Anthology:
The impact of the pandemic on border (im)mobility

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Contents

Abbreviations 4

Acknowledgement 5

Preface 5

Contributors 6

The impact of the pandemic on border (im)mobility 9
Margherita Matera, Claire Loughnan and Tamara Tubakovic

EU Digital Green Certificates: passports to mobility or new mobility passports? 12
Marco Borraccetti and Susanna Villani

COVID-19 and the Sovereign Backlash to Refugee Rights 15
Ainoa Cabada

The COVID-19 syndemic as a multiplier of border violences 20
Francesca Esposito

After the emergency: Tensions and connections between COVID-19 and 'migrant crisis' representation in Italy 24
Elena Giacomelli and Pierluigi Musarò

Waiting for our embrace: COVID-19 and people seeking asylum in Australia 27
Caroline Fleay and Mary Anne Kenny

Practices of externalisation in the time of COVID-19: the case of the Italian quarantine ships 31
Elena Giacomelli and Sarah Walker

Passports and pandemics: strategies of exclusion through the 'medical border' 35
Claire Loughnan and Sara Dehm

Refugees, borders and narratives in a time of COVID 39
Philomena Murray

Australia's Carceral Identity 43
Amy Nethery

Immigration Amnesty as a Viable and Necessary COVID-19 Response 46
Anthea Vogl and Sara Dehm

Abbreviations

ASGI - Association for Juridical Studies on Immigration

CFREU - Charter of Fundamental Rights of the European Union

EMA - European Medicines Agency

EU - European Union

HSC - Health Security Committee

IOM - International Organization for Migration

NGOs - non-governmental organizations

PPE - personal protective equipment

TFEU - Treaty on the Functioning of the European Union

UNHCR - United Nations High Commissioner for Refugees

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Preface

This Anthology is the result of an interdisciplinary, international collaboration that has begun to explore the impact of COVID -19 on people seeking asylum, through an analysis of government policies which have sought to securitise the public health response and restrict who crosses its borders. The project – of which this Anthology is a product – contributes to interdisciplinary debates on the significance of borders; belonging; humanitarian responsibility; and the right to refugee protection. Through a comparative analysis of these shifts and challenges within Australia and Europe, the articles in this Anthology explore how borders are maintained in new and untested ways during pandemics and how they contribute to the ongoing marginalization of those most in need of protection. It seeks to contribute to national, regional and international knowledge creation and public debate on the social, political and legal impact of COVID -19 on borders and belonging.

Contributors

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Sarah Walker is a critical migration researcher. Her research is underpinned by a social justice ethos and informed by her previous experience working as a support worker with asylum seekers in London, UK. She is currently working as a postdoctoral research fellow at the University of Bologna funded by the Leverhulme Trust Study Abroad Scholarship. This project builds on her PhD in Sociology, which explored the interaction between migration regimes and young African men, bureaucratically labelled 'unaccompanied minors', who have made the perilous, illegalized journey to Italy. Using the minor as lens, it interrogates the borderwork of race and childhood. Employing qualitative and creative research methods, her work examines the intersections of migration, race, gender and citizenship.

The impact of the pandemic on border (im)mobility

Margherita Matera, Claire Loughnan and Tamara Tubakovic

The COVID-19 pandemic has exposed significant societal fault lines and introduced a new set of bordering practices by states. It has contributed to an acceleration of pre-existing externalisation trends. Externalisation refers to the often violent practices adopted by governments to disrupt migration pathways, prevent individuals from reaching or entering state territory, and thus deny asylum seekers access to refugee procedures. Measures that were proven not to have worked during and after the so-called 2015 EU 'refugee crisis', notably those based on coercion, isolation and externalisation, continue to be practiced during the COVID-19 pandemic, and have become the status quo approach in many respects (Esposito, this volume). Despite initial claims that COVID-19 was a social leveller, to which everyone was vulnerable, the COVID-19 pandemic has revealed underlying social inequities. And rather than provide an opportunity for reflection, it has enabled governments to pursue deterrence and evasive practices with several new developments, as well as the redeployment of tried and tested containment practices (Nethery, this volume; Loughnan and Dehm, this volume). It has provided new grounds to justify additional restrictions on asylum seekers and refugees and to focus on national interests and national sovereignty over international cooperation (Cabada, this volume).

In responding to the COVID-19 pandemic, we witnessed harsh border closures across the globe, which have had a significant impact on refugees. Pandemic-induced border closures and travel restrictions, framed within the context of protecting public health, have extended externalisation practices of states against asylum seekers and temporarily halted the United Nations High Commissioner for Refugees (UNHCR) coordinated resettlement in 2020, further curtailing movement despite increased forced displacement worldwide (Ghezelbash and Tan, 2020). As noted by UNHCR (2021b, p. 12), most countries fully or partially closed their borders, some returned asylum seekers to their country of origin, 'while others increasingly resorted to the disproportionate use of immigration detention'.

We witnessed a continuation and in some places an increase in pushback measures. The associated health concerns with cross-border movement enabled governments to pursue such practices with greater regularity and brutality, especially during the early phase of the pandemic. Paradoxically, these measures might have in fact exacerbated the risk of the virus spreading, as people sought alternative and dangerous routes to protection, 'bypassing health checks and quarantine' (McAdam, 2020, p. 365).

In managing the pandemic, more actors, especially those working in dealing with the public health aspects of the pandemic, became indirectly engaged in externalisation practices. This diffusion of responsibility for acts that have been shown to repeatedly violate human rights raises significant tensions for health care workers who have a duty of care.

COVID-19 has had an impact on the politics of belonging especially in terms of what it means to belong to a community and to be recognised as worthy of protection. We have seen many ways in which rights associated with citizenship have been undermined, challenging concepts of belonging. The expansion of government power to control the body and movement of refugees suggests a concerning erosion of the careful balance between state power and individual rights. The pandemic led to narratives of exclusion, with most citizens welcomed home, and others, typically racialised communities, confronted with the intensification of border controls, as the 'polluted' other.

COVID-19 has therefore had a significant impact on societal perceptions of refugees as a health threat. They were presented as carriers of the virus who needed be stopped at the border or quarantined to stop the spread of the disease into the wider community (see Giacomelli and Walker, this volume). These actions were often couched in terms of protecting refugees and asylum seekers from exposure to the virus in the broader community, but the conditions in which they were placed – overcrowded detention centres with no ability to social distance or access to personal protective equipment (PPE) – would demonstrate that this was not a priority of governments. In assessing the situation within the EU, Tazzioli and Stierl (2021, p.77) have argued that the

> modes of migration confinement have multiplied across EUrope and the captivity of migrants has been justified in the name of their own (sanitary) protection against Covid-19…not only did carceral geographies of migration multiply during the pandemic, both at sea and on land, they have also been disguised as modes of (hygienic) protection.

This builds on what we have seen over the years in which asylum seekers and refugees have been framed negatively by politicians and the media – narratives such as 'immigrants are polluted, and they pollute us'. As well as looking at these broader societal narratives, it is also crucial to examine the policy narratives that underpin and shape government understanding of refugee issues and how these narratives, not grounded in evidence, perpetuate particular framings of refugees as a societal and now health threat (see Musaró and Giacomelli, this volume).

This directs our attention to the prominence and spread of these policies, given that they are not driven by scientific consensus on their utility in managing the threat of the pandemic, and containing the spread of the virus. In fact, such narratives and policies can be seen as part of a long-standing symbolic politics by governments responding to domestic interests and public opinion (Davies, 2020; Kenwick and Simmons, 2020). The 'pervasive use of external border controls in the face of the coronavirus reflects growing anxieties about border security in the modern international system' (Kenwick and Simmons, 2020, p. E36). Here we can see how bordering,

rather than constituting an effective public health response, is instead a political resource used by governments to secure populist electoral success under conditions of unprecedented uncertainty.

There were some indications, however, of shifting narratives in relation to asylum seekers and refugees in the context of COVID-19. In Italy, Mateo Salvini and Luciana Lamorgese (the former and current Minister of the Interior), shifted away from the notion of closing the borders forever. Within in Australia, community support to return the Nadesalingam family to their home in regional Queensland after being forcibly removed to detention helped, as Fleay and Kenny (this volume) argue, to 'humanise the asylum-seeking family through appealing to particular Australian values that have become more salient during the pandemic'. However, there was little discussion of this shift in the media. Analysing the narratives and perceptions of migrants and refugees is critical to identify the gaps between border policies in place, and people's perceptions of forced migration (Murray, this volume; Musaró and Giacomelli, this volume).

A common response to COVID-19 was the introduction of strict national (and internal) border closures to restrict movement into state territory and to restrict the internal movement within states. These measures have had both significant implications on the ability for national citizens to move freely and have exacerbated the obstacles to movement for those seeking asylum. Border closures effectively shut off air travel by reducing the number of flights, increasing the costs of tickets (as airlines were forced to reduce the number of passengers on flights, thus prioritising those that could pay for business class ticket), and imposing new health measures, including vaccine passports (Dehm and Loughnan, forthcoming; Loughnan and Dehm, this volume), such as the EU Digital Certificate (Borroccetti and Villani, this volume). Australia represents an extreme case of border closure, with strict restrictions exercised until now, on who can enter and leave Australia. Furthermore, internal regional border closures also prevented freedom of movement within Australia. Australia's travel bans were also used in a radicalised way as reflected in the decision of then Prime Minister Scott Morrison on 27 April 2021 to ban Australian citizens in India from returning from India. This ban mandated that any traveller trying to bypass the ban would face up to five years in jail and a $50,000 fine (Martin, 2021).

Public health orders, though not directly targeted at refugees and asylums seekers, have had in impact on refugees and asylum seekers, especially in terms of the increased securitisation of these orders. The introduction of COVID passports and restrictions on internal movement, affected the movement of irregular migrants who do not have official papers, access to vaccination programs, thus exacerbating existing barriers and creating new obstacles for vulnerable groups (see Borroccetti and Villani, this volume; and Loughnan and Dehm, this volume). Such measures have further increased the vulnerability of people seeking refuge. They have undermined social and economic rights associated with citizenship (Lambert and McAdam, 2021; Gilbert, 2020). This builds on trends in some countries, where successive governments have curtailed already inadequate medical and sanitary conditions of state healthcare services as pertaining to migrants and refugees (Carlotti, 2021). This intentional segregation based on the quality of health care suggests an additional border practice, played out away from the external frontier.

Furthermore, the securitisation of the pandemic and the overriding prioritisation on 'public health' has meant that government and authorities have been given unprecedented powers under the mandate of emergency response. This has manifested in the undermining of the protection of sensitive data – the undermining of national data protection laws under the guise of national security and public health. This raises concerning implications for the health of democratic systems, and their resilience to populist and anti-liberal trends.

In March 2020, UNHCR and the International Organization for Migration (IOM) announced a temporary suspension of resettlement departures citing travel restrictions imposed by states and the capacity of states to deal with the health crisis as the reason for the decision (UNHCR, 2020b). In 2020, UNHCR resettled 22,770 refugees (UNHCR, 2021a), compared to 63,696 in 2019 (UNHCR, 2020a). Within Australia, only 3,687 refugees were resettled in 2021 compared to 18,240 in 2019 (RMIT ABC Fact Check, 2021). The opportunity for family reunion is near impossible at the moment within Australia. This has become an invisible impact of COVID-19.

With the priority that governments gave to controlling movement in order to limit the spread of COVID-19, greater prominence has been given to measures designed to control national and internal borders. It has also contributed to the increased use of language associated with 'security' (references to a war against the virus; the virus as the invisible enemy; the virus as a threat). In addition, military personnel have had an increasing role in national and local public health strategies. Military personnel have been used to; assist with border control and enforcing lock-down rules; military run pop-up hospitals; or military personnel working in hospital, and COVID testing centres. Within Australia we saw the appointment of key military personnel to top administrative positions central to the national COVID response – Lt Gen John Frewen was appointed as the head of Australia's national COVID vaccine taskforce, taking over from the retiring Health associate secretary, Caroline Edwards and Navy Commodore Eric Young was appointed to manage logistics associated with the vaccine program.

As part of this move towards securitisation, we have seen national responses marked by the increased use of confinement, and unconventional forms of detention, in order to 'secure' the general population (see Esposito in this volume; Tazziolo and Stierl, 2021). One of the 'striking responses' from Australian governments early on in the pandemic was the introduction of quarantine for international and cross-border travellers (Nethery, this volume). Unlike in other countries, this system of containment was largely uncontroversial and

stemmed from a long history of racialised administrative detention (Nethery, this volume). The use of quarantine ships and other places for sanitary confinement for migrants were also used by states. In Italy, the government utilised cruise ships as quarantine ships (see Giacomelli and Walker, this volume). In Portugal military bases were used during the first lockdown. And in the UK, disused military barracks were used to house asylum seekers due to shortages in housing within the community and as a means to minimise the spread of the disease (Cohen and Burnett, 2021). We also witnessed a surge in informal shelters to warehouse people away from the community.

Although we are still unable to comprehend the long-term consequences of the COVID-19 pandemic on people seeking asylum, the current trends are worrying. These shifts suggest that it is not always the crisis that generates these changes that requires our focus: it is the response to the crisis that demands our attention. For example, there is concern within the academic community that these 'emergency' measures might become institutionalized practices and normalised in policy discourse (Triggs, 2020). An example is the way that health-related discourses have functioned to defend exclusionary practices.

It is therefore imperative that we analyse how governments have reinforced and introduced further barriers to the movement of people, and the qualitative impact and experiences of pandemic borders from an interdisciplinary approach. Moreover, in what way does the pandemic suggest a break from the past: does the language of crisis signify a new path in how governments respond to and manage refugees and asylum seeker arrivals? The answers to these questions are crucial in order for us to work to inform global responses and protect the right of an individual to refugee protection.

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EU Digital Green Certificates: passports to mobility or new mobility passports?

Marco Borraccetti and Susanna Villani

Introduction

In the context of the COVID-19 pandemic, the European Union (EU) Member States have adopted measures restricting free movement on public health grounds (Alemanno, 2020; Pacces and Weimer, 2020; van Eijken and Rijpma, 2021). On 13 October 2020 the European Commission adopted recommendation (EU) 2020/1475[1] to ensure a well-coordinated, predictable and transparent approach to the adoption of restrictions on freedom of movement, with respect to the principles of proportionality and non-discrimination (Thym, 2020). In the meantime, some EU Member States (including Austria, Germany, Italy and France) launched or planned to launch, initiatives to issue COVID-19 vaccination certificates allowing citizens to exercise their right to free movement. However, it was soon evident that to facilitate the exercise of the right to move and reside freely within the territory of the Member States, a common framework should be established for the issue, verification and acceptance of interoperable COVID-19 vaccination, test and recovery certificates.

On 14 June 2021, the European Parliament and the Council thus adopted reg. 2021/953[2] concerning the EU Digital Green Certificate, aimed at providing a green light for removing obstacles to the free movement of persons inside the EU through a secured and standardized criteria for COVID recovery declarations, medical vaccination certificates or verified test results. This contribution intends to critically analyze the scope of application and the content of the regulation (including as further detailed by delegated regulations adopted by the Commission) by proposing some points of reflection on its effective (and future) impact over the freedom of movement within the EU.

Field of application of Reg. 2021/953

Reg. 2021/953 represents the attempt to bring national decisions regarding the free movement of EU citizens and their family members within a legal framework, above all based on the Schengen *acquis*, in order to coordinate national activities in respect of the principle of subsidiarity (Goldner Lang, 2021; Salomon and Rijpma, 2021).

The legal basis of this regulation is art. 21(2) of the Treaty on the Functioning of the European Union (TFEU), a provision that, in this case, has been used to remove the obstacles to the free movement put by the Member States vis-à-vis such a sudden emergency. For this reason, the scope of application of the EU Digital Green Certificate is limited *ratione* personae to the EU citizens. EU Member States also have the opportunity to issue the certificate to nationals or residents of Andorra, Monaco, San Marino and the Vatican or Holy See. However, to prevent any discrimination against other non-EU citizens staying and residing in Member States, the European Parliament and the Council extended to them the use of the Digital Green Certificate through complementary reg. 2021/954,[3] thus honoring the broader scope of art. 45(2) of the Charter of Fundamental Rights of the European Union (CFREU). The extension to third country nationals includes the same conditions of application, meaning that – for example – the possession of the certificate is considered as a way to remove obstacles to movement and not a means of restriction. As a result, the control of the holder's identity is separate from the verification of possession of a visa or of any other valid legal documents. In practice, the Green Certificate should not be used as a way to control the holder's legal status on the territory of the Member State, but operated as an instrument for health safety, allowing people to move inside the EU territory.

