, and the words “Australian Government” are inscribed below. The coat of arms and the image of Australia give legitimacy to this governmental action through conflating the protection of the nation with the actions that the government authorizes itself to do in “stopping the boats.”

The sea and the text here produce affects of anxiety over chaos and the pleasure of reasserted control. Imagine the images without text or boat – just the sea, blank of human presence, liquid and in flux, undistinguishable from any other patch of sea and therefore unconquerable. This image would be of a surface that resists the assertion of jurisdiction as there would be no reason for law to exist without the ability to demarcate and claim. And yet, from the perspective of the sovereign the horizon lies in relation to *it*. The sovereign’s horizon is not only “as far as the eye can see” but also beyond it. This is because the sovereign always extends its powers as far as possible,<sup>62</sup> and as long as the sea’s surface appears unpopulated, sovereignty’s imagined domain could stretch forever. The potential for law is always present.

The sudden presence of the boat calls law instantly to it and makes visible the border that it has breached by suddenly becoming a forbidden object upon the previously indistinguishable sea. At the moment of breach, the border is reasserted through the deployment of legal devices of disembodiment that exclude the potential of the lives on those boats to becoming citizen lives, and through the writing over of the space that takes place in these discursive images. There is a demarcation made between entering the maritime territory and the consequential inability to enter the land territory and “make Australia home.” The presence of the boat is registered as a thing that law and the sovereign are called to and are capable of dealing with, but the thing itself will have no agency to engage with Australia in any other way than as passive objects.

There is both absence and presence of the human subjects of the message presented. They are absent visually but also present through being elliptically addressed to by the text (which of course, is also a significant visual element of the images). The collective “you” of the address, representing asylum seekers, is through the

combination of text and image, compressed into the metonym and category of the boat. The asylum seekers in becoming the boat are in turn tainted by that boat's affective associations with danger and illegal people-smuggling activities.<sup>63</sup>

The scene created in the “No Way” campaign is spaceless and the bodies are mere containers – they become a metaphor for a muscular, all-seeing sovereignty performed through the maritime drama of interdiction and interception. In a video that accompanied the launch of the “No Way” campaign, the then “Commander of Operation Sovereign Borders” Lieutenant-General Angus Campbell stands as a superimposed figure over the image of the sea and the boat, with the “No Way” text next to him.<sup>64</sup> The boat appears smaller in the frame than every other element now, including the words. In contrast, General Campbell, who is named by the embroidered tag on his uniform, takes up over half the frame. It is a mythic scene, recreating the foundational inscription of the colonizer's claim of sovereignty over the nation. Stephanie Jones and Stewart Motha describe these kinds of performances of absolute power and knowledge over space as “anxious sovereignty,” prone to fictionalizing space and the real bodies that inhabit space.<sup>65</sup> Here, whilst the actual bodies of asylum seekers and their ability to make a claim before the law is de-realized and transformed metaphorically into the image of the boat, sovereignty is reified into a militarized and masculine figure which looms Leviathan-like and guards the border in its omnipotence. The real becomes abstract and the abstract becomes real<sup>66</sup> in a substitution that completely removes the asylum seeker bodies from frame, overwriting them for the only body who is permitted at and who rules over the maritime border space – the sovereign.

## THE BOAT AND THE BODIES

This section analyses in more detail how the metaphor of the boat functions in Australian refugee law and discourse. The unauthorized maritime arrival and the advertising images are two sides of the same figure of the forbidden boat and it is this figure of the boat that must be interrogated and kept in play, to resist its reductive de-materialization when acting as a legal metaphor. The law here performs a magic trick using metaphor – replacing asylum seeker subjects with a boat, which then allows it to use further force upon this greatly denuded subject. Whilst the advertising campaign images play out the high drama at the border, the technical definition, which does all the work in conveying asylum seekers into state coercion, resists looking through its flat, legislative language. In this instance, we do not have to go far to uncover the “aesthetic practice” of law,<sup>67</sup> which relies on the deployment of drama and banality respectively to illustrate the righteous force and affirmation of sovereignty that the law represents and to embed the exceptional consequences of the offshore and indefinite detention of bodies that have committed no crime within normality through the innocuous order of the administrative legislation of the Migration Act 1958.

The law and images outlined above are synchronized in their depiction of the subject of border law (i.e., the asylum seekers) as boats and are a perfect representation of the dematerialized nature of legal metaphor.<sup>68</sup> The boat is a figure that is de-spatialized and de-historicized by its location on the liminal border, which is a threshold and a between-space and then again by its stipulation as an “arrival”, which completely negates the specific and material history and movement of how it got there. Whilst a thinking, acting human body is not a necessary condition for a legal person to exist, a disembodied human is much easier to firstly reduce the legal personhood of and then to enact state violence upon.<sup>69</sup>

Gillian Whitlock has argued that the image of the boat coming towards Australia is one that displaces the asylum seekers who are actually on board.<sup>70</sup> The image of the boat that law and the “No Way” advertising campaign constructs is placed at a distance from the territory so that nothing would register as testimony – the state, its institutions, and its citizens are too distant to hear, see, touch, or smell any communication from the asylum seekers. The image of the boat renders them both incapable of sensing and refusing to sense any legal or humanitarian claims that those on board would seek to use to engage Australia’s obligations. This distancing of sense-ability allows the government to make the boat appear only through the limited frame presented by the government. In this frame, the boat is configured “as a sign of invasion and contamination.”<sup>71</sup>

Australia’s concern with borders, bodies, and boats has also been highlighted by Suvendrini Perera in her book exploring the particular insular imagination that occurs from Australia’s island isolation, colonial history and the dramas that symbolically and in reality play out on the beach as the threshold zone between the sea that connects the land with the “outside” world and the solidity of land and national jurisdiction.<sup>72</sup> The metaphor of the boat, then, emerges as a congealment of specifically maritime anxieties and arose out of a political context that emphasized “stopping the boats” as the highest and only priority, both as a matter of compassion in preventing deaths at sea, and as a matter of protecting the border.<sup>73</sup> The metaphor of the boat acts as propaganda that stops or sidesteps thought about the body and abandons them to the exclusion.<sup>74</sup> Discourses that transition asylum seekers out of their embodied being into emptier disembodied categories pave the way for, and justify, a legal category as abstract as being a mere “arrival” – a presence in the territory and a problem for regulation. The boat on the water stands in as metonym for the entire “problem” of unauthorized, unlawful presences within the state territory. Metaphorized in this way, all measures are permissible in solving the problem of the presence. They are recognized just enough for law to authorize violence towards them as a generic problem of presence whilst being kept away from any mechanisms of recognition that would allow them to challenge their treatment and make claims for the right of their presence.

Being designated as a boat is the equivalent of the mark of the *homo sacer*. The *homo sacer* cannot “perform any juridically valid act,”<sup>75</sup> and being outside the protection of the law also means being unable to invoke or to use it. What happens to

asylum seekers is largely at the discretion of the immigration minister and their delegates, including control over their movements and applying for visas on their behalf to the countries they are transferred to.<sup>76</sup> The status of being a boat – that is, of being classified as an “unauthorized maritime arrival” – is what strips the asylum seeker body of protection and nullifies their claim for law, reflecting a technocratic way of viewing the movement of bodies. It is also an act of designation that is intimately bound up with the discourse on sovereignty – Agamben’s analysis of sovereignty finds that it is the act of being able to cast life into bare life that is constitutive of sovereign power.<sup>77</sup>

Former Prime Minister John Howard’s 2001 campaign speech which famously stated that “We will determine who will come here and the manner in which they come”<sup>78</sup> epitomized the rhetoric of the vital importance of border control, which has through successive legislative amendments altered the law and its logic. Howard’s speech was a rallying cry for national sovereignty. Its rhetorical flourish lasted beyond the moment of the speech and made it subsequently easier to argue against any objections to specific policies as potentially weakening border security and an invitation to refugees and people smugglers to be the ones who “choose” to pass through the border by their own agency.<sup>79</sup> Although the “we” of the speech referred to the Australian people, in practice the only people who could do the choosing were the immigration minister and their delegated officers. The boat, as a trope of threat and sovereignty, forecloses the legal and political imagination and embeds power in the executive officers of the state.