It is necessary to note however, that the same approach is not applied to applicants of international protection. In fact, pending the procedure in front of competent authorities, asylum seekers cannot move from the State where they are staying as set by dir. 2013/33/EU[4]. Confirming this, the regulation expressly states that the extension of the Digital Green Certificate includes those who are residents or legally present in the State, provided that they are entitled to travel, which is not the case for asylum seekers. The inclusion of legal residents and those who have legal rights to stay, and the exclusion of irregular migrants is not surprising, given that the Certificate applies not as a public health measure, as the vaccination is, but a measure to facilitate the freedom of movement, something typically excluded for persons with irregular legal status. Accordingly, the EU Green Certificate is not extended to irregular migrants in detention centres; and, since they are not allowed to travel and to move inside and outside the country at all, this limitation *ratione personae* appears consistent with the current EU legal framework.

1 Council Recommendation (EU) 2020/1475 of 13 October 2020 on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic (Text with EEA relevance) [2020] OJ L 337/3.

2 Regulation (EU) 2021/953 of the European Parliament and of the Council of 14 June 2021 on a framework for the issuance, verification and acceptance of interoperable COVID-19 vaccination, test and recovery certificates (EU Digital COVID Certificate) to facilitate free movement during the COVID-19 pandemic (Text with EEA relevance) [2021] OJ L 211/1.

3 Regulation (EU) 2021/954 of the European Parliament and of the Council of 14 June 2021 on a framework for the issuance, verification and acceptance of interoperable COVID-19 vaccination, test and recovery certificates (EU Digital COVID Certificate) with regard to third-country nationals legally staying or residing in the territories of Member States during the COVID-19 pandemic (Text with EEA relevance) [2021] OJ L 211/24.

4 Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) [2013] OJ L 180/96.

The Digital Green Certificate

The Digital Green Certificate is multifaceted, since it can be used to provide not only the proof of vaccination (vaccination certificate), but also can denote successful recovery from the infection (certificate of recovery), and verification of the existence or otherwise of a contagion (test certificate). Thanks to the mutual recognition of documents and interoperability of these systems, this regulation provides legal grounds for the processing of personal data and information to issue such certificates and to confirm and verify their authenticity and validity. In such a system, the importance of the protection of personal data (art. 10) is evident, as affirmed by art. 8 CFREU, which states that everyone has the right to the protection of his/her personal data with the requirement that "such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned". Entitled "Trust Framework" (art. 4), this system should allow the recognition of certificates issued by third countries to EU citizens and their family members, as well as to third country nationals: having verified their authenticity, validity and integrity, these certificates are equated in substance to those issued by the authorities of the Member States (Gstrein, 2021).

Furthermore, according to reg. 2021/953, the vaccination certificate (art. 5) can be issued at the request of those who have been vaccinated or issued automatically by national health authorities. It allows for the certification of the holder's identification, the type of vaccine administered, the completion of its cycle, as well as metadata, such as the certificate issuer or a unique certificate identifier. In this context, vaccine authorization is essential to make art. 5 effective: Member States have the obligation to accept vaccines authorized by the European Medicines Agency (EMA) but also the right to accept vaccination approved by the authorities of another Member State, which has received temporary authorizations under art. 5(2) of dir. 2001/83/EC[5] or included in the WHO Emergency Use Listing. To prevent and avoid discrimination between those vaccinated and those not, including those who cannot access vaccination, it is possible also to issue a certificate of recovery from the virus (art. 7). The recovery certificate requires personal data such as (a) identification of the holder; (b) information about past SARS-CoV-2 infection; and (c) certificate metadata, such as the certificate issuer or a unique certificate identifier. The last, but not least option, is the issue of a test certificate which functions as a balancing measure for those who cannot be vaccinated for health reasons or because they belong in a category upon which the vaccines are not tested or whose State vaccination plan is lagging behind (art. 6). Issued to those who have been swabbed to verify the absence of COVID-19 infection, it contains information about (a) identification of the holder; (b) the test carried out; (c) certificate metadata, such as the certificate issuer or a unique certificate identifier. The test shall be accepted if issued in another Member State but not in third countries; here, concerned persons would be tested once in the EU at official gates (airports, ports, land borders) or either at their final destination under the control of the national health authorities (Kochenov and Veraldi, 2021).

Even if the digital green certificate was issued to reduce and remove obstacles to free movement, Member States may maintain restrictive measures to holders (art. 11), due to their responsibility for the protection of their citizens' health conditions. In case of measures of containment that result in restrictions upon the free movement of persons, Member States shall inform the Commission and respect the coherence between measures adopted inside their territory and their effect to the free movement in the EU. For the effectiveness of the system, the Health Security Committee (HSC) and the EMA are fundamental in determining the duration of the effects of vaccination and to provide updates on the validity of all the measures that would be taken, the digital green certificate included. It is from this perspective that the EU institutions are asked to keep the value of the certificate updated and based on scientific evidence (art. 3.11). The role of control of the HSC and EMA is also of strategic importance in guaranteeing coordination and coherence between the actions of single national authorities and to prevent any type of misalignment in their decisions about certificates. Furthermore, given the crucial role of national authorities in authorizing the use of vaccines not yet authorized by the EMA, the role of these bodies is essential to guarantee that the national governments adopt decisions in the respect of transparency stated by art. 41 CFREU.

Questions and future perspectives of the Digital Green Certificate

In February 2022, the Commission issued a proposed revision (COM/2022/50 final[6]) – not yet approved – according to which the period of application of the regulation could be extended to 30 June 2023, thus losing its temporary nature justified by the emergency situation. The concrete application of these regulations analysed here has brought to light two main, critical points that deserve to be tackled from a long-term perspective.

In the first place, there is no 'economic' alignment between the certificate and the tests to be performed in order to have the certificate itself issued. Indeed, while the former is free of charge (to avoid any risk of economic discrimination), the latter is instead subjected to payment. In this regard, one could wonder whether such an economic barrier puts at risk the "effet utile" of the regulation and thus the real access to mobility for all EU citizens independently from their economic conditions. By imagining the potential temporal extension of the EU Green Certificate beyond the period originally laid down, a review of

5 Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use [2001] OJ L 311/67.

6 Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) 2021/953 on a framework for the issuance, verification and acceptance of interoperable COVID-19 vaccination, test and recovery certificates (EU Digital COVID Certificate) to facilitate free movement during the COVID-19 pandemic, COM(2022)50.

this should be addressed, or at least taken into account by the national authorities and EU institutions.

Secondly, one could identify a potential risk in the (ab)use of the Digital Green Certificate vis-à-vis dir. 2004/38[7] (Häkli, 2021). As outlined in art. 5 of dir. 2004/38, the exercise of freedom of movement requires the possession of a document, i.e. identity cards or passports. Given that the aim of the Digital Green Certificate is to remove obstacles to mobility, the verification of the holder's identity should take place through these documents. The same approach applies in case the holder is a third country national staying or residing legally in the EU; in this situation, documents are fundamental to verify their identity and allow them to circulate inside the Schengen Area. Accordingly, the lack of possession of the Digital Green Certificate cannot prevent the exercise of mobility, inconsistent with its aim to facilitate free movement inside the EU. A different interpretation would transform the digital certificate into a condition additional to those required by dir. 2004/38, with the opposite effect to the one stated by the regulation. In this regard, it is worth noting the Council recommendation (EU) 2022/107[8] according to which holders of EU Digital Green Certificates meeting certain requirements should, in almost all circumstances, not be subject to any additional requirements when exercising their free movement rights. However, this is only a recommendation, and needs to be met by the awareness that a 'person-based approach' necessitates the continuous review of the legal framework on EU Digital Green Certificates.

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7 Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Text with EEA relevance) [2004] OJ L 158/77.

8 Council Recommendation (EU) 2022/107 of 25 January 2022 on a coordinated approach to facilitate safe free movement during the COVID-19 pandemic and replacing Recommendation (EU) 2020/1475 (Text with EEA relevance) [2022] OJ L 18/110.

COVID-19 and the Sovereign Backlash to Refugee Rights

Ainoa Cabada

Introduction

In March 2020, COVID-19 presented nationally and internationally as a threat against the life of all humans. Political and media discourse framed the pandemic with terminology related to war, this coupled with a focus on bringing control back to the nation became a key priority for states (Castro Seixas, 2021). Securitisation measures such as the closure of national borders and suspension of resettlement for those seeking asylum were justified in the name of public health (McAdam, 2020). Asylum procedures were suspended and those who crossed international borders during the health crisis faced harsher measures at the border, including refoulement, detention and violence (Ghezelbash and Tan, 2021). Evidence suggests that liberal governments are today more likely to adopt measures that do not comply with the Refugee Convention, putting refugee rights at risk (Kirişci, 2021). The war narrative and the securitisation measures during COVID-19 encouraged liberal governments to focus on sovereign measures that benefited the nation and its citizens, in many cases diverting their international obligations.

This article focuses on three pre-existing measures utilised to bring control back to the nation, that have not lost vigour since the pandemic started. It will be argued that these measures present a threat to refugee rights. Firstly, I examine states' withdrawal from and their lack of willingness to ratify new international agreements that constitute the international refugee protection regime. Secondly, I explore recent adoptions of domestic measures that do not comply with the Refugee Convention. Thirdly, I focus on the pejorative rhetoric used by government leaders towards those who seek refuge, which has become increasingly normalised in Western countries during the pandemic.

States' withdrawal from and lack of willingness to ratify new international agreements

Before COVID-19 spread worldwide, one of the most problematic measures undertaken by some states to bring control back to the nation and restrict immigration was their withdrawal from international agreements and/or refusal to ratify new agreements that protect refugee rights. This was exemplified by the lack of universal commitment by UN member states to the *Global Compact on Refugees* and the *Global Compact for Safe, Orderly and Regular Migration* adopted in December 2018 (Goodman, 2018; Rush, 2018).

One of the first governments to articulate its disagreement with the Compacts was the United States, whose Ambassador to the UN, Nikki Haley, stated that ratifying the Compacts was 'not compatible with US sovereignty' (Nichols, 2017). A similar approach was adopted by Australia in August 2018 by then Minister of Home Affairs Peter Dutton, who stated 'We're not going to surrender our sovereignty – I'm not going to allow unelected bodies dictate to us, to the Australian people' (Sherrell, 2019). Within the EU, Austria announced in December 2018 that 'the Republic sovereignly decides on the admission of migrants to Austria. A human right to migrate is unknown to the Austrian legal order. Austria rejects the creation of the category of "migrant", which does not exist under international law' (UNGA, 2018). These positions reinforce the idea that international agreements dictate and constrain national sovereignty, even though the Compacts do not create new legal obligations for states as they are not binding.

These responses could be understood as a sovereign backlash to immigration and international organisations. Disagreement with the Compacts from the United States, Australia and Austria demonstrate that in the lead up to COVID-19 there was a strong focus on emphasising national interests when managing immigration. This was further developed through the pandemic with government actions against World Health Organisation's advice on the unsustainability of the closure of national borders and government actions against the International Organisation for Migration's advice on access to territory and returns (CBS News, 2020; IOM, 2020; IOM Research, 2020). In the case of Australia, this was reinforced by its absence at the Global Refugee Forum held in December 2021, after opening its national borders in November (Refugee Council of Australia, 2021).

Adoption of domestic measures that do not comply with the Refugee Convention

Australia is well-known for its strict border measures towards immigration and diminishing refugee rights. Experts argue that Australia's measures serve as a precedent to other countries who have adopted similar responses since the pandemic started (Murray et al., 2022). Similarly, recent examples come from the UK and the EU.

In April 2022, the UK government passed a new *Nationality and Borders Act* which aims to establish a fairer asylum system and discourage the use of irregular journeys by asylum seekers (UK Parliament, 2022). As a result of this Act, the type of protection that asylum seekers will receive is conditional on their mode of arrival. Clause 10 delegates 'Group 2' for refugees claiming asylum in the UK, a new and inferior status with fewer rights and benefits which could potentially breach articles 31 and 33 of the Refugee Convention. These articles present provisions on the prohibition of imposing penalties on accounts of their illegal entry and non-refoulement (UN, 2011). Therefore, Clause 10 is a threat to the key protections offered by the Refugee Convention, to which the UK is a signatory.

Together with this new Act, the UK government signed a highly controversial agreement with Rwanda to relocate asylum seekers 'not for offshore processing for possible settlement in

the UK but as a permanent destination' unless those seeking asylum choose to return to their country of origin (Beirens and Davidoff-Gore, 2022). According to the UK-Rwanda Deal, Rwanda will process asylum claims and 'settle or remove them in accordance with Rwandan law, the Refugee Convention and international law' (Soy, 2022). The UK Home Office has already given notices to deport and relocate people seeking asylum. Upon receiving one of these notices, an anonymous asylum seeker from Iran wrote,

> I did not know anything about the Rwanda offshoring plans when I arrived in the UK. I was shocked when I found out. I still can't believe it. I'm not an economic migrant, I'm a refugee and I'm just here to save my life. It is hard to believe that the UK wants to send us to a country that we have no connection with and does not respect human rights (Secret Asylum Seeker, 2022).

These responses from the UK go against requests from the UK Refugee Council to better protect asylum seekers and refugees due to the COVID-19 crisis (Refugee Council, 2022). The potential implementation of such measures sets a standard for other countries to rely on third countries to process asylum claims. Denmark's advances toward Rwanda in 2021 to establish a similar deal to process their asylum claims could also be rapidly implemented if the UK-Rwanda Deal is successful (Skydsgaard and Solsvik, 2022). Experts have warned that the effective practice of such measures can 'wreck' the Refugee Convention (The Economist, 2022).

Within the EU, countries such as Greece, Italy, Malta, Poland, and Hungary have been criticised by experts due to their involvement in deportations, pushbacks, and returns (Amnesty International, 2020; De Coninck, 2021). These disproportionate measures continued during the pandemic, in many cases being 'exploited to enact deterrence through hygienic-sanitary border enforcement' (Tazzioli and Stierl, 2021, p. 541). For example, in Greece, restrictions continued for asylum seekers after the government lifted lockdown measures for citizens which breaches articles 26 and 31 of the Refugee Convention (Cossé, 2020). During the height of the pandemic, Italy and Malta declared their ports 'unsafe' suspending the disembarkation of migrants arriving from the Mediterranean Sea (Tazzioli and Stierl, 2021, p. 542). In Hungary, a new legislative provision was implemented in response to the pandemic which requires that asylum seekers 'express their intent to seek asylum at the Hungarian Embassy' in non-European states (UNHCR, 2021). These measures limit the effective access that people have to the territory and the asylum procedure.

COVID-19 is understood as a pretext to legitimise actions that do not comply with the Refugee Convention as article 12.3 of the International Covenant on Civil and Political Rights granted governments the authority to limit the right of freedom of movement and rule within their borders to avoid the spread of the virus and to protect their citizens (UN, 1966). These examples illustrate that states are framing their domestic policies to evade their obligations under the Refugee Convention and its Protocol and putting refugee rights at threat. Requirements on how to arrive and where and when to apply for asylum, breach the protections of the Refugee Convention which contracting states should comply with. The challenges that forced migration and COVID-19 bring to states require international responses, not standalone measures that defy the international refugee protection regime and the refugee category. These domestic measures are in many cases supported by a rhetoric that is corrosive to the notion of refugee.

The use of pejorative rhetoric towards refugees

Every year seeking asylum becomes harder, due to the harsh border policies and practices imposed by states, but also due to the normalisation of corrosive narratives towards those seeking refuge. Governments' responses to COVID-19 were framed with rhetoric related to war which presented the virus as an invisible enemy (Castro Seixas, 2021). French President Emmanuel Macron stated in March 2020 'We are at war. Certainly, in a healthcare war […] the enemy is here – invisible, elusive, it progresses […]' (BBC News, 2020a). Similarly, then UK Prime Minister Boris Johnson said, 'We must act like any wartime government' (BBC News, 2020b). This type of war narrative reinforces nationalistic thinking but also states' sovereign authority over the territory which legitimises casting people as dehumanised others and dismissing advice by international organisations (Christoyannopoulos, 2020). This focus on militaristic rhetoric during the pandemic has reinforced pre-existing corrosive narratives towards asylum seekers. The common reference of refugees as terrorists has evolved to include carriers of diseases, and narratives that dehumanise the category of refugee as someone unworthy of protection. These responses are commonly associated to nationalist, populists, and far-right leaders (Trilling, 2020).

Nationalists from European countries such as Italy, who were highly affected by COVID-19, blamed immigrants for spreading the virus. One of the demands put to the Italian government from former Deputy Prime Minister and Minister of Interior Matteo Salvini included 'iron-plating the borders' to ban arrivals from North Africa (Davis, 2020). Salvini continued to pressure the government with corrosive statements about immigrants such as 'clandestine invasion, boom of the infected' (Salvini, 2020). In July 2020, Giorgia Meloni, leader of the conservative party, the Brothers of Italy, also criticised the Italian government for being 'conniving' and letting in 'infected immigrants' (Camera dei Deputati, 2020). The Italian government's measures on transferring immigrants to quarantine ships were justified on similar grounds in October 2020. The Minister of Interior Luciana Lamorgese said it was designed to 'protect other asylum seekers and staff at the centres from infection' (Creta, 2020).

Other corrosive narratives to dehumanise the category of asylum seeker remove their legal and political identities as unworthy of protection. This is often achieved by reducing asylum seekers to something material that requires storage, as stated by the President of Serbia Aleksandar Vučić who indicated that his

country was not a 'parking lot' for migrants (Ozturk, 2020). Similarly, Turkey's President Recep Tayyip Erdoğan warned that Turkey will not become a 'refugee warehouse' (MacGregor, 2021). The narrative that emphasises asylum seekers as unworthy of protection often refers to these people as human weapons (Stierl, 2021). This type of narrative has been used within the EU to blame other governments or mafias of human trafficking. References identifying asylum seekers as 'weapons' and 'hybrid threats' were common during the crisis at the Poland-Belarus border (Monroy, 2021). The Prime Minister of Poland, Mateusz Morawiecki, stated 'we are dealing with a new type of war, a war in which migrants are weapons' (Stierl, 2021). In September 2021, the President of the European Commission, in support of Poland's responses and narratives towards asylum seekers indicated 'let's call it what it is: this is a hybrid attack to destabilise Europe' (von der Leyen, 2021). 'Hybrid threats' indicate that migrants were used by Belarus as a tactic to 'exploit the vulnerabilities of the EU' (European Commission, 2022). In June 2022, after 23 immigrants died while crossing the border between Morocco and Melilla, Spanish Prime Minister Pedro Sanchez referred to them as a 'violent assault' which Sanchez attributed to 'mafias' involved in human trafficking (Agence France-Presse, 2022). Sanchez expressed solidarity and vindicated the extraordinary work of the forces of the state, some of them civil guards who were injured because of the violent assault (Pinedo and Eljechtimi, 2022).

As demonstrated throughout the pandemic, the emphasis on nationalistic thinking to protect both citizens and the nation from the virus became pervasive towards immigrants. This has resulted in the adoption of corrosive narratives that accompany government measures which are a risk to refugee rights. The category of refugee is continually degraded when identifying them as a security threat to a nation that needs to be protected.

Conclusion

Refugees as well as the rights they hold are facing one of the most challenging times in recent history. This short article argued that COVID-19 presented a threat to the lives of all citizens but also a significant threat to refugee rights. Pre-existing disproportionate measures and attitudes towards those who seek asylum spread during the pandemic and are today a frequent response by governments worldwide. As mentioned, these three responses toward asylum seekers are not new, however COVID-19 has helped to legitimise the use of these disproportionate measures by states and have facilitated the lack of accountability to the Refugee Convention and its Protocol. International rules live or die with the states' willingness to comply with them, and this has become a major challenge since the spread of COVID-19 as more governments appear empowered to defy them. The measures examined throughout this article demonstrate that refugee rights are increasingly threatened. The spread of COVID-19 has given countries the authority to wield greater power within their borders due to the risk of citizen infection, however this has also been used as an opportunistic measure to adopt domestic responses that do not comply with agreed international standards. Therefore, it can be said that since 2020 refugee rights have experienced a sovereign backlash.

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The COVID-19 syndemic as a multiplier of border violences[1]

Francesca Esposito

For many months, COVID-19 has cast a shadow on our daily lives – and still continues to do so – forcing us to face extremely complex health, social and political challenges. During this period, the statement 'we are all in this together' was repeatedly circulated in consumer culture and health campaigns (Sobande, 2020) thus creating the sense that we were all being affected equally by the virus. However, as many have emphasised, we were – and are – not all in the 'same boat'.

Instead, COVID-19 has exposed and exacerbated long-standing social inequalities based on race, gender, class, and citizenship amongst other structural factors (e.g., Gruer et al., 2021; Manzanedo & Manning, 2020; Riou et al., 2021). These factors intersect with health-related stigma and inequality, disproportionately affecting marginalized communities, including people on the move (UN, 2020).

It is based on these considerations that I understand COVID-19 as a *syndemic*, rather than a pandemic. First introduced by anthropologist Merril Singer (1994), the term syndemic reflects the multi-intersectionality of biologic-health conditions and pre-existing (and persisting) structural-societal inequalities and harms (see for example, Mendenhall et al., 2017; Willen et al., 2017). More recently this notion has been applied to COVID-19 by scholars who have called for a more nuanced and systemic approach centred on social justice (e.g., Horton, 2020; Irons, 2020).

As far as borders are concerned, most governments have taken advantage of the 'COVID-19 crisis' to further accelerate and normalise pre-existing hostile environment policies and mechanisms of social exclusion – or what Ruth Gilmore (2007) defines as forms of organized violence and organised abandonment – as well as to generate new violent forms of governance of human mobility, relying on the involvement of state and non-state actors.

Overall, under the umbrella of the 'COVID-19 crisis' I trace two major developments:

- On the one hand, the exacerbation of existing mechanisms to deter and hamper people's access to mobility, sanctuary, and fundamental rights, accompanied by the consolidation of pre-existing hierarchies of membership, deservingness, and differential inclusion.
- On the other hand, the instrumental use by governments of COVID-19 as an 'excuse' (Stierl & Dadusc, 2021) to enact new violent border control measures and mechanisms of containment, targeting people racialised as migrants and refugees. Notably, these measures, as Martina Tazzioli (2020) has highlighted, have often been enforced in the name of hygienic-sanitary logics and justified to protect citizens and, sometimes, also migrants themselves.

As far as the latter point is concerned, an illustrative example is the introduction of so-called 'quarantine ships' in Italy (on this point see also Dadusc & Stierl, 2021; Denaro, 2021; Lo Verde, 2021; Tazzioli & Stierl, 2021).

This measure came after the declaration, in early April 2020, of Italian and Maltese ports as 'unsafe' due to the health emergency situation and was justified as being intended to protect not only national citizens but also the migrants themselves, by preventing them from being exposed to the health risks in Europe. This comprised a rationale based on a sort of paradoxical 'contain to protect' principle in the face of a global 'health threat' (Tazzioli, 2020).

On 12 April 2020, a Decree by the Head of Italian Civil Protection established the creation of 'quarantine ships' as a measure 'to counter the spreading of COVID-19'. Since then, a number of vessels belonging to private companies have been contracted through direct tenders to enforce the mandatory 'quarantine period' for migrants arriving to Italy by boat (both those rescued by NGOs and those arriving on Italian shores autonomously). The costs of this offshore confinement system have been identified as enormous. Despite the lack of transparency on the part of the Ministry for Infrastructure and Transport (the body in charge of tender procedures) activists have estimated a 'fixed cost' for each ship of more than one million euros per month, to which should be added the costs relating both to assistance and health surveillance, for which the Italian Red Cross are responsible[2], and the of security of those on board (VV.AA, 2020).

Over time this mechanism has also been increasingly extended and normalised. The Italian Guarantor for the Rights of Persons Detained or Deprived of Liberty (2022) reports that, overall, 35,304 people were confined in quarantine ships in 2021 alone. Remarkably, for a period, even migrants already residing in Italy and accommodated in reception centres in the country, including people who tested positive for COVID-19, were transferred onto these ships. It has only been recently, in June 2022, after two and a half years of advocacy by grassroots activist groups and strategic litigation by militant lawyers, that the quarantine ship program has been discontinued. Yet, until 31 December 2022, the Italian government will have the power to reintroduce them as 'an emergency measure to fight the COVID-19 crisis'.[3]

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2 As reported by ASGI (2021), "the services that the Italian Red Cross is bound to ensure include: health and psychological assistance, identification of and support to pregnant women and vulnerable persons presenting clinical/psychological risks with the support of a psychologist who is part of the healthcare team, treatment of chronic diseases, linguist-cultural mediation, social assistance, logistical support and provision of services including the distribution of PPEs to on-board staff. Such activities are performed by healthcare and technical staff using means, structures and dedicated expertise, and by volunteers. These personnel shall be on call 24/7".

3 As I am revising this article, the news has been published that the Ministry of Interior, upon request by the major of Lampedusa Filippo Mannino, has established an emergency plan for the transfer of migrants from the hotspot of the island of Lampedusa to the Italian mainland by hiring the Pietro Novelli ferry of the Siremar company (Iuliano, 2022)

Since April 2020, activists and NGOs have denounced various abuses and human rights violations taking place on these floating confinement camps at the expense of the thousands of people isolated there (e.g., ASGI, 2021; VV.AA, 2020). Migrants have reported a lack of access to legal information, including on the possibility of seeking international protection; poor healthcare; lack of screening and adequate assistance for vulnerable groups; lack of information about the time to be spent on the ship and the reason for their confinement; and a lack of psychological support and linguistic-cultural mediation. People were also denied access to phones, cut off from the outside world, including from contact with loved ones and with solidarity groups. Unsurprisingly, this abusive system did not take long to take its toll: from May to October 2020 three young men – Bilal Ben Massaud (a 28-year-old from Tunisia), Abdallah Said (a 17-year-old from Somalia), and Abou Diakite (a 15-year-old from the Ivory Coast) – lost their life as a direct result of their offshore confinement. Many others have committed self-harm or even attempted suicide. Others have tried to escape by jumping overboard and risking their lives (VV.AA, 2020).

As far as my first point is concerned, that is, the exacerbation of existing punitive methods of border control, it is also illustrative to investigate what has happened inside immigration detention sites. Notably, in the first year of the COVID-19 syndemic the number of people in Italian detention centres has slightly decreased, similar to patterns in other countries (e.g., the UK; but see also the COVID-19 Global Immigration Detention Platform by the Global Detention Project). However, this reduction, as I have argued elsewhere (Esposito, Caja & Mattiello, 2020), has been governed by selective logics of social control which have ultimately reproduced and intensified pre-existing 'hierarchies of detention deservingness', hierarchies which are racialised, gendered and classed. These hierarchies, as Harsha Walia (2021) underlines, are in actuality key technologies for the production and reproduction of border violence.

In line with my previous findings (Esposito et al., 2021), which demonstrate how gendered and racialised notions of 'vulnerability' and 'dangerousness' shape the continuous (re) drawing of the line between 'deserving' and 'undeserving' subjects in detention, women and asylum seekers were the first to be released. In other words, these were the first groups deemed 'worthy of compassion'. Unsurprisingly, on the other hand, people (especially men) affected by the criminal justice system continued to enter and populate detention facilities throughout this period.

This trend – which highlights the role of constructions of 'social dangerousness' and 'marginality' as main forces behind the selective operation of the detention regime – was however not exclusive of the Italian case. In the UK, for example, while the number of people in immigration detention facilities temporarily decreased during the first period of the COVID-19 syndemic, the number of people held under immigration powers in prisons increased significantly, that is by 85%, from before the syndemic to December 2021, according to UK government statistics. This made it more difficult for solidarity groups to establish contact with, and provide support to detained people, as in prison mobile phones are not allowed. In light of this evidence, human rights advocates have denounced how, in the UK, detention in prison is 'becoming the norm, rather than an exception' (AVID, 2021). This worrying trend also shows how the COVID-19 crisis has allowed for a further expansion of the 'crimmigration nexus' (Stumpf, 2006).

It is also important to note how these 'hierarchies of deservingness' and mechanisms of differential inclusion (Casas-Cortes et al., 2015) which predated the syndemic (e.g., Campesi & Fabini, 2020) were further modified by the hygienic-sanitary logic of bordering (Tazzioli, 2020) characterising this period. As a result, in Italy, it has been the numerous foreign nationals without a 'home to stay in' and left in greater vulnerability due to the closure of the already limited health and social services available to them, that have become a prime target of police control and the racialised politics of containment (Esposito et al., 2020). Notably, most of these cases were assessed by Justices of the Peace[4] who, even in the context of this global health emergency, have confirmed their tendency to validate and extend detention measures ordered by the Public security authority (the 'Questore') – in contrast to the guidelines usually adopted by the specialised sections of the Courts (see Asta, 2020).

Overall, the critical trends already identified over the years by activists and scholars engaged in anti-detention work have further intensified during the COVID-19 syndemic. We have witnessed, for instance, the increasing isolation of detained people, who were often left abandoned in these sites for months while also being exposed to very precarious living conditions. Sometimes they were not even provided with appropriate information about the virus and equipment to protect their health (Esposito et al., 2020).

Many of those subjected to the detention regime have, over the years, emphasised a dominant sense of abandonment in these remote sites, often kept far away from the public eye. It is this same sense of abandonment, and neglect, which also distinguishes immigration detention centres from other custodial institutions, such as prisons. Yet, as noted by Emilio Caja, Giacomo Mattiello and myself (2020), the 'COVID-19 crisis' has rendered this dimension acutely visible, thus shedding light on the use of orchestrated abandonment and neglect as specific modes of governing people confined in these sites (for similar analyses see, Lindberg, Lundberg, Häyhtiö and

4 A Justice of the Peace is an honorary judge with a precarious career status. Notably, immigration detention is the only case in Italy in which Justices of the Peace decide on a measure that affects personal liberty. As many critics have highlighted, due to their precarious office and unsatisfactory remuneration system, based on piecemeal work rather than a consistent salary, Justices of the Peace lack fundamental guarantees of institutional or structural independence as presupposed by international standards.

Rundqvist, 2020). This is evident in the words of a detained man interviewed by Radio Radicale at the beginning of the COVID-19 outbreak:

> We are like horses inside the stables, closed, and no one is listening to us, no one of those, both the internal bodies here and those outside, i.e. the Ministry, the Quaestor. Because no one is looking at us anymore, because this is now a national, international emergency.

This situation has been aggravated by the thickened veil of opacity created around these institutions, resulting particularly from the suspension of visits from relatives and friends as well as from external associations/groups. The limited number of NGOs that have traditionally entered these sites were forced to abruptly interrupt their work, on the basis that this 'ensured the protection of those detained'. For example, the feminist NGO *Befree*[5], which used to provide support to women with experience of gendered violence detained in Ponte Galeria, was stopped from visiting the centre by Rome Prefecture[6] in March 2020, and their activities were never resumed.

In light of this reality, it has become more difficult for activists, solidarity groups, and civil society more broadly, to know what is happening behind the gates of these custodial institutions. This situation has also further intensified the proliferation of abuses and violence against detained people. Tragically, in Italy alone, five people have died in – and from – immigration detention since the COVID-19 outbreak: Vakhtang Enukidze (a 38-year-old from Georgia), Orgest Turia (a 28-year-old, from Albania), Moussa Balde (a 23-year-old from Guinea), Wissem Ben Abdellatif (a 26-year-old from Tunisia), and Anani Ezzedine (a 44-year-old from Tunisia).

These deaths, like those from quarantine ships, are border deaths and state authorities should be held accountable for them. Yet as we mourn the lives lost to COVID-19, remembering the images of people attached to ventilators and struggling to breathe, the lives *suffocated by the border regime* are instead neglected and forgotten, revealing the unequal distribution of life chances organised around race, gender, class, and citizenship status. These are 'ungrievable lives', in Butler's (2004) terms, for whom the *right to breathe* becomes a daily struggle against a *suffocating world* (Koshravi, 2022). A daily struggle that, in this particular period, has seen the intertwining of COVID-19 and borders, and the multiplication of border violences as systematic forms of suffocation of racialised subjects. But we have also seen, on the other hand, the multiplication of forms of contestation and resistance from those at the sharp end of this regime, who continue to find ways to resist suffocation and undermine the violent operation of borders.