Longstanding national anxieties about boats are used in order to build a narrative around the rapid and extreme legal changes that have occurred in Australia’s migration law, but how do we get from political rhetoric to a complete legal regime that treats the exclusion of asylum seekers as absolutely essential to the integrity of the border, and by extension the state and nation? Goodrich’s work on legal emblems illustrates how medieval emblemata grounded the construction of norms of governance and law, tracing connections between theological symbols and their use to legitimize and transform the authority of law, such that these images are a juridical genre that we can read in order to find out how these norms were understood and disseminated.<sup>80</sup> Convergences between image and law, affect and juridical text, emerge in periods of legal change that requires the making of myth to stabilize, facilitate and ossify the change. This floating of the signified beneath the stable signifier is what Roland Barthes calls myth – a “force of stability” – that Desmond Manderson argues is actually a force of *mobility*, acting as “transitional objects” that change the world by hiding that change beneath the stable trope.<sup>81</sup>

The metaphor of the unauthorized boat provides a stable signifier that bridges law and the political discourse about law, dematerializes the actual asylum seeker body and reifies sovereign power whilst concealing its explicit violence. One boat is capable of standing in for many things, solidifying different “levels” of meaning which can come into play at any time depending on who is evoking the trope and for what

reason. Overall consistency between the different messages communicated at each level is not necessary and contradiction, at least in a moral sense, are entirely possible.<sup>82</sup> What is important is not the realism of the trope of the boat but what it is made to mean and how the boat transfers asylum seekers into the trope and then erases them. This is a part of the general problem of law – it is always missing something in its translation of the world into legal text, but this absence of full and potentially protesting subjects is highly useful to legislators in bringing about complex policy changes. It is also inherent to the structure of legal metaphor, enacting an effacement that then forgets the effacement, like a coin polished of its marks and returned to circulation.<sup>83</sup> The image of the boat remains in circulation without its bodies, emptied of its original content, and filled in with a story about sovereignty and borders.

The mythic scene is not only incidental in the dramatic advertising images that frame the issue as one of a struggle between sovereignty and outsiders, but actively transforms legal understanding. Australia's implementation of the Refugee Convention remains within the legislation,<sup>84</sup> but the boat is permanently "held at sea" by the sovereign gaze, incapable of accessing the provisions of the general law, whilst being captured within the state force authorized against them because of their diminished status. A bodiless boat cannot speak or make legal claims; it can only be moved. This myth forecloses the possibility of seeing the bodies that cross the border seeking asylum as such and changes the narrative so that asylum seekers on boats becomes a story about the border. Refugee law is transformed into boat law and boat law is border law.

Here, law is written onto the body in order to erase it and turn it into an expression of the ineffable border, cast as a disturbed liquid surface between the boat and the nation. Franz Kafka's short story *In the Penal Colony*<sup>85</sup> illustrates how such mythic constructions of law are as much a matter of internal national myth as it is about projecting a forbidding image to those outside of the nation. In the story, an enthusiastic administrator of a penal colony describes to a traveler the working of a capital punishment apparatus that uses needles to inscribe the offender's sentence deeper and deeper into the body. All the while, water clears the blood away into a ditch so that observers can see the sentence being written through the glass surface of the inscribing machine, until the body is completely punctured with the sentence and flung into the ditch by the machine. The idea of the law-writing machine is that the text will disappear into the flesh, and along with it, the legal lesson. Sentence and legal sentence are one. Signifier and signified are unified in this law machine.