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5 BeFree Social Cooperative against trafficking, violence, discrimination is a feminist NGO based in Rome. As the name suggests, Befree provides services to women who have experienced gender-based violence. To know more see: https://www.befreecooperativa.org/.

6 In Italy the Prefectures (local branches of the Ministry of Interior) are responsible for the activation and management of detention centres within their jurisdictions, for disciplining access and activities inside them, and for appointing external managing bodies and monitoring their work (as established by Decree 394/1999 of the President of the Republic).

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After the emergency: Tensions and connections between COVID-19 and 'migrant crisis' representation in Italy

Elena Giacomelli and Pierluigi Musarò

The choice of how we communicate is never neutral. It conveys differences in the representation of the world and plays a major role in the (re)production, (re)creation and transformation of meanings and in the social construction of reality. While choosing appropriate words to describe phenomena can help us to understand them and to manage them better, using inaccurate or distorted words could mislead not only the understanding of events but also emotions, decisions and actions that follow.

Times of crises and emergencies can provide stark reminders of the importance of language and communication. Deployment of terms such as 'emergency' and 'crisis' focuses on the immediate event, not its causes. It calls for an urgent response, usually humanitarian or military, with no time for complex economic, social or political analysis (Giacomelli and Musarò, 2022).

In recent years, despite irregular immigration representing only a minority of the total migration population, those arriving in this way have received increasing (negative) media visibility. The emphasis on the need to contain the flows does not derive from an objective analysis of the data, but from the impact of this hyper-visibility on public opinion. This hyper-mediatisation has led to a substantial discrepancy between perception and reality, which fuels concerns about security and sovereignty. The discursive practices and representation strategies have been framing irregular migrants crossing borders as a widespread 'emergency' to be managed in terms of a social, cultural and political 'crisis' at national and European level (Musarò and Parmiggiani, 2022).

However, in Italy, the term 'emergency' has always played a key role from the regulatory point of view, with 'emergency' posed both as a consequence of massive flows of migrants and as a risk to national security (Musarò and Parmiggiani, 2022). This has been intensified during the COVID-19 pandemic in order to present migration flows as *the emergency within the emergency*.

In this sense, political and public discourses and the (old and new) media framed migration and the COVID-19 pandemic through a crisis and emergency narrative. Associating the word 'emergency' with these phenomena tends to normalise this sense of suddenness and unpredictability associated with such events and to nomalise responses to crisis, something which is also reinforced by the media. Yet, crises and emergencies are unexpected short-term and temporary by nature, whilst migration and public global health (in relation to COVID-19) are long-term phenomena requiring such policy responses (Agamber, 2003).

Framing migration and COVID-19 with crisis narratives translate into, and justifies, ad-hoc and short-term responses instead of holistic approaches that may be more appropriate given the systemic, global, and political nature of these topics.

How did COVID-19 (re)frame migration discourses?

The hyper-visibility of the COVID-19 emergency in media and in political speeches has impacted upon the so-called 'migrant emergency': media representations have built on and augmented tensions between 'migrant emergency' and the COVID-19 pandemic, and the way the crisis was framed influenced its *mise-en-scène*, restricting or amplifying what could be seen, felt and known in that period. Narratives of discrimination and practices of dehumanisation reveal complexities and intersectionality between COVID-19 and migration discourses and raise new questions about the Italian media frame for COVID-19 and the so-called 'migrant emergency'.

In collaboration with Amnesty International Italy, we investigate media narratives adopted during the onset of the COVID-19 period through a qualitative analysis of mainstream online newspapers and other less relevant Italian media outlets, focusing on the metaphor of an alleged war against COVID-19 (Giacomelli, Musarò and Parmiggiani, 2020). This 'war' metaphor justified systemic enemy research, constructing the national 'us' as a 'victim' and the contagion as a 'threat' coming from outside. More specifically, we examine how the COVID-19 pandemic and the fear of 'the other' has shifted migration discourses, revealing how the news has become polarised during the pandemic: on the one hand, border closures due to the link between migration and illness; on the other hand, the regularisation of migrants working in the informal economy[1] (Williams, 2021).

Two central discourses arose that have kept the migrant 'emergency' in the spotlight, resulting in polarised political outcomes. Moving within the concept of (in)visibility, two macro-discourses have been created around migrants and the pandemic during the pandemic: on one side, the link between migration and illness that led to strict border security measures; on the other, the utilitarian regularisation of migrants working in informal economy.

Firstly, the belief that such 'invisible' threats could be stopped as they approached from the outside fuelled the historical link

1 It was decided on May 13th, 2020, as part of the "Relaunch" legislation in Italy, that from 1 June to 15 July 2020, undocumented migrant agricultural laborers, domestic workers, and carers may file claims for regularization. It was intended to legalize illegal migrant workers so they may enter the declared economy. Just 11,000, or 5%, of the 220,000 persons who filed for permits across the country to the interior ministry as of April 15 2021 had actually obtained one.

between migration and diseases, which was frequently used for discriminatory purposes, justifying the closure of Italian ports for the duration of the quarantine period. During the early stages of the pandemic, the topic of migration was frequently linked to the illness (Musarò, 2020). This scenario was based on the media's inclination to sensationalise border closures or public assaults on non-governmental organisations (NGOs) saving people in the Mediterranean Sea (Camilli, 2019).

In April 2020, the Conte 2 government decreed that 'for the entire period of duration of the national health emergency deriving from the spread of the Covid-19 virus, Italian ports do not ensure the necessary requirements for the classification and definition of Place of Safety' (Inter-ministerial Decree n. 150 of 7 April 2020). And, subsequently, quarantine ships were set up to function as places of containment with the purpose of providing housing assistance and health surveillance for people rescued at sea: this included the use of private commercial ships, paid for by the Italian government, where hundreds of people have been held at sea, in crowded and uncomfortable conditions, without many necessary services.

As Ambrosini (2022, p. 33) writes, these exceptional measures led newspapers close to the centre-right, and those hostile to refugees, to claim:

> the Covid-19 pandemic has thus reinforced the trend of securitizing borders and retreating into national sovereignty, in an effort to protect the group of the included (national citizens) from outsiders, migrants and refugees, perceived as a threat to national well-being. Internal solidarity and the obligation of states to protect their citizens have exacerbated the backlash toward vulnerable people from outside.

The measure was justified, on the one hand politically, through calls for the need to protect public health; on the other hand, through the declaration of a state of emergency. However, not only did the decree feed the narrative of migrants as carriers of the virus, but also, as many Italian activists and NGOs reported, it seems to be incompatible with international human rights law (La Repubblica, 2020; Il Giornale, 2020).

Secondly, migrants became visible in news media during the second stage of the epidemic. This was thanks to the system's demand for agricultural labour and the resulting regularisation strategy for often 'invisible' undocumented migrants considered essential workers, who are, or have been employed as caregivers or in the agricultural sector. The 'invisibility' of migrant workers who continued to do vital front-line tasks, such as in agriculture, led to a policy of regularisation for undocumented migrant workers.

Regularisation was presented as a utilitarian measure, initially by trade unions due to a labour shortage, and then by solidarity activists and NGOs due to the need to preserve individual and public health. An examination of the regulation's media narratives reveals the lengthy political debates, obstacles, and compromises that went into its creation. As a result, there has been an arbitrary and partial final text of the law on regularisation of undocumented migrant workers, with multiple aporias and deficiencies, which have created numerous hurdles for it implementation, both in terms of *a priori* requirements and processes[2].

While COVID-19 has finally enabled migrants to be valued as essential workers, this policy attempt still does not fully recognise them as human beings, beyond merely that of a workforce. Even though migrant regularisation was critical to reducing migrants' vulnerability to disease and protecting personal and public health, it was primarily regarded as a utilitarian approach to address Italy's prospective labour shortage. As a result, it looks to be a squandered chance to preserve migrants' civil and social rights even while improving their living conditions.

Words matter!

Pandemics are not merely serious public health concerns, but instead tend to exaggerate already existing socio-economic inequalities. The virus has shown how everybody is exposed to contagion. Yet, the most vulnerable groups are being erased by public policies and in the mainstream discourse. Apart from becoming the greatest threat to global public health of the last century, COVID-19 can also be considered an indicator of social inequity (Chakraborty and Maity, 2020). It highlights the mobility (in)justice (Sheller, 2018) governing the possibilities of people to move, where tourism and migrations become the faces of the same coin (Bauman, 1996).

Italian media during COVID-19 adopted polarized languages and discourses on migration: on the one side, the border closure due to the nexus between COVID-19 and migration; on the other, the regularisation of migrants working in the informal economy.

Such language deliberately dehumanises the estimated 80 million people caught up in the global refugee crisis. It naturalizes the use of stereotypes, helping to legitimise the imperialist gaze of those who established the rules of the game of mobility (Musarò and Parmiggiani, 2017). It also masks the unjust treatment reserved for those who are not part of a hegemonic group, are not one of 'us', and therefore are not entitled to move easily through space (Dal Lago, 1999).

Yet these are other examples of what happens when the media disproportionately amplify the physical proximity between the victim/foreigner and the spectator/citizen, feeding, consequently, the paradoxical tension between benevolence and suspicion, generosity and rejection, compassion and repression (Musarò and Parmiggiani, 2022). As Fassin (2012, p. 3) denounces:

2 https://www.asgi.it/primo-piano/la-sanatoria-ai-tempi-del-coronavirus/ (accessed: 24 June 2022).

> the politics of compassion is both a politics of inequality - since moral feelings are focused on the poorest, the most unfortunate, the most vulnerable; and a politics of solidarity - since the condition of possibility of moral feelings depends on the recognition of others as fellow human beings, companions or brothers.

If the coronavirus is the 'spectacular embodiment of the planetary stalemate in which mankind finds itself today' (Mbembe, 2000), then mobility justice requires us to embrace no-border solidarity, to carry on the common duty that we all have to keep each other safe, and to regard our collective mobility and (im)mobility as an intrinsic part of that.

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Waiting for our embrace: COVID-19 and people seeking asylum in Australia

Caroline Fleay and Mary Anne Kenny

Throughout the COVID-19 pandemic, many in Australia were moved to support the Nadesalingam family's return to the small Queensland town of Biloela upon learning they had been forcibly removed from a community that loves them. The 'Home to Bilo' campaign was pivotal to this. It helped to humanise the asylum-seeking family through appealing to particular Australian values that have become more salient during the pandemic, such as a willingness to work hard and to help others. The family finally being granted permanent visas perhaps offers hope for more than 30,000 other people who came to Australia to seek asylum and who similarly need permanency.

Tamil asylum seekers Kokilapathmapriya Nadesalingam (Priya) and Nadesalingam (Nades) Murugappan arrived in Australia by boat. Nades arrived in 2012 and Priya in 2013. They married and had two children, Kopika and Tharnicaa, and the family lived in Biloela where Nades worked at a local abattoir and Priya volunteered to support the local hospital.

Their refugee claims were refused. While questions have been raised about the fairness of the process, the specific reasons are not publicly available (Reilly, 2021; Dehm and Vogl, 2019). In 2018 the family were taken suddenly into immigration detention and moved to Melbourne. The government attempted to remove the family to Sri Lanka in 2019 but a last-minute injunction saw the flight halted mid-air. The family were taken to the remote Christmas Island immigration detention facility, and they remained there for two years until Tharnicaa became seriously ill and had to be medically evacuated to Perth. In June 2019 the Minister for Immigration personally intervened in their case to allow them to be released into the community, however, he placed conditions on their release which required them to remain in Perth. All through these processes the family's lawyers lodged court appeals and sought intervention from the government to grant the family visas or at least the opportunity to apply for another visa.

The campaign to return the family to Biloela, spearheaded by the family's friends in the Queensland town, was relentless and it made the family's experience highly visible across Australia. There were many images in mainstream and social media of a loving family, including two young girls, and public calls from Biloela locals for the return of their friends (McCutcheon, 2021; Mao, 2021; Hyland, 2021). This was a story of a family seeking asylum who had become part of a rural community but were then brutally detained and forced to live apart from those who loved them.

The campaign moved enough people that the Australian Labor Party leadership, both before and after the May 2022 election, clearly saw there was political advantage (or at least no significant political detriment) in showing their support for the family's return to their Queensland home. As the former Leader of the Opposition, Anthony Albanese described the treatment of the family as 'publicly funded cruelty' (McGowan *et al*, 2019) and repeatedly declared that: 'You can be strong on borders without being weak on humanity' (Albanese, 2019).

Following their election win, the Labor leadership was highly visible in showing their compassion towards the family. Six days after the election, Interim Home Affairs Minister Jim Chalmers called the family to let them know they were all to be issued with bridging visas, allowing them to return to Biloela. He also filmed himself calling Angela Frederickson, a Biloela resident who was one of leaders of the campaign to return the family to the town, to let her know of his decision and to thank her and others in the town for their support for the family (ABC News, 2022). Several weeks later, Australia's new Prime Minister, Anthony Albanese, met with the family and said that he saw 'no impediment' to the family being granted permanent visas (McGhee and Loftus, 2022), and on 5 August 2022 the Minister for Immigration exercised his personal discretion to allow this to happen (Giles, 2022).

What led to this political, and public, support for the Nadesalingam family in the midst of the pandemic?

There are a range of reasons that explain why the Nadesalingam family has returned to Biloela and looks set to receive permanent visas. In no small measure this includes the sustained campaign for the family's return that was spearheaded by their friends in Biloela. The campaign commenced with an online petition on Change.org, ultimately attracting nearly 600,000 supporters, raising the visibility of the violence of separating this family from their home and friends, and became known as the 'Home to Bilo' campaign (Home to Bilo, n.d.). This campaign gained much mainstream and social media attention and featured many images and videos of the family. It humanised this family of asylum seekers. Many across Australia were able to witness the physical and mental health impacts of this state violence on a mother and father and their two young daughters, and were clearly moved to support the family's return to Biloela.

Campaigns calling for humane refugee policies in Australia have often sought to humanise people who have come by boat to seek asylum in attempts to counteract dominant narratives. These negative narratives, led and perpetuated by various federal Members of Parliament and sections of the mainstream media over much of the past three decades, have long portrayed people who arrive by boat as 'queue jumpers', 'unauthorised' and/or 'illegal' to convey that these are people who are not deserving of Australia's protection (Altman, 2020; Doherty, 2015). Indeed, former Minister for Home Affairs, Peter Dutton, reinforced these narratives in relation to the children, declaring them 'anchor babies' stating the parents were using the children to leverage a positive legal outcome and manipulate the Australian community (Karp, 2019).

Labelling in this manner was particularly problematic as it

purports to deny that the children have rights of their own. This was evident when the government attempted to deny Tharnicaa the ability to make a visa application by claiming the family had already had opportunities to apply for protection and failed. The government's decision was found to be procedurally unfair (Kenny and Procter, 2019; Reilly, 2021). These types of negative narratives have unfortunately found enough resonance among the broader population that the punitive and harmful asylum seeker policies imposed by various governments over the past few decades have been at least tolerated, if not actively supported, by many Australians.

However, campaigns that portray people seeking asylum as deserving of protection can also be problematic. For example, essentialising people as merely passive and suffering victims of injustice can serve to deny their agency. There are many examples of people from a refugee background being portrayed as victims and without agency; people who rely on saviours (often white) to rescue them from the inhumane actions of a government (Malazzo, 2019). More respectful campaigns are those that seek to humanise people beyond just their experience of seeking asylum, and are led by or developed alongside people with this lived experience. Humanisation here is understood as 'a counterpoint to dehumanising divisions', underpinned by 'a notion of humanity based on common values and rights' (Altman, 2020, p. 6). While rights that underpin such a notion of humanity include the right to seek asylum (as enshrined in various United Nations human rights instruments), there are particular common values in the Australian context that have become more salient during the COVID-19 pandemic, and these appear to be helping to humanise people seeking asylum.

During the COVID-19 pandemic in Australia, values that have been publicly lauded in Australia are a willingness to work hard and help others. Politicians and media outlets have applauded the efforts of those who work relentlessly during the pandemic within the health system, retail, construction and other areas of employment deemed essential. People who volunteer to help others during the pandemic have similarly been celebrated (AAP, 2020; Croll, 2021). Considerable labour skills shortages have been evident across the country throughout the pandemic due to both international and domestic border closures, particularly in regional areas. These areas previously relied on temporary migrants such as backpackers to fill positions in the agriculture, horticulture and hospitality industries. Abattoirs in regional areas have experienced acute worker shortages during the pandemic. The physically demanding nature of this work, and reports of exploitative conditions, has meant that the meat processing industry has long relied on migrants for its workforce. Abattoirs have also been high risk environments for spreading COVID-19 (Moolchand and Marshall, 2022).

Through the Home to Bilo campaign, we learned that Nades had been a worker at the local abattoir, and that Priya had volunteered her time by making curries for staff at the local hospital. As Rachel Sharples and Linda Briskman express it: 'In many ways Nades, Priya and their family embody some of the attributes we hold dear in the Australian national imaginary: strong work ethic, community spirit, a commitment to regional Australia, and contributing to the economy' (Sharples and Briskman, 2021, p. 209).

The previous Coalition Government made it clear that Priya and Nades' status as 'illegal maritime arrivals' who had not been found to be owed protection was the over-riding factor in whether they would be allowed to remain in Australia. This consideration, viewed so negatively by the previous government, would always trump any other consideration, including the rights of the children. But increasing support for this family suggests that many across Australia now disagree. This is supported by recent research that found most Australians consider that people who have lived and worked in Australia for several years should 'have a pathway to permanent residency' (Essential Research, 2021). Survey respondents considered that the main benefit brought by migrants who live and work in Australia is that 'they help to fill skill shortages for particular jobs', followed closely by the benefit that 'they bring cultural diversity' (Essential Research, 2021, p. 7). While this is arguing that temporary migrants' acceptance in Australia is conditional on what they can bring to the country, and not on whether those seeking asylum are owed protection, on these measures the Nadesalingam family clearly brings much to Australia.

But what about other people seeking asylum, such as those who are unable to fill labour shortages? Does the support for the Nadesalingam family during the pandemic indicate that their experiences have resonated in other ways with Australians.

Perhaps the public support for the Nadesalingam family reflected, at least in part, the sharp experiences of so many across Australia who were separated from loved ones during the lockdowns and border closures of the COVID-19 pandemic over past few years. Many have experienced the heartache of being separated from those we consider our family, whether by relation or not. For some, there was the terrible anguish of not being able to be with a loved one when they fell ill or died thousands of kilometres away from us. There were others who missed many important milestones in the lives of their children or grandchildren. Perhaps our own anguish resonated with the forced separation of the Nadesalingam family and their loved ones in Biloela.

But while the border closures that were present throughout much of the past few years have had a near universal impact in terms of a shared experience of being forced apart from loved ones, it has been particularly acute for many people seeking asylum. Living on a temporary visa means not being able to reunite with any family members who do not already live in Australia. For many people seeking asylum, this includes their partner and children who are likely to be living in situations of great insecurity or danger in their home or neighbouring country. The impact of this indefinite separation for a decade or more can mean living with constant anxiety about family members and an increased 'risk of complicated grief, persisting PTSD and depression' (Newman and Mares, 2021, p. 20). Many

do live with this agony, as increasing numbers of people in this situation are telling us (Bridges, 2022; We all need our families, n.d.).

The visibility of what the Nadesalingam family has endured over the past four years has touched many people in Australia. The family embodies the Australian values of working hard and helping others, values that have become more salient during the COVID-19 pandemic. Perhaps our experiences of being forcibly separated from those we love during the pandemic also help us to recognise the pain that so many people seeking asylum endure. What the support for the Nadesalingam family suggests is that it is possible for enough people in this country to understand that people who come to Australia by boat to seek asylum deserve what so many of us seek in this world – to find somewhere to live peacefully with our family, and within a community and a country that embraces us.

But what is also needed is a radical change to the laws and policies that create the cruel conditions under which people seeking asylum live both in the community and sites of immigration detention across Australia, Papua New Guinea and Nauru. All need the certainty of a permanent visa to get on with their lives. To celebrate the granting of permanent visas to the Nadesalingam family without committing to address this punitive policy landscape is to leave the system intact for ongoing acts of cruelty. As Behrouz Boochani rightly observes, to leave it at this is an act of white saviour culture: 'The public feel they have saved lives, have righted an aberrant wrong, and can now return to everyday life having done a good job' (2022).

It is wonderful that the Nadesalingam family have been granted permanent visas. This recognises that both Priya and Nades have been in Australia for a decade and were subjected to a deeply flawed protection claims process and a cruel immigration system. So too were more than 30,000 others who arrived in Australia by boat to seek asylum around the time that Priya and Nades did. Many continue to be forced to live apart from their families. They too are waiting for our embrace.

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Practices of externalisation in the time of COVID-19: the case of the Italian quarantine ships

Elena Giacomelli and Sarah Walker

The COVID-19 pandemic drew stark attention to the increasing stigmatisation of racialized and marginalised foreign citizens as vehicles of contagion, whether resident in Italy for years or people recently rescued from dangerous and illegalized Mediterranean sea crossings. However, this logic has characterised the management of migration in Europe long before the pandemic.

Indeed, the term 'pathological', as Tim Cresswell (2021) points out, means 'caused by disease' and metaphors of disease have long been at the heart of violent reactions to mobility and displacement. The term can be seen as a metaphorical way of framing particular mobilities, which allows certain kinds of drastic action to be taken against mobile people and things deemed as the opposite of 'normal' (Cresswell, 2021, p. 54). In the COVID-19 pandemic, the links between pathology as a medical term and its application to marginalised groups through control of mobility are strongly evident (Cresswell, 2021).

The refrain, 'we're all in the same boat', which became a common response to the ongoing COVID-19 pandemic, and a reference to the global and apparently indiscriminate nature of the pandemic, was quickly revealed as a fallacy. Here, we take the space of the 'ship' to expose how people are, quite literally and metaphorically, in very different boats indeed. Our analytic focus is on two cruise ships repurposed as quarantine-ships under the Italian 'emergency' migration policy triggered by the COVID-19 pandemic. Focusing on two such ships, we present how these former cruise ships, devoid of their usual tourist passengers as a result of the pandemic, were transformed into sanitised, surveillance spaces in which migrants' bodies were subjected to racialised biopolitical practices of control. These practices further externalisation policies, which typically relocate responsibility for refugee protection away from states that are signatory to the Refugee Convention.

Building upon literature exploring quarantine spaces as part of border control measures (Lozanovska *et al.,* 2020; Baldacchino, 2021; Cresswell, 2021; Tazzioli and Stierl, 2021), we here examine the effects of the COVID-19 pandemic in the Central Mediterranean Sea, one of the most spectacularized and, at the same time, contested borders of recent years. This is a border which also reflects the racialisation of Europe's border regime, as the mobility of those from formerly colonised countries has been progressively illegalised (De Genova, 2018). Created under the guise of 'safety', we reveal how the quarantine ships reflect age-old practices of controlling disease and mobility, the two often conflated as the same issue, and framed as an invasive threat to the body of the nation-state.

Using this space as a lens, through our analysis of Elena Giacomelli's ethnographic study whilst working as a caseworker for a humanitarian organisation onboard two quarantine ships (in December 2020 and March 2021), we shed light on the productive nature of the space therein to draw attention to a hidden element of the pandemic and the creeping externalisation of border controls that occur in times of emergency (Giacomelli, 2020). Alison Mountz's excellent documentation of the genealogy of externalisation has shown how historical repetitions that emerge in moments of crisis have been instrumentalised as *ad hoc* policies that are then formalised into new legislation, increasingly restricting access to mainland territories (2020). The externalisation of border controls extends to policy tools such as the (im)possibility of acquiring a visa (Infantino 2019; Laube 2019), the external processing of asylum claims (Frelick et al. 2016), third-country territorial surveillance and patrolling (Dijstelbloem et al. 2017), and offshore detention facilities (Flynn 2014). We show in this paper how the depoliticised and dehumanised policies and practices observed on board the quarantine ship are part and parcel of such externalisation, restricting and delaying access to asylum rights through *ad hoc* practices, likely to become normalised as Mountz's analysis shows (2020).

The 'Italian Solution' for the isolation of migrants

In Italy, measures implemented by the Italian government towards migrants arriving at sea were immediately implemented following the declaration of the pandemic. First, ports, declared to be 'unsafe', were closed, the deployment of search and rescue vessels was reduced, and 'quarantine-ships' were subsequently set up. On 7 April 2020, an inter-ministerial decree declared that as a result of the COVID-19 emergency, Italian ports are unable to meet requirements as a Place of Safety whilst the pandemic continues[1].

On 12 April 2020, under the decree of Italy's Head of the Civil Protection department, quarantine-ships were prepared for containment with the aim of providing accommodation assistance and health surveillance of people rescued at sea. The Association for Juridical Studies on Immigration (ASGI) (2020) has pointed out the flawed nature of this rationale: these same cruise ship spaces, now used to quarantine migrants unable to access a 'Place of Safety', were closed to tourists as a health risk due to their design that encourages the spread of disease. Unsurprisingly, this has led to human rights groups and others raising concerns about discriminatory measures and poor sanitary conditions (ASGI, 2020; Amnesty International 2020). As

1 The Inter-ministerial Decree n. 150 of 7 April 2020: https://www.avvenire.it/c/attualita/Documents/M_INFR.GABINETTO.REG_DECRETI(R).0000150.07-04-2020%20(3).pdf?fbclid=IwAR1ND4AFGVqsf-nO7pzXcIdlG2NlPGcPKUgT1Mjjg6lYqsU-3cEsfPu3ovU4 (Accessed: 15 June 2022).

a virologist has observed, the cruise ship 'is more an incubator for viruses rather than a good place for quarantine' (in Derfel, 2020, np; see also Tardivel, White and Kornylo Duong 2020). Yet, whilst this was universally acknowledged and applied in the case of tourists[2], it was completely ignored for those forced to move through irregular means.

As Giacomelli experienced on board and, as Stierl and Tazzioli also report in their paper: 'remarkably [...] even migrants who were already hosted in accommodation centres on Italy's mainland, including those who had tested positive of COVID-19, were transferred onto these ships' (2021, p. 77). Further, as pointed out by Di Meo and Bentivegna (2021 np), the 'quarantine ship' label is a misnomer in that the term 'quarantine' refers to the 'separation and restriction of the movement of people who have been exposed to a contagious disease to see if they become sick.' Instead, these ships are also used for the isolation of people who have not been in contact with any established case.

On board two of these ships, acting as a caseworker/covert researcher (see Giacomelli and Walker, forthcoming, 2022), Giacomelli was able to observe first-hand how these supposedly health-centred spaces had become spaces of the surveillance and control of unwanted bodies. Whilst not explicit, the administrative processes followed there constructed barriers and undermined access to legal representation, human rights, and avenues to asylum. Italian policies have sanctioned a state of emergency; legitimate public health concerns have been used as an excuse to detain people in poor conditions on the cruise ships and to restrict access to asylum. The purported main purpose of these ships was to isolate migrants for health and safety purposes, and asylum decision making is not conducted on board. However, legal advisors are present and vulnerability assessments are conducted on board, both of which are part of asylum surveillance. These features are precisely the same precise administrative processes that the Italian authorities requested when they asked the EU for 'floating hotspots' in 2016. This proposal was rejected at that time by the EU under human rights and administrative grounds[3]. The identification process is lengthy, and took weeks even before the COVID-19 pandemic and it was judged that the health care on board would have been insufficient.

Quarantine Ships as totalitarian institutions

Ships have served a variety of purposes over the centuries: as places of commercial and tourist activity, and as places of confinement and segregation. Whatever its purpose, the ship represents a space in motion, and time is suspended within. The ship as 'other space-time' ruptures imposed everydayness and normality, and can be understood as "heterotopia par

Floating quarantine-ship anchored off the coast of Italy. Credits: Elena Giacomelli

2 Ministerial Decree No. 125, March 19, 2020 - Suspension of cruise services for Italian-flagged passenger ships and blocking arrival in Italian ports of foreign-flagged cruise ships. https://www.gazzettaufficiale.it/atto/serie_generale/caricaArticolo?art.progressivo=0&art.idArticolo=6&art.versione=1&art.codiceRedazionale=20A02179&art.dataPubblicazioneGazzetta=2020-04-11&art.idGruppo=0&art.idSottoArticolo1=10&art.idSottoArticolo=1&art.flagTipoArticolo=0; https://bussola.s3.eu-west-1.amazonaws.com/331515/Decreto%20del%20Ministro%20delle%20Infrastrut-ture%20e%20dei%20Trasporti%20di%20concerto%20con%20il%20Ministro%20della%20Salute%20del%2019%20marzo%202020%20-%20NAVI%20PASSEGGERI%20BANDIERA%20ESTERA.pdf. (Accessed: 15 June 2022).

3 EU Parliament (2016) Question for written answer P-004213-16: https://www.europarl.europa.eu/doceo/document/P-8-2016-004213_EN.htm (Accessed: 15 June 2022).

excellence" - in the Foucauldian sense of the term - of utopia or dystopia with respect to ordinary reality (Lago, 2016). Such duality is mirrored in the repurposed cruise ships. In fact, Foucault (2006) himself described the cruise ship as an example of a 'ship-utopia', where space becomes a true 'reservoir of imagination' for the people on board. In contrast, a 'ship-dystopia' can be seen in the ship of the mad, 'a strange 'drunken boat' that glides along the calm rivers of the Rhineland and the Flemish canals' (Foucault, 1988: 7). A ship whose only purpose was to transport the mad from one city to another, in a kind of natural exile that was delivered to the esoteric power of the river waters (Foucault, 1988). Quarantine ships can be understood as the 'dystopia-ship' of present day Italy.

As an entry in Giacomelli's onboard diary (29/12/20) explains:

> In the end, this is securitized control disguised - barely - as health control. You can feel it in your body. This is a disproportionate and totally unreasonable health control as migrants with a negative COVID-19 test are also contained. It is also extremely expensive. A time-space suspension, devoid of legal regulation or any human rights guarantees.

This transformation of cruise ships into quarantine spaces is indicative of the fault lines that divide bodies that arrive. The virus ravaging through cruise ships led to the closure of this industry for tourists, owing to the very risky nature of their architecture for virus transmission. Tourists kept on board cruise ships following an outbreak of COVID-19 referred to feeling like 'prisoners' (in Derfel, 2020). Yet, this is exactly the situation of the migrants purposely placed onboard quarantine ships. This is also reflected in Loughnan's (2020) research on the dualities between quarantine-hotels for (regular) travellers in Australia and the very different asylum hotels that (irregular) travellers are held in. The 'boat', so to speak, is then not 'the same' but very different indeed. What is acceptable and what is not, and for which bodies, is indicative of the violence of the border regime and its externalisation policies. The utopia/dystopia of the space is dependent upon the value of the bodies held within.

What's next?

The COVID-19 situation has created chasms and suspended rights for some. The chasms examined in this article are experienced by those kept 'afloat' in Italian quarantine ships. Indeed, from the North African Emergency[4] onwards, the externalisation of the border regime in Italy has moved further and further towards the African coasts, first passing through "trial labs" in the governance system of migratory flows (Campesi, 2011). The COVID-19 emergency has allowed for increased human rights violations in the management of migration movements along the Mediterranean Sea's central border. Whilst these 'quarantine ships' are purportedly solely for the purposes of health, we fear that they are in effect a creeping extension of Italy's externalisation policies. They have become means by which *ad hoc* practices that emerge in moments of 'crisis' become standardised practice.