In the myth of bodies becoming boats, the sentence of the crime of being a boat is written onto asylum seeker bodies. The mythic image of the boat remains at the maritime border but the real exercise of bordering off takes place upon the body, which is always excluded, even when it is physically within the geographic space of the nation.<sup>86</sup> Because of their designation as "unauthorized maritime arrivals," asylum seekers who come by boat can never apply for a valid protection visa to normalize their status, and can only do so by a decision of the immigration minister.<sup>87</sup>

Legally, they remain where the myth dwells, in the maritime space just outside the nation, stopped by the sovereign. There is also a synergy here between the underlying assumption of the logic of deterrence – that the punishment of the representative few will stop others from attempting the forbidden action – and the idea of effacing the body in order to write a lesson that is only visible to the spectator. In Kafka’s story, the body is meant to know their sentence through the pain, whilst observers will read it through the glass.

Although the myth of the boat is ostensibly directed outwards from within the border to potential asylum seekers, its meaning is read and understood within the border. It is within the border that the myth does the most work transitioning legal understanding whilst promoting the myth that this is all in service to the stable status quo of sovereign borders. The radicality of the legal changes is concealed beneath the device of the boat.

### BODIES AS MATTER THAT MATTER

The preceding sections have shown how law and image work together through the common metaphor of the boat. The substitution of the asylum-seeker’s body for the boat enables their exclusion from the law, whilst generating myths that enable radical legal change to occur by constructing the boat as a transitional object. Meanings proliferate around the metaphor of the boat and its over-determination spins a narrative where the erasure of the body becomes the power of the sovereign at the border. The body – the singular, fleshy one having moved from a place where the sense of home has collapsed (or perhaps from a place always hostile to them) towards a place of a potential new home – is what has been excluded from law and the political discourses about asylum seekers, compressed into a collective category of mere disruptive presences violating the border of the nation. In the process of “carrying over”<sup>88</sup> the asylum seeker into the law via metaphorical substitution as a boat, we are carried away from the body.

Focus on the materiality of the body has been facilitated by the critical turn towards space.<sup>89</sup> Andreas Philippopoulos-Mihalopoulos compellingly argues that “spatial justice” requires an orientation towards the bodies that are always in a process of positioning themselves within the lawscape.<sup>90</sup> The question of “does the body suffer?”<sup>91</sup> is an attempt to move from a framework of legal legitimacy in the use of force to a visceral, vital and sensate question. The law will remain mute before this sensational question, but the muteness will come out of law’s incapability of dealing with affect, rather than law’s superiority above non-legal and non-linguistically askable questions. Under such a framework, the legitimacy of asylum seeker presence becomes what is irrelevant here, although the focus may simultaneously shift to the cause of the suffering. “Was the unauthorized maritime arrival legally moved to an appropriate designated offshore processing country?” is a fundamentally different question to “Are we, through law, making the body suffer?” It is the question posed by the sensations of the body that break through the cage of legal discourse and into the material, ethical

question, and where I hope the deconstruction of legal metaphors will move us. Although this paper has focused on how the body disappears into legal metaphor, the needling away and play with meaning is far from complete. It is possible from this point to animate the body, bring it back into the fold and see what happens.

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1. Sandro Mezzadra and Brett Neilson, *Border as Method, or, the Multiplication of Labor* (London: Duke University Press, 2013), 3.
2. Étienne Balibar, *Politics and the Other Scene*, trans. Christine Jones, James Swenson, and Chris Turner (London: Verso, 2002).
3. Anthea Vogl, "Over the Borderline: A Critical Inquiry into the Geography of Territorial Excision and the Securitisation of the Australian Border," *University of New South Wales Law Journal* 38, no. 1 (2015): 114-45. This image of Australia as a singular island has been shown to be false, although the legal excision of the many smaller islands that are also part of Australian territory shows the willingness of the state to cut them off in order to preserve the integrity of the image.
4. *Ibid.*
5. Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, trans. Daniel Heller-Roazen (Stanford: Stanford University Press, 1998).
6. *Ibid.*, 183.
7. Giorgio Agamben, *State of Exception*, trans. Kevin Attrell (Chicago: University of Chicago Press, 2005).
8. Judith Butler, *Precarious Life: The Powers of Mourning and Violence* (London: Verso, 2004), 59.
9. Catherine Dauvergne, *Making People Illegal: What Globalization Means for Migration and Law* (Cambridge: Cambridge University Press, 2008), 169.
10. Suvendrini Perera, "Burning Our Boats," *Journal of the Association for the Study of Australian Literature: JASAL* 15, no. 3 (2015): 5, 1-11.
11. Dauvergne, *Making People Illegal*, 17.
12. Federal Coalition, "The Coalition's Operation Sovereign Borders Policy," The Liberal Party of Australia, [http://lpaweb-static.s3.amazonaws.com/Policies/OperationSovereignBorders\\_Policy.pdf](http://lpaweb-static.s3.amazonaws.com/Policies/OperationSovereignBorders_Policy.pdf) (accessed July 2013).
13. Fleur Johns, "Guantánamo Bay and the Annihilation of the Exception," *European Journal of International Law* 16 (2005): 626, 613-35.
14. Vogl, "Over the Borderline." The narrative of a stable border is one constructed through law, contrary to the realities and uncertainties of geography.
15. Margaret Davies, *Asking the Law Question* (Sydney: Law Book Co, 2008), 22-23.
16. Desmond Manderson, "Bodies in the Water: On Reading Images More Sensibly," *Law & Literature* 27, no. 2 (2015): 279-93; Desmond Manderson and Honni van Rijswijk, "Introduction to Littoral Readings: Representations of Land and Sea in Law, Literature, and Geography," *Law & Literature* 27, no. 2 (2015): 167, 167-77; Gillian Whitlock, "The Hospitality of