The very same proposal to use ships as 'floating hotspots' put forward by Italy in 2016 that was rejected by the EU for violating human rights has now been effectively implemented under the 'emergency' of the COVID-19 pandemic. In short, the quarantine ships immediately became hotspots, 'filtering devices' of human beings, made possible by the double 'emergency' of migratory flows in the emergency of the pandemic. We believe that these practices will remain post-pandemic and become incorporated into standard asylum offshore practices in Italy. As Mountz (2020) has shown in relation to other jurisdictions, depoliticised and dehumanising *ad hoc* practices creep in and become normalised in 'emergency' times. Evidence from Italy worryingly reflects this pattern. Whilst the COVID-19 state of emergency ended in Italy on 31 March 2022, at the time of writing, these ships are still operating. No new legislation has been adopted in relation to their continued use.[5] Those detained on board continue to be kept floating in a legal limbo, exposed to all the risks of the so-called quarantine ships and restricted from accessing asylum.

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4 In 2011, after the North-Africa crisis and the Libyan civil war, Italy released the North Africa Emergency Provisions (ENA), when about 60,000 people fled to Italy. The overall management of these migratory flows has been framed as an 'emergency'. The use of the term 'emergency' is still framing Italian migration management and policies towards migrants in Italy to date.

5 https://www.lindipendente.online/2022/04/08/lemergenza-e-finita-ma-le-navi-quarantena-sono-ancora-in-funzione/

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Passports and pandemics: strategies of exclusion through the 'medical border'[1]

Claire Loughnan and Sara Dehm

Although borders are conventionally understood as the territorial lines dividing nation states, in practice, borders are experienced and enforced both as an official institution and as set of bordering practices within a state's territory. Borders are thus always dynamic, rather than fixed in their operation and effects; and they manifest in myriad sites, both institutional and embodied, wherever practices of inclusion and exclusion are articulated, determined, enforced or resisted. As Shahram Khosravi (2020) has emphasised, attending to this multitude of actors, practices and histories allows us to appreciate 'the border' as a 'ritualised performance' of differential inclusion. In this short piece, we are interested in how the passport comprises one of the many techniques for instituting and ritualising the border in pandemic times. As we examine below, the COVID-19 pandemic prompted states to institute particular bordering practices in order to exclude 'undesired' non-citizens through new visa restrictions, while largely welcoming their own citizens, even if not tested or vaccinated. In order to contextualise such COVID-19 response, here we briefly examine the history of the passport as a technique of exclusion (even while it promises greater mobility for some) and reflect, in closing, on the impact of so-called 'COVID-19 passports', and related pandemic restrictions, on prospects for refugee justice and resettlement.

Global and national responses

After the global onset of COVID-19 infections, it has become clear that the pandemic, and government responses to it, have operated in tandem *with* borders, with accompanying effects on the contours of 'spatial and social injustice' (Casaglia, 2021, p. 695). While states in the Global North have long created and maintained a racialised 'hierarchy of mobility' through their exclusionary immigration regimes, pandemic response measures have had further chilling effects on freedom of movement. From March 2020 onwards, states quickly moved to drastically tighten their border controls, with air travel diminishing to a point where airports were emptied of people instead becoming parking lots for vast numbers of stationary planes. While states sought to justify such measures on the basis of purportedly 'protecting' their citizens, conversely, those seeking protection, were denied it (Vogl et al., 2020). The UNHCR refugee resettlement program was temporarily suspended, nominally resuming again in August 2020. Border closures impacted adversely on migrant and refugee movement (Foster, Lambert and McAdam, 2021). Numbers of 'irregular arrivals' fell dramatically in Europe (Casaglia, 2021, p. 697). Border closures also put limits on those wanting to apply for asylum, not just for those already granted it, who have also endured long waits for resettlement (Casaglia, 2021, p. 698; Banulescu-Bogdan et al., 2020) As Anna Casaglia (2021, p. 696) has insisted, the intensification of border control measures, including the turn to adopting 'COVID passports' in order to facilitate and privilege travel and movement by vaccinated individuals, thus became a technique for reinforcing experiences of 'mobility injustice' for those already experiencing discrimination and marginalisation.

Internal restrictions were also imposed through measures like home quarantine, and periodic lockdowns. Many of these manifested distinctly racialised effects *within* the border – as well as *at* the border – exemplified by the intensified policing of racialised communities, and the de facto exclusion of non-white citizens from returning to Australia, especially vis-à-vis India (see Macklin, 2020). Borders are thus 'key makers of global injustice' (Casaglia, 2021, p. 700). For our purposes here, the introduction of what has become referred as the 'COVID passport' – an umbrella term for any kind of official proof that a person has been vaccinated or has some kind of COVID-19 clearance or immunity – has clearly had distinctly differential impacts on some populations compared to others, both within, at and beyond state borders. Globally, refugee communities have been and may continue to be among the last populations to receive COVID-19 vaccines, despite their demonstrated need for such healthcare and their heightened vulnerability to the virus (Ferdinand et al., 2020; World Vision International, 2021). Through COVID passports, this global failure to provide equal access to healthcare to all, has in turn, shored up pre-existing global hierarchies of mobility.

Nonetheless, the rationale behind a system of COVID passports has been justified in terms of both public health outcomes and economic benefits: domestically, COVID passports promised to make it easier for vaccinated or otherwise immune people *en masse* to interact safely in pre-pandemic day-to-day activities, thereby allowing social and economic activity to resume within a state; and internationally, COVID passports promised to enhance the mobility of certain travellers and facilitate travel between states for vaccinated or other immune people without the need for strict quarantine restrictions that were imposed in some states like Australia. While such quarantine restrictions to enter states have largely now eased, especially for citizens within some jurisdictions (Parveen, 2022), the requirements to provide proof of vaccination in order to access certain places such as hospitals and aged care facilities within states remain widely applied, with the EU Digital COVID certificate still required, as of early 2022, in many such settings across EU states as well as for cross border travel (European Commission, 2022). Nonetheless, the use of restrictive passports, largely based on immunisation, has clearly shone a light on the capacity for passports to operate in racially exclusionary ways, a trend which also has a much longer history.

1 This publication draws in part upon an article accepted for publication by Sara Dehm and Claire Loughnan, for *Australian Journal of Human Rights* (forthcoming).

Historical strategies of exclusion: disease and the passport

Although the introduction of COVID passports appears to represent a new bordering practice, the use of vaccine passports or certificates as a means of regulating human mobility within and between states is far from novel (Patel, 2021). Writing about the historical use of quarantine, Alison Bashford (2004, p. 36) has reflected on the use of bodily markers such as scars on a traveller's arms or faces (as a sign of having survived smallpox) in order to administer the Imperial Vaccination Act of 1867 (UK), arguing that such markers effectively functioned as 'passports into and out of certain zones.' Additionally, during the US smallpox epidemic at the turn of the 20th Century, vaccine certificates became a form of 'internal passport' required for regulating the movements of *particular* populations, especially racialised minorities such as African Americans (Willrich, 2011).

The historical link between pandemics and passports required for international travel is also illustrated by the enforcement of passport restrictions after the onset of the Spanish flu in the early part of the 20th Century (Kavalski and Smith, 2020). Similarly, concerns about privacy that have been articulated regarding the use of (digital) passports are not entirely new: at the 1926 Passport Conference in Geneva, delegates voiced concerns that the use of finger printing and other measures could comprise a breach of an individual's privacy rights (Kavalski and Smith, 2020).

The connection between 'disease', vaccination and human mobility also persists in a range of contemporary contexts. For example, some states routinely require proof of yellow fever vaccination (often a handwritten entry in a WHO 'yellow card' vaccination booklet) in order to travel to or re-enter from a particular region. Indeed, the US *Immigration and Nationality Act* renders a person ineligible for entry into the USA if they are not vaccinated for certain vaccine-preventable diseases such as mumps, measles, rubella, polio, tetanus, diphtheria, pertussis, influenza type B and hepatitis B (Wasem, 2011).

This history of vaccine certification to enable or curtail individual mobility across and within state borders needs to be understood within this much longer historical context of conventional state passports effectively functioning as gendered and racialised border technologies.[2] Yet, current proposals for, and the use of, COVID passports appear categorically different on two key levels: first, through the use of big data technology in COVID passports; and second, the diffuse use of COVID passports (i.e., no longer simply checked at point of entry into a state, or at a railway port, but used to regulate and determine access to places and services in everyday life such as restaurants, schools, universities and sporting facilities). Although the enforcement of these mandates is diminishing, they remain applicable to people employed in particular industries and occupations (Kolovos, Rose and Ore, 2022), as a condition of entry to many venues (European Commission, 2022) and for international travel in certain contexts.

Ensuring safeguards during the 'emergency'

The proposal for a vaccine passport, like many other responses to the pandemic, has been defended as crucial to deal with this 'emergency'. However, states need to take time to ensure that their responses are accompanied by careful consideration of the purposes of vaccine passports, and of the necessity of the data sought. At the very least, such measures ought to be accompanied by 'effective remedies to protect rights' and ensure 'technical and organisational safeguards' (Gstrein 2021, p. 11). This is important, we argue, since the health of a state's population is also dependent on how it treats those at the margins. A response which is fundamentally informed by human rights is critical for mobility justice. Vaccine nationalism, immune-privilege and the policing of a person's vaccine status are likely to limit enjoyment of fundamental human rights for those at the margins (Heller, 2021, p. 122). Without such attention to the implications for the human rights of refugees, as Matiangai Sirleaf (2021, pp. 93-4) has cautioned, the treatment of those on the margins of society (Hall and Studdert, 2021) is likely to amount to a global 'moral failure' of sorts. Caution is also warranted in relation to the use of the vaccine passport as an emergency response given the ease with which the use of the standard passport has become normalised (Kavalski and Smith, 2020) and the impact that this has had on limiting freedom of movement for some, typically those without access to resources, legal, economic and otherwise. Those seeking refuge for example, who are without an internationally recognised passport, typically face numerous obstacles to the successful processing of their applications for asylum.

In many respects then, the pandemic and the introduction of vaccine passports point to the proliferation of 'highly uneven and contradictory global mobility entanglements' that are marked by the privileging of particular kinds of movement and bodies: those with the 'right passport' and 'the right amount of cash' (Heller, 2021, pp. 113, 114). At the same time, it has been those with privilege who have had the luxury of remaining safely immobile during the pandemic (Heller, 2021, p. 117).

There are also questions around who and what is being served by COVID passports. At its most basic level, these passports are defended by governments as a way of opening up the borders again. But who and what are the borders being opened to, and what is obscured by these narratives? Importantly, this raises potential concerns around rights to mobility, and the possibility that, rather than open borders, a COVID passport might serve to

2 On the gendered and racialized histories of 'the passport', see Dehm (2022).

reinforce global hierarchies, between those who can move and those who cannot (Macklin, 2020). As Charles Heller remarks (2021, p. 125)

Those who cannot stay where they are, because of wars, political and economic crisis, and the lack of prospects to fully realise their lives, will continue to move no matter what restrictions states impose, and they *must* have the right to travel with safe and legal means.

A time of 'racial reckoning'?

The function of state-issued passport has long served both to enable and limit movement, and as a tool of governments to exercise control over their territorial borders. Yet the extent to which the emergence of COVID passport systems will limit mobility for some, and enable it for others, remains to be fully tested. But it is crucial to consider, especially in relation to refugee movement, given the historical limitations imposed by the conventional state-issued passport, let alone one which is arguably designed to 'liberate' the world from the pandemic. This is a time also of 'racial reckoning' (Sirleaf, 2021, p. 72), in which control is differentially exercised depending on who is moving across borders. The 'pathologisation' of some forms of mobility illustrates how 'moral geographies' accompany and reinforce the physical border (Casaglia, 2021, p. 696). In this vein, COVID-19 and COVID passports have revealed how 'access to health' functions as a 'gatekeeping practice' for some but not others (Casaglia, 2021, p. 698). Importantly, it is also clear that unlike state-issued passports, the vaccine passport will have a limited life of one to two years and may have to be regularly renewed in order to secure the right to travel and, potentially, the right to goods and services. In many respects, the pandemic and responses to it, such as the introduction of COVID passports, illustrate the materialisation of unequal access to *mobility,* overshadowing the border as such. Regular and timely access to the vaccine, as a form of 'immunoprivilege' (Liz, 2021), is also likely to be critical to the enjoyment of mobility justice.

The pandemic, and the COVID passport, have been characterised by growing distinctions between the access to human rights by citizens and by non-citizens, recalling Hannah Arendt's (1951) insight that to enjoy human rights, one must first enjoy the 'right to have rights'. In many respects then, the response to the pandemic in the form of vaccine passports reflects the intensification of national borders. Like state-issued passports, and state borders more generally, COVID passports and the bordering practices they introduce set a precedent. And although in many jurisdictions we are seeing the relaxation of COVID passports, and of requests for proof of vaccination (Parveen, 2022), the use of such measures will always remain available for re-appropriation in the future. As we note above, there is also a persistence of measures such as the EU Digital COVID Vaccination Certificate (European Commission, 2022).

Importantly, despite the relaxation of quarantine mandates, and vaccine passports for those travelling for work or leisure, many states have not returned to pre-COVID resettlement numbers for those seeking refuge. Two years after the pandemic was declared, there has been a marked reluctance by many states to provide protection to those seeking asylum, often relying on 'restrictive public health practices' that have been retained as 'security measures' (UNHCR, 2022). Those seeking refugee protection and forced migrants more generally, are made vulnerable when they lack possession of a passport. A mundane, somewhat innocuous document for those of us who enjoy uncomplicated freedom of movement, not having one closes off such possibilities. Accordingly, we call for careful vigilance on how state responses to the pandemic contribute to an expansion in borders which benefit some while disadvantaging others, as all state borders do.

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Refugees, borders and narratives in a time of COVID

Philomena Murray

Introduction

The outbreak of COVID-19 led to the enhanced hardening of borders in many states. Yet the hardening of borders is not a new phenomenon. Many liberal democratic states, including Australia, European states and the United States, have already engaged in bordering practices that deny access to protection for refugees and asylum seekers. Some states, including Spain, Portugal, the United Kingdom (UK) and Italy, did provide some limited support for refugees for temporary release from detention in the first phase of COVID (Ferdinand, Loughnan, Murray, 2020). In Australia, there were calls for refugees to be released from detention (Loughnan et al., 2020). However, rather than this providing an opportunity to reconsider and recalibrate refugee policies and detention practices, there was little support for protection from COVID-19, such as new mechanisms for supporting refugees (Vogl et al., 2021).

Since 2019, many states accorded scant attention to people seeking asylum and refugees, but rather continued practices of exclusion and externalisation, unwilling to confront obligations of healthcare provision, including availability of, and access to, vaccinations and release from detention (Ferdinand, Loughnan, Murray, 2020; Loughnan et al., 2020). The securitisation of borders dominated political narratives, with little discussion of access to health and social support provided to refugees, even in the difficult period of a major pandemic. There was a reluctance to tackle the implications of the potential spread of COVID-19 infection among refugees in detention, as well as among guards and others employed in these sites of incarceration, including in Australia, the US and many parts of Europe (Vogl et al., 2021). As Crawley (2021) pointed out, '[m]any refugees live in poor housing and overcrowded conditions in camps, informal settlements and urban areas'. Narratives of exclusion and the denigration of refugees did not abate in the years when COVID-19 was most prevalent. A commitment to human rights was missing, in the European Union, the UK and Australia. Borders were utilised to deny access to people seeking refugee, with a denial of access to territories, for example in Italy (Crawley, 2021). There was even some evidence of blame and scapegoating of refugees and migrants: Banulescu-Bogdan et al (2021) comment that '[m]igrants have long been scapegoated for the public health concerns of the day'. Further, the Norwegian Refugee Council, referring to Italy and Hungary, pointed out that '[r] efugees and migrants are often the first to be stigmatised and are often unjustifiably blamed for spreading viruses' (Høvring. R./Norwegian Refugee Council, 2021). Hoffman and Gonçalves (2020, p. 327) illustrate that they have 'been framed as prima facie causes for the transboundary spread of the virus, and public health exception and derogation clauses in both national and international refugee and human rights instruments have been used to block their entry, suspend asylum processing, or trigger deportations'.