- Cyberspace: Mobilizing Asylum Seeker Testimony Online," *Biography* 38, no. 2 (2015): 245-66.
17. George Lakoff, "The Contemporary Theory of Metaphor," in *Metaphor and Thought*, ed. Andrew Ortony, 2nd ed. (Cambridge: Cambridge University Press, 1993), 203-51.
  18. George Lakoff and Mark Johnson, *Metaphors We Live By* [1980], revd ed. (Chicago: University Of Chicago Press, 2003).
  19. George Lakoff, "Contemporary Theory of Metaphor."
  20. Bernard J. Hibbitts, "Making Sense of Metaphors: Visuality, Aurality and the Reconfiguration of American Legal Discourse," *Cardozo Law Review* 16 (1994): 237, 229-356.
  21. George Lakoff and Mark Johnson, *Philosophy in the Flesh: The Embodied Mind and its Challenge to Western Thought* (New York: Basic, 1999).
  22. Andreas Philippopoulos—Mihalopoulos, "Flesh of the Law: Material Legal Metaphors," *Journal of Law and Society* 43, no. 1 (2016): 45-65.
  23. Paul Ricœur, *The Rule of Metaphor: Multi-Disciplinary Studies of the Creation of Meaning in Language*, trans. Robert Czerny, Kathleen McLaughlin, and John Costello (Toronto: University of Toronto Press, 1977), 7.
  24. Ibid.
  25. Philippopoulos—Mihalopoulos, "Flesh of the Law"
  26. Elizabeth Mertz, *The Language of Law School: Learning to "Think Like a Lawyer"* (Oxford University Press, 2007), 214.
  27. Peter Goodrich, *Languages of Law: From Logics of Memory to Nomadic Masks* (London: Weidenfeld & Nicolson, 1990), 17.
  28. Mertz, *Language of Law School*, 99.
  29. Roberto Esposito, "The Dispositif of the Person," *Law, Culture and the Humanities* 8, no. 1 (2012): 25, 17-30.
  30. Steven L. Winter, "Citizens Disunited," *Georgia State University Law Review* 27, no. 4 (2011): 1142, 1133-45; Costas Douzinas and Lynda Nead, *Law and the Image: The Authority of Art and the Aesthetics of Law* (Chicago: University of Chicago Press, 1999), 3.
  31. Philippopoulos—Mihalopoulos, "Flesh of the Law."
  32. Mertz, *Language of Law School*, 113-15.
  33. Margaret Davies, "Exclusion and the Identity of Law," *Macquarie Law Journal* 5 (2005): 5-30; Honni van Rijswijk, "Towards a Literary Jurisprudence of Harm: Rewriting the Aboriginal Child in Law's Imaginary of Violence," *Canadian Journal of Women and the Law* 27, no. 2 (2015): 311-35.
  34. Goodrich, *Languages of Law*.
  35. Philippopoulos—Mihalopoulos, "Flesh of the Law," 56.
  36. Butler, *Precarious Life*.
  37. Philippopoulos—Mihalopoulos, "Flesh of the Law," 56.
  38. Mary Crock, Ben Saul, and Azadeh Dastyari, *Future Seekers II: Refugees and Irregular Migration in Australia* (Sydney: Federation Press, 2006).
  39. David Marr and Marian Wilkinson, *Dark Victory* (Sydney: Allen & Unwin, 2003).
  40. Vogl, "Over the Borderline."
  41. Commonwealth of Australia, Migration Amendment (Excision from Migration Zone) Act 2001.
  42. *Al-Kateb v Godwin* (2004) 219 CLR 562.
  43. Desmond Manderson, "Groundhog Day: Why the Asylum Problem is Like the Drug Problem," *Griffith Review* 41 (2013): 86, 84-110.
  44. Commonwealth of Australia, Maritime Powers Act 2013, s72(4).
  45. *Plaintiff M68/2015 v Minister for Immigration and Border Protection* [2016] HCA 1.
  46. Commonwealth of Australia, Migration Amendment Act 1992.
  47. Commonwealth of Australia, Migration Amendment (Excision from Migration Zone) Act 2001.
  48. Mary Crock and Laurie Berg, *Immigration, Refugees and Forced Migration: Law, Policy and Practice in Australia* (Sydney: Federation Press, 2011), 147.
  49. Ibid., sched 3 inserting s5(1) into the Migration Act 1958 (Commonwealth of Australia).
  50. Ibid., sched 4 inserting s46A into the Migration Act 1958 (Commonwealth of Australia).
  51. Commonwealth of Australia, Migration Act 1958, s5AA.
  52. Guy S. Goodwin-Gill and Jane McAdam, "Preface," in *The Refugee in International Law*, 3rd ed. (Oxford: Oxford University Press, 2007), v, v-vii.
  53. Fiona Jenkins, "Bare Life: Asylum Seekers, Australian Politics and Agamben's Critique of Violence," *Australian Journal of Human Rights* 10, no. 2 (2004): <http://www.austlii.edu.au/au/journals/AUJIH/Rights/2004/18.html/>.
  54. Commonwealth of Australia, Migration Act 1958, s46A.
  55. Ibid., ss189, 198, 198AA, 198AD.
  56. Jacques Ranciere, "The Ethical Turn of Aesthetics and Politics," *Critical Horizons* 7, no. 1 (2006): 12, 1-20.
  57. Sharon Pickering and Leanne Weber, "New Deterrence Scripts in Australia's Rejuvenated Offshore Detention Regime for Asylum Seekers: Australia's Offshore Detention Regime," *Law and Social Inquiry* 39, no. 4 (2014): 1006-26.
  58. Grégoire Chamayou, *Manhunts: A Philosophical History*, trans. Steven Rendall (Princeton: Princeton University Press, 2012).
  59. Commonwealth of Australia, Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Act 2013.