Cruelty and the undermining of human rights values

Values were in little evidence on agendas when it came to refugees. For many people throughout Europe and across the globe, the European Union (EU) has, in the past, seemed to present a noble narrative of peace and human rights (Manners and Murray, 2016). As a values community, it inspired many countries to join its ranks. Beyond Europe, the EU has been admired for its strong stance on human rights and its generous aid programs. The challenge to responding to refugee movements, often dubbed a 'refugee crisis', tested these founding ideals and values over the last decade. Meanwhile, for many observing from afar, Australia had, in the past, been a strong exemplar of multiculturalism and welcome, even though it is only in recent years that it has started to address its history in the cruel treatment and dispossession of Indigenous peoples, through, for example, the Apology to the First Nations peoples, particularly the Stolen Generations, by then Prime Minister Kevin Rudd (2008), on 23 February 2008. Since European 'settlement', Indigenous people had been killed; suffered dispossession of their land; were forcibly removed from their families and communities and were alienated from their cultures and languages.

Over the last three decades, successive Australian governments have enacted exclusion and cruelty towards people seeking asylum and refugee protection. In Australia and within the EU, there has been intensifying recourse to the familiar paradigm of border security, characterised by the language of exclusionism and national interest. Narratives regarding refugee movement and border control are acquiring ever more menacing overtones. The EU's continued failure to execute a fair and effective asylum processing system is encouraging the conflation of refugee and security concerns to the detriment of social cohesion (Murray and Longo, 2018). Likewise, the failure of successive Australian governments to bring about a fair and just policy illustrates its neglect of human rights. Exceptional measures that breach human rights have been legitimised through the normalisation of the 'crisis' and exception. One effect of this is a form of banalisation that now characterises narratives of protection of borders. It has become acceptable, and seen as barely worthy of comment, that states are routinely denying access to protection under international treaties and fair treatment of asylum seekers. Asylum seeker pushbacks are evident in Australian, EU and UK initiatives and approaches. Cusumano (2019) has illustrated considerable opposition to rescue missions, with organised attempts to prevent the rescue boats from intervening at sea to save refugee lives. Stierl and Dadusc (2022) illustrate how border violence has become justified by reference to the pandemic, what they call the 'COVID excuse'. Put simply, COVID renders it difficult to move, to seek asylum and to rescue.

Opposition to people seeking safety has become increasingly commonplace. The response within the EU to the refugee 'crisis' pushed the boundaries of responsibility outside of the EU through its recasting of the Dublin system, and through the intensified focus on agreements with host and transit countries such as Turkey, and by blaming the crisis on human trafficking. The expansion of the Frontex border management agency, accompanied by the militarisation of enforcement through naval operations, has further reinforced the externalisation of refugee policy and responsibility beyond the EU borders (Frelick, Kysel and Podkul, 2016).

At the national level in Europe, the pandemic 'crisis' – like the so-called 'refugee crisis' - has challenged domestic approaches to refugee protection and responsibility and brought to the fore questions of belonging within the member states. The reluctance of western, wealthy states to effectively respond to refugee movements has placed the boundaries of national and EU governance on refugee matters in question (Longo and Murray, 2018). The attempts by states to push responsibility beyond their borders undermine their legitimacy and standing as credible governance actors and reliable adherents to international refugee law. Australia and European states have in place a number of agreements on offshore refugee processing and to push back those seeking asylum by boat.

States and the EU seek to deny access to their territory. They attempt to expel or return asylum seekers from their territory. Thus, the state determines access to its territory by not only refusing admission, but also by (re)locating people who are seeking asylum in another country – offshore to Papua New Guinea and Nauru or to Libya, Turkey or Rwanda (FitzGerald, 2020). This is achieved by deals made between richer states (the reluctant hosts) and poorer states (Murray, 2023).

The policy of offshoring responsibilities transforms the governance of refugee protection and, equally, the responsibility for border control. Border control is now a matter of prevention of access, rather than processing the refugee claims of those who are seeking access. Even when processing does occur, it is not to be assumed that the processing is carried out in or by the state or that it results in settlement in the putative host state. Further, in cases of positive determination of refugee status, the state can refuse entry and detain the refugees offshore.

Accountability is being undermined by secrecy, regarding offshore detention and boat arrivals, for example (Nethery and Holman, 2016). This secrecy was evident when the Australian government did not provide information to refugees in detention on measures to protect them from COVID-19 infection (Ferdinand et al., 2020).

The state is effectively hollowing itself out by the enaction of borders as sites of exclusion and of punishment. Similarly, human rights and humanitarian ideals are being hollowed out by harmful language and state narratives that effectively seek to justify suffering.

States engage in anti-humanitarian actions, including through the *failure to act* – by the state and institutional actors. It is an abrogation of responsibility - and liability. Loughnan (2023) argues that:

> Neglect suggests the absence of doing anything, or simply the absence of care. In this sense, neglect is imbued with passivity even while it refers to a failure to care for something/someone for whom we have responsibility. The implication is that the state holds no responsibility for the suffering which emanates from neglect; services are merely withdrawn. However, this failure is more adequately described as an active practice: states intend to produce suffering, as punishment

Externalisation, then, is not simply a policy. It is constituted through narratives of exclusion, forming part of a rhetoric that hardens borders (Murray, 2019). This gains legitimacy through repetition by politicians and through the mediatisation of securitisation language and action. It is both agenda-setting and agenda-responsive.

A range of externalisation policies is employed – and legitimised – to control the access of arrivals to their territory by the EU and its member states. The most significant has been the prevention of, or limitation of access to states by those seeking asylum, due to the closure of borders after the pandemic was declared, with dramatic drops in arrivals. These polices operate beyond the state – and the EU – to disrupt migration pathways, preventing individuals from reaching or entering a state's territory, but they are carried out and financed by the state or the EU. These externalisation practices are accompanied by a strengthening of securitisation, with refugees increasingly framed as a security risk, as a societal risk and as a terrorist threat in Europe and Australia (Ferreira, 2018). The narrative of externalisation is thus one of risk (to state, society and region), and not of protection. It does not assess risk *to* the asylum seeker. This approach also enables states and the EU to externalise responsibility, obligations and duties, by partially imposing these on third countries and by distorting the lines of responsibility of states. At the same time, states have utilised border closures to deny access to refugees and asylum seekers during COVID restrictions. There were also cases of lack of access to vaccines (WHO, 2021) with the World Health Organization (WHO) pointing to evidence that refugees and migrants 'experienced high levels of xenophobia, racism and stigmatization', noting that '[a]ll these vulnerabilities have been further exacerbated by public health control measures and border closures' (WHO, 2021, p. vi).

Nethery and Dastyari (2023, p. 217) observe that:

> the suspension of travel means people seeking asylum have been unable to flee their country of origin, or are trapped in transit, where their living conditions mean physical distancing is impossible, and they do not hold a right to access health care.

Refugee resettlement policies were significantly stalled or halted by COVID regulations, especially in Australia (Garnier, 2021).

The movement of refugees is an urgent governance challenge. It is equally a test of the humanitarian principles, values and legitimacy of the EU, Australia and other states. Refugee policy remains in the hands of states that, especially in the Global North, are increasingly seeking external solutions beyond their borders to the movement of those seeking asylum. There is an equally urgent need to contest these policies, and the narratives that enable them.

Contestation

Contesting populist narratives and the tendency for political parties to adopt these narratives for electoral gain, including in the context of COVID-19, is imperative, notwithstanding the limited ability to engage in public protests due to social distancing restrictions and constraints on refugee voices.

Instead, the EU is divesting itself of its own values of humanitarianism. It has unceremoniously discarded its values for an externalisation of its responsibilities and the securitisation of its refugee policy. This is also the case in Australia, which has been increasingly regarded as a model for cruelty to refugees by many politicians in Europe, including the UK, and evidenced by the recent Rwanda deal (Murray, Matera, Tubakovic, 2022). Yet a recent narrative is that Ukrainian refugees are welcome, which suggests that a system of preferential treatment is in place, through narratives that refer to people from Ukraine as European, in an apparent hierarchy of race and ethnicity.

Contestation is required of the ways that democratic states are legitimising extraordinary responses to the movement of asylum seekers seeking protection within their boundaries in Europe and Australia. There will be a need to remain vigilant to monitor whether COVID provides a context for states to pursue and legitimise these extraordinary responses.

The externalisation policies discussed here merit enhanced and continued contestation, although it can be challenging to propose alternative policies and narratives to policy communities. Counter-narratives are required which embrace inclusion, valuing of difference, empathy for refugees and the promotion of multiculturalism. Alternative narratives would draw on the idea of solidarity and would tackle intolerance (Cook, 2012), through a focus on social solidarity.

There has been some mutual learning and adaptation, with several states in Europe regarding the Australian case of externalisation as a putative model rather than as a cautionary tale (Murray, Matera, Tubakovic, 2022). The rights of asylum seekers require strong advocacy and support so that their own voices and own narratives are articulated and heard (Loughnan and Murray, 2022). There is a need for further, robust criticism of the denial of access to processing of claims for protection and to health care and welfare, particularly given the lack of a humane approach in a time of COVID-19. A re-instatement of legal, political and social responsibility for those who seek to cross their borders is required of states. Occlusive narratives based on state control over access to much of the official information regarding refugees must be countered, with scrutiny of government practices and deals by civil society and the media. The EU is opting out of human rights and refugee protection, despite its 70-year history of values enshrined in its treaties. Similarly, over 70 years after it first welcomed refugees, Australia has become a state with a hardened border and offshore and onshore detention. These trends have intensified during the pandemic. Incorrect narratives must be avoided regarding both access to refugee protection in times of COVID and false allocation of blame to refugees. Public health provision and refugee protection remain essential to support people seeking asylum. The 'COVID excuse' is simply not excusable.

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Australia's Carceral Identity

Amy Nethery

It was striking that one of Australia's first responses to the COVID pandemic that swept through the world in 2020 was to implement a system of quarantine. In fact, the requirement that people entering the country, and even moving between states within Australia, would be subject to fourteen days of mandatory quarantine was nearly unique to Australia. For the first two years quarantine was one of Australia's key strategies for controlling the virus.

By comparison other countries, such as the UK, adopted quarantine more than a year after the pandemic begun. There, the experiment was deeply unpopular with UK citizens and lasted less than 10 months. This comparison is enlightening because it sheds light on the broad acceptance of quarantine within Australian public debate. Certainly, the *effectiveness* of Australia's quarantine system was criticised (Knaus and Davey, 2021), and experts have offered suggestions for making the system stronger, including moving quarantine hotels to regional locations and purpose-built facilities (AMA, 2021). But the fundamental *idea* of quarantine itself – the mandatory removal of a person's liberty for the benefit of the whole community – remained largely uncontroversial in Australia.

To scholars of confinement, the broad acceptance of the fundamental idea of quarantine in Australia was revealing. What factor in the Australian debate – or indeed, the Australian character – contributed to policymaking and public debate so different in Australia to that of other countries? Elsewhere the removal of personal liberty – even during a time of global emergency – is anathema. What makes Australia different?

An answer can be found if we regard Australia's COVID-19 quarantine response within the country's long history of administrative detention. Since the arrival of the settler colonial state, the confinement of strangers, migrants, Indigenous people and 'enemies' have been used in the governance of Australia's borders and for the production of Australian identity. Different forms of confinement have been used not only to control the spread of illness, but also to respond to a wide range of perceived social and political problems. The quarantine hotels for controlling COVID-19 should be understood as the latest iteration of a long, repeating history of confinement.

Australia as a quarantine nation

Australia's history of quarantine began in the 1830s when port and health authorities first confined people to their ships in harbour. Soon afterwards, in a system of purpose-built quarantine stations were constructed at Australia's main ports. All people arriving in the country and wishing to stay were detained on arrival in Australia for fourteen days. The system stayed in place for 120 years, only winding down in the 1950s when air travel became popular, and quarantine became unfeasible. As such, it was the longest-lived quarantine program in the modern world, lasting nearly a century after Britain, Western Europe, Russia and North America had stopped the practice (Maglen, 2005).

One explanation for the Australian colonial governments' enthusiasm for quarantine was that it allowed them to manage who could enter the colonies. The policy quickly took on a racialised tone (Bashford, 2004). Quarantining all people who arrived on Australia's shores allowed authorities to distinguish between race and class of new arrivals. White, first-class passengers were serviced with good accommodation, food, and entertainment. Lower class and non-white passengers suffered poorer conditions, and could be detained far longer than the mandatory fourteen days. Indeed, some poorer, non-white passengers endured months in quarantine before being released into the community (Foley, 1995).

The smallpox epidemic in Sydney in the 1880s serves to illustrate this point. While evidence suggests the disease was brought on a boat from Britain (where smallpox was endemic), authorities used the opportunity to raid and capture members of Sydney's Chinese community. During the 1881 epidemic and the 'racial panic' that ensued, the newly constituted Board of Health empowered officials to move hundreds of Sydney residents of Chinese descent from their homes into detention, regardless of their disease status. Conditions were poor, and 'patients' were kept under police supervision to enforce their segregation (Foley, 1995, p. 75). Throughout the epidemic and for several decades afterwards, Chinese residents and arrivals were regularly blamed for the introduction of the spread of disease.

The federal Quarantine Act was enacted on March 30, 1908. The Parliamentary debate that ushered it into law revealed the extent to which politicians regarded the policy as an important part of the new, federated Australian nation-state. On one level, the consolidation of different colonial quarantine programs into the one system was a successful exercise in federal cooperation and administration; on another, quarantine was part of a symbolic 'imagining' of the new nation (Bashford, 2004). Historian Alison Bashford (2004, p. 116) described the establishment of quarantine boundaries as marking the formation of a 'particular geographic imagining of Australia … Quarantine boundaries are *national* boundaries' (my emphasis). If quarantine helped shape a particular geographic imagining of the new nation, it also helped shape a particular racial imagining of Australia. The new Australian nation state was described as healthy, fresh, clean and pure. For administrators, this was synonymous with ideas about 'white' Australia (Bashford, 2004).

Other forms of administrative detention

Quarantine was not the only form of administrative detention practiced by colonial - and later, Australian - governments. Rather, a whole range of institutions were implemented to respond to perceived social and political problems, creating a template of administrative confinement. To each new biopolitical challenge, Australian policymakers have reached for the same template in their response (Nethery, 2021).

These include institutions for confining Australia's First Nations people. From the mid-1800s until well into the second half of the 20th century, colonial governments established a network of protectorates, reserves and missions across the country to confine and isolate First Nations people. Their purpose shifted over time: from protecting Indigenous people from frontier violence, to 'smoothing the dying pillow', to training people to integrate into white society (Reynolds, 1989; Wilson, 1997). For generations of people, these institutions were punitive and deeply damaging, and formed part of the architecture of the genocide of Australia's First Nations people (Maddison, 2013).

Australian policymakers drew on the same template during the two World Wars. Australia's enemy alien internment camps were the most extensive of all allied nations. These internments camps functioned to remove people of enemy alienage from the Australian community. In most cases this removal was temporary, and most were released without charge at the end of the war. Yet internment also facilitated the permanent removal of some groups of people from Australia: at the close of WWII, all Japanese in Australia were deported to Japan, ending a long-standing Japanese community in Australia (Nagata, 1996). Australia also detained thousands of prisoners of war on behalf of its allies, to whom it proved to be an unquestioning partner to requests for internment (Fischer, 1989).

Finally, Australian policymakers also drew on this template when devising a response to people seeking asylum by boat. It is now 30 years since Australia's system of mandatory immigration detention was enacted. Immigration detention centres are located across the continent, on Christmas Island, and on the territory of other sovereign nations: Nauru and Papua New Guinea. Immigration detention is used for two categories of people: asylum seekers, and people awaiting deportation on criminal grounds. In this way, immigration detention works like quarantine and enemy alien internment to manage problematic groups of people both at the border and within the community. A lack of transparency over the policy means that these are environments in which the staff have nearly full discretion over the lives of those detained. This has resulted, inevitably, in human rights abuses on a scale that has received sustained international condemnation (Gleeson, 2016; Nethery and Holman, 2016).

These forms of administrative detention have overlapped in Australian history, and this is the case also during the COVID-19 pandemic. In 2020 and 2021, scores of immigration detainees were transferred from Nauru and PNG to Australia for medical treatment and were confined in hotels in Melbourne and Brisbane reclassified as alternative places of detention. There they were held for nearly two years (and without receiving such treatment) in hotels indistinguishable, and only a few kilometres away, from those holding people quarantining for COVID-19 (Vogl et al., 2020).

Administrative detention and the Australian settler colonial state

These different carceral forms are not individual instances. Instead, they are variants of administrative detention, a form of incarceration with a particular social and political function, legal status, and social impact. Recognising administrative detention as a type of incarceration allows for a sharper analysis of the category in general, and all its individual forms. Administrative detention has proved particularly useful for settler colonial governments in Australia because it has enabled them to classify and then incarcerate certain groups of people. Its effectiveness at this task, and the way the policy provided governments with pockets of unmitigated executive control, meant that it was an attractive template to which policymakers reached when faced with biopolitical problems. Settler colonial governments, concerned with questions of national identity and the composition of their populations, found administrative detention a compelling and useful tool because it enabled the suppression and genocide of indigenous populations, the removal of unwanted groups from the community, and the management of outsiders wishing to enter (Hernandez, 2017).

Throughout Australia's white history, policymakers have reached for administrative confinement as a response to perceived social and political problems. A repeated theme is the enthusiasm with which these policies have been adopted, often extending far beyond the practice in comparable nations. While all these sites of confinement have attracted protest and resistance, the dominant discourse has been a utilitarian one (the greatest good for the greatest number) rather than a debate about the encroachment of the state on personal freedoms and liberties. No doubt this is aided by the fact that the vast majority of people subject to administrative confinement in the past have been non-white or outsiders. In instances – like quarantine – where white, wealthy people have been confined, the conditions have been more comfortable and the period of detention shorter.

Administrative detention communicates to those with precarious claims to citizenship exactly who belongs; who does not; the conditions for that belonging; and the unmitigated power of the executive arm of government to decide. The study of administrative detention reveals how these long-standing practices of incarceration, classification, and unmitigated executive control to determine the fate of certain groups of people, remain firmly within the character of Australian society and politics today.

This history offers an explanation for why Australian policymakers reached so quickly and uncontroversially to quarantine as soon as the COVID-19 pandemic hit. These practices have been an ever-present part of our political landscape and remain firmly entrenched in Australia's imagination of how it should manage its borders.

The history also offers an endogenous explanation for some of the unanswered questions about contemporary immigration detention. It can explain why policymakers seized upon the idea of administrative detention in 1989 when faced by boats carrying unwanted asylum seekers. It can explain the character of the policy – the unmitigated executive control, its punitive tone and effect, and how it is used to deny rights and punish some categories of non-citizen but not others. It can explain the broad levels of community and political support for the policy, and how the policy has become so seemingly entrenched in the Australian system. And it can explain why the policy persists, ever-tightening, despite its flaws and the damage it inflicts.

Disclaimer

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A much longer articulation of these ideas was published as 'Incarceration, classification and control: Administrative detention in settler colonial Australia', *Political Geography*, 2021, 89, pp. 1-10, doi: 10.1016/j.polgeo.2021.102457

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Immigration Amnesty as a Viable and Necessary COVID-19 Response

Anthea Vogl and Sara Dehm

The disproportionate impact of the COVID-19 pandemic on the health, mobility and economic security of temporary migrants, refugees and people without lawful immigration status brought discussions of immigration amnesties to the fore of pandemic-related immigration policy responses (Dehm & Vogl, 2022). In Brazil, civil societies groups launched a movement called *'Regularização Já* (Regularisation Now)' in response to COVID-19 impacts (Dias, 2020). The group called for radical reforms, including a bill 'that would grant residency to all immigrants in the country, regardless of their current status' (Dias, 2020). Portugal, too, temporarily granted all migrants and refugees living within its territory full citizenship rights, including access to state healthcare (Pla, 2020). The measure benefited approximately 260,000 migrants who saw their 'legal position temporarily regularised', with subsequent governmental orders extending the operation of the measure until the end of April 2021 (Gil, 2021). Like other pandemic-related immigration policy reforms and status grants, these initiatives are notable either for their explicitly 'temporary' or emergency nature, or for the grant of status being conditional upon the immediate effects of the pandemic rather than the systematic and prior forms of exclusion faced by people living without legal status.

In Australia, the COVID-19 pandemic highlighted the centrality of undocumented workers to Australia's essential industries and led to calls for an immigration amnesty from diverse sources, including from conservative Australian National Party parliamentarians. At the same time, national border closures in response to COVID-19 limited non-citizens' ability to depart Australia once their visas had expired. Although exact numbers are unknown, the Government estimates that there are currently over 64,000 people living without lawful immigration status in Australia (Department of Immigration and Border Protection, 2017). Other sources of support for amnesty in Australia during the pandemic included the Federal Government's National Agricultural Labour Advisory Committee (National Agriculture Advisory Committee, 2020), labour and migration experts (Howe et al., 2019; Howe, 2021; Farbenblum & Berg, 2020; Dehm & Loughnan, 2021), Victorian Farmers Federation representatives (Sullivan, 2020), agricultural sector unions, and undocumented workers themselves (United Workers Union, 2020).

In this piece, we present the growing evidence that an immigration amnesty is a viable, necessary and desirable legal and policy response to the uncertainty, exploitation and suffering experienced by undocumented people in Australia today. In particular, we explain how and why immigration amnesties have arisen as a legal and political response to the complex, intersecting challenges created by the COVID-19 pandemic both for Australia's workforce of temporary migrant labour and for non-citizens living in Australia more generally. We also highlight our recent research project on Australia's little known past three immigration amnesties. We briefly present key lessons from these past initiatives and argue that Australia's past amnesties and their legal legacies are instructive for contemporary and urgent campaigns for a broad-ranging immigration reform in Australia.

What is a Legal Immigration Amnesty and Why is it Currently Needed in Australia?

While amnesties take a range of forms and serve multiple ends, in general, legal immigration amnesties are mechanisms by which governments allow people within their territory without lawful migration status to come forward and lawfully regularise their status without risk of punishment or deportation. US immigration law scholar Linda Bosniak defines amnesties broadly as 'policies that lift or eliminate the illegality of status imposed on [undocumented people] and that incorporate them into the body politic' (Bosniak, 2013). While some definitions focus on the 'illegality' of so-called 'unauthorised non-citizens' and others emphasise the exclusionary nature of migration laws that make people illegal (Lakoff & Ferguson, 2006), all immigration amnesties involve the change of status for particular groups of non-citizens. Although legal amnesties are often designed to have a broad application, they may also apply to limited subsets of non-citizens, and outcomes for non-citizens may range from temporary reprieves from deportation (such as the US Deferred Action for Childhood Arrivals program) to facilitating more formal pathways to permanency and citizenship. Amnesties may also be referred to as 'legalisation' or 'regularisation' programs, and common criteria delimiting eligibility for amnesty include the duration of one's residence within a state or participation in the labour market (Levinson, 2005). And, as Levinson (2005) notes, they are 'usually implemented in concert with the internal and external strengthening of migration controls'.

As states increasingly equate orderly migration programs and effective border control with the exercise of state sovereignty, governments generally only consider amnesties when other internal and external migration controls have failed (Levinson, 2005). Marmora outlines four broad reasons why states opt to implement immigration amnesties: to achieve control over irregular migration; to improve the social situation of migrants; to increase labour market transparency; or in response to foreign policy goals or agreements (Mármora, 1999). In practice, these motivations overlap, as is evident in the recent turn to regularisation in Australia.

Recent engagement with the need for an immigration amnesty in Australia has focused on two groups of undocumented people in particular: unlawful non-citizens living in the community as the result of overstaying previous visas, and refugee applicants living in the community whose status has lapsed, or who do not have pathways to permanent residency under the *Migration Act* (Cth). As noted, in 2017 the Department of Immigration and Border Protection estimated the number of undocumented people in Australia to be at least 64,000 people (Department of Immigration and Border Protection, 2017), approximately 6,000 of whom had lived in Australia for over a

decade (Truu, 2020). However, precise and up-to-date numbers are not available; and other estimations range up to 90,000 people (Rimmer & Underhill, 2015). Similarly, there is no precise account of the make-up of this group, though in 2017 the Government identified the main nationalities of undocumented people as including nationals from Malaysia (14.6%), China (10.1%) , USA (8%) and the UK (5.7%). In 2013, the Department reported agriculture, forestry and fishing, construction, hotel accommodation and hospitality as the most common industries of work for people without lawful status in Australia (Howe et al., 2019)

(i) Undocumented workers

The recent emergence of amnesty as a policy option – both before and during the COVID-19 pandemic – has focussed on the risks faced by undocumented people who are currently in the workforce, and specifically on those in the agricultural sectors. One of the findings of Joanna Howe et al's 2019 report into addressing labour challenges in the horticultural industry is that the industry has a 'structural reliance' on undocumented migrant workers as a key source of labour (Howe et al., 2019). Undocumented workers are highly vulnerable to exploitation and have limited capacity to seek assistance or redress due to their irregular status (Farbenblum & Berg, 2017). The high risks of exploitation identified in relation to this group of workers extends to undocumented people in the workforce more generally, and successive governments and multi-agency government initiatives, have failed to address these issues or even to successfully detect undocumented people.

It is in response to the systematic exploitation and harm faced by undocumented workers that recent recommendations for an immigration amnesty have emerged. For the agricultural sector in particular, amnesty calls are also motivated by concerns that deportation or removal of undocumented workers will further affect the limited supply of labour. In late 2020, a Government Advisory Committee convened by the Department of Agriculture to develop a 'labour strategy for Australian agriculture' made a direct recommendation for a 'one-off regularisation of the undocumented workers in the country' (National Agricultural Labour Advisory Committee, 2020). The recommendation was made as part of the Federal Government's National Agricultural Workforce Strategy report, which presented it as a means to eliminate the 'unscrupulous and unethical practices' that labour hire companies use to employ and exploit documented people. A number of Australian unions have expressed a similar rationale for an amnesty (United Workers Union, 2020), including a suggestion that amnesties should be available where visa conditions are breached due to exploitation or pressure from an employer (Senate Education and Employment References Committee, 2016; Shop, Distributive and Allied Employees' Association, 2015).

Notably, the National Agricultural Labour Advisory Committee (2020) report explicitly put forward regularisation as part of the public health response to COVID-19. It presented public health concerns for undocumented people and the broader public as a core reason for an amnesty, stating that:

> [the] current pandemic provides a unique chance to design a one-off regularisation program for social health reasons. It is a potentially dangerous situation for the Australian public to have 60,000 to 100,000 overseas workers avoiding contact with clinics and hospitals (p. 190; Davis, 2021).

(ii) Refugees and Asylum Seekers

Amnesty as a potential political and legal solution also pertains to asylum seekers and refugees, who have lived for extended periods in the Australian community either on continual temporary visas or without regular status at all (Vogl, 2019). A complicated regime of post-arrival policies aimed at refugee deterrence has created a population of refugees and asylum seekers who cannot access either permanent residency or citizenship, but who also cannot return 'home' or to their country of persecution. The key factor giving rise to both a permanent temporary migration status and associated precarity was the re-introduction of temporary protection in late 2014 under the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014* (Cth). Both Temporary Protection Visas (TPVs) and Safe Haven Enterprise Visas (SHEVs) were introduced at this time. These visas last only three and five years respectively and must be renewed on an ongoing basis. While refugees granted SHEVs have some conditional pathways to permanency, those holding SHEVS and TPVs live for the most part with a permanently temporary migration status. The group to which these policies apply has been labelled the 'legacy caseload' by successive Liberal Governments, and includes people who have lived in the community for up to 10 years.

As with people living without documentation in Australia more broadly, the need for regularisation – and with it access to health services– has been exacerbated during the COVID-19 pandemic for asylum seekers and refugees. The absence of regularization opportunities has effects which are particularly acute for members of this group who are living in the community without lawful status, due to delays in the renewal of their bridging visas or refusals of bridging visas, often without clear reasons given by government for these delays or refusals. As the Refugee Council of Australia ('RCOA') notes, this group includes asylum seekers who have made every effort to maintain a lawful status and engage in the Government processes and have been forced into an irregular status, with no rights or entitlements (RCOA, 2020). This group also includes asylum seekers living in community on 'final departure' visas prior to deportation (RCOA, 2020; Liberty Victoria, 2021).1 The

1 Recent research has demonstrated that these asylum seekers regularly fall out of regular status due to the complex processes involved in grant and renewal bridging visas valid for as short as three or six months: Liberty Victoria, 2021.

size of this population frequently changes, however as of June 2021, there were 2,281 asylum seekers who arrived by boat as part of the 'legacy caseload' residing without a valid visa in the community (Department of Home Affairs, 2021; Boon-Kuo, 2017).

Like undocumented workers, refugees and asylum seekers without permanent status are at high risk of systemic labour exploitation (Fleay & Hartley, 2016). This is particularly so for people living in the community without a valid visa or regular migration status (Kooy & Bowman, 2019; Berg, Dehm & Vogl, 2022). Organisations such as the RCOA have recommended creating pathways to residency for refugees and asylum seekers who fill agricultural labour shortages exacerbated by COVID-19 (Bonyhady, 2020). Providing such pathways would address similar issues to those identified in respect of long-term undocumented people – not least their exploitation at work and exclusion from COVID-19 public health response by virtue of their lack of status.

At present, however, it remains unclear whether there is political will in Australia for a broad amnesty as a necessary pandemic response measure. While the newly-elected Labor government has committed to providing recognised refugees on temporary visas (TPVs or SHEVs) a pathway to permanency, they have not as yet announced any broader measures to address the systemic creation and exclusion of undocumented populations in Australia. The previous Liberal Government, for example, resolutely rejected an immigration amnesty as a response to the issues outlined above. Michael Pezzullo (2021), then Home Affairs Secretary, told a Senate Estimates hearing in March 2021 that an amnesty would 'undermine the integrity' of Australia's visa system and 'create an incentive for people to get themselves smuggled into Australia' or overstay their visa. A similar preoccupation with the 'pull' factors of unauthorised migration is evident in the Department's formal statement on the issue, in which it said that '[b]road regularisation of the status of unlawful non-citizens may perversely encourage non-compliance with migration law', and that '[d]espite the closure of the Australian border, pull factors encouraging illegal immigration are still relevant' (cited in Davis, 2021).

Australia's Little-Known Past Immigration Amnesties

Yet, despite such concerns, immigration amnesties have been used by successive Australian governments in the past to provide a fair and humane pathway to permanency for undocumented people in Australia. Indeed, a little-known aspect of Australia's legal and immigration history is its past use of three legal immigration amnesties in 1974, 1976 and 1980. Each amnesty was implemented via executive action and allowed certain non-citizens living in Australia without state authorisation to apply for permanent residency. These past amnesties were implemented under both Labor and Liberal governments, and each enjoyed enthusiastic bipartisan support. Each amnesty was explicitly promoted as a way to remedy the issue of people living in Australia without status as humanely as possible, and to avoid further exploitation and uncertainty as a result of this status. Further, in language that seems at odds with contemporary practices of migration management, successive Immigration Ministers stressed during each amnesty campaign that any so-called 'illegal immigrants' who came forward would be treated sympathetically, and applicants did not need to fear arrest or deportation.

Despite the legal and political prominence of Australia's past amnesties at the time of their implementation, they have been subject to surprisingly little scrutiny within both legal and historical scholarship on immigration law and policy in Australia (North, 1984; Rhodes, 1986). While it is beyond the scope of this piece to outline each of the historical amnesties in detail, elsewhere, we have argued that these past amnesties provide fruitful lessons for contemporary law reform efforts. In particular, they demonstrate how contemporary amnesties ought to:

- be informed by a social (rather than legal) conception of citizenship;
- adopt an inclusive criteria and consultative process for engaging migrant communities, and
- be presented as a humane and effective legal response to the harmful practices associated with the prevailing detection and deportation model for addressing the presence of undocumented people in Australia today (Dehm & Vogl, 2022).

In recalling these lessons from past amnesties in Australia alongside noting the use and benefits of immigration amnesties in other jurisdictions, we argue that – so long as state border controls remain in place – immigration amnesties should be seen as an effective political and legal mechanism to remedy the exclusion, illegalisation and exploitation that undocumented people experience. Indeed, immigration amnesties are valuable not only as a response to the effects of the COVID-19 pandemic, but also as a permanent and cyclical feature of the Australian migration system.

This piece is based on a larger research project on the historical use of immigration amnesties in Australia. For a detailed account, see: Sara Dehm and Anthea Vogl, 'Immigration Amnesties in Australia: Lessons for Law Reform from Past Campaigns' (2022) 44(3) Sydney Law Review (forthcoming).

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