60. "Operation Sovereign Borders" is the coalition government's name for its set of policies targeted towards asylum seekers who come by boat, which includes interceptions at sea, turn backs of boats when safe to do so, and the transfer of rescued asylum seekers to offshore detention and processing centers in Nauru and Manus Island.
61. Peter Mares, *Borderline: Australia's Treatment of Refugees and Asylum Seeker* (Sydney: University of New South Wales Press, 2001), 16. This often becomes a justification for the use of temporary protection visas (TPVs).
62. Suwendrini Perera, *Australia and the Insular Imagination: Beaches, Borders, Boats, and Bodies* (New York: Palgrave Macmillan, 2009), 57. Consider also that the act of declaring Australia *terra nullius* allegedly conferred sovereignty over the entire land to England.
63. Sharon Pickering, "Common Sense and Original Deviancy: News Discourses and Asylum Seekers in Australia," *Journal of Refugee Studies* 14, no. 2 (2001): 169-86.
64. AusCustomsNews, "No Way. You Will Not Make Australia Home - English," YouTube, <https://www.youtube.com/watch?v=rT12WH4a92w> (accessed April 15, 2014).
65. Stephanie Jones and Stewart Motha, "A New Nomos Offshore and Bodies as their Own Signs," *Law & Literature* 27, no. 2 (2015): 270, 253-78.
66. Peter Gabel, "Reification in Legal Reasoning," *Research in Law and Sociology* 3 (1930): 25-51.
67. Douzinas and Nead, *Law and the Image*, 5.
68. Philippopoulos-Mihalopoulos, "Flesh of the Law."
69. Hannah Arendt, *The Origins of Totalitarianism* (London: Allen & Unwin, 1967).
70. Whitlock, "Hospitality of Cyberspace," 252.
71. Ibid.
72. Perera, *Australia and the Insular Imagination*.
73. Pickering and Weber, "New Deterrence Scripts."
74. Agamben, *State of Exception*; Costas Douzinas, "Law's Subjects: Rights and Legal Humanism," in *The End of Human Rights: Critical Legal Thought at the Turn of the Century* (Oxford: Hart, 2000), 229-61.
75. Agamben, *Homo Sacer*, 183.
76. *Plaintiff M68/2015 v Minister for Immigration and Border Protection* [2016] HCA 1
77. Agamben, *Homo Sacer*, 11.
78. John Howard, "Address at Federal Liberal Campaign Launch," speech delivered at the Federal Liberal Campaign Launch, Sydney, NSW, Australia, October 28, 2001, <http://electionspeeches.moadoph.gov.au/speeches/2001-john-howard/>.
79. Eve Lester, "Myth-Conceiving Sovereignty: The Legacy of the Nineteenth Century," in *Allegiance and Identity in a Globalised World*, ed. Fiona Jenkins, Mark Nolan, and Kim Rubenstein (Cambridge: Cambridge University Press, 2014), 354-80.
80. Peter Goodrich, *Legal Emblems and the Art of Law: Obiter Depicta as the Vision of Governance* (Cambridge: Cambridge University Press, 2013).
81. Desmond Manderson, "The Metastases of Myth: Legal Images as Transitional Phenomena," *Law and Critique* 26, no. 3 (2015): 208, 207-23.
82. Ibid.
83. Jacques Derrida, "White Mythology: Metaphor in the Text of Philosophy," trans. F.C.T. Moore, *New Literary History* 6, no. 1 (1974): 7, 5-74.
84. Commonwealth of Australia, Migration Act 1958, s5H.
85. Franz Kafka, *The Metamorphosis and Other Stories*, trans. Joyce Crick (Oxford: Oxford University Press, 2009), 75-99.
86. Pickering and Weber, "New Deterrence Scripts."
87. Commonwealth of Australia, Migration Act 1958, s46A.
88. Terrell Carver and Jernej Pikalo, eds, *Political Language and Metaphor: Interpreting and Changing the World* (New York: Routledge, 2008), 2.
89. Andreas Philippopoulos-Mihalopoulos, *Spatial Justice: Body, Landscape, Atmosphere* (Abingdon: Routledge, 2015).
90. Ibid., 3.
91. Here, I am reshaping Derrida's citation of Jeremy Bentham in thinking about the animal: "'Can they suffer?' asks Bentham, simply yet so profoundly"; cited in Jacques Derrida, *The Animal That Therefore I Am*, trans. David Wills (New York: Fordham University Press, 2008), 27.

**Justine Poon** is a doctoral candidate at the ANU College of Law, Australian National University. She works on critical legal theory and the use of metaphors in refugee law and political discourse, and is interested in interdisciplinary and creative ways of thinking about law. Email: [justine.poon@anu.edu.au](mailto:justine.poon@anu.edu.au)