Westphalian sovereignty as a zombie category in Australia

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Abstract

State sovereignty is customarily connected to the 1648 Peace of Westphalia, which it is argued established the ideal of political authority being tied to static geographical containers. While academic scholarship has demonstrated that this ideal fails to account for performative and fluid modes of political power, Westphalian sovereignty remains an influential feature of political discourse. This article argues that Westphalian sovereignty consequently fits Ulrich Beck's description of a 'zombie category', a dead social institution kept alive in political and public discussion. This is demonstrated in the context of the Australian State's exclusion of Aboriginal and Torres Strait Islander peoples, as well as asylum seekers arriving by boat. Drawing on Giorgio Agamben's theories of sovereignty, I contend that these populations are excluded from the Australian polity because of how they move, while other subjects including 'genuine refugees' and European settlers are included due to their ideal (im)mobilities. I argue that this underlying mobile logic of Australian sovereignty and exclusion is hidden by the zombie notion of a static Australian state, which delegitimizes humanitarian and indigenous claims to sovereignty based on experiences of forced mobility and mobile expressions of political authority.

Keywords: Sovereignty, zombie, mobilities, settler-colonialism, Giorgio Agamben

Introduction

Modern accounts of sovereignty are customarily connected to the 1648 Peace of Westphalia, which it is often argued helped to establish the ideal of political authority being tied to static geographical containers governed by sovereign rulers. Academic scholarship has however demonstrated that a static 'Westphalian' conception of sovereignty fails to account for the performative and fluid modes by which state-based political power is exercised and resisted (e.g. Agnew 2018; Conversi 2016; Darling 2017; Earnest 2019; Everuss 2020; Hardt & Negri 2001; Burke 2002). Additionally, social scientists have illustrated that in response to the corrosive forces of global mobilities, state borders have become liquid, stretching and shrinking to manage flows of people, goods and ideas (Dickson 2015; Jones et al. 2017). However, despite scholarly critiques, the conception of static Westphalian sovereignty continues to dominate political discourse and state decision making (Conversi 2016; McNevin 2019, p. 3). This article argues that Westphalian sovereignty thus acts as what Ulrich Beck and Elisabeth Beck-Gernsheim (2002) describe as a 'Zombie Category', a social conception that no longer accurately describes anything but continues to inform perceptions of social phenomena.

The zombie nature of Westphalian sovereignty is analysed in this article in relation to the state exclusion of Indigenous Australians[1] and asylum seekers attempting to reach Australia by boat. Drawing on the theory of Giorgio Agamben (1998, 2000, 2005), I argue that the exclusion of first nations Australians and maritime asylum seekers (MASs) has occurred through the mobile expression and constitution of Australian sovereignty. Agamben (1998, p. 83; 2000, pp. 40-41) conceptualises sovereign borders as not being

established along geographical lines, but between people who maintain certain 'forms of life'—valued political identities—and others who do not. I argue that MASs and Indigenous Australians have been denied 'forms of life' and excluded because of how they move or stay still, while other (im)mobile subjects, including European settlers, white Australians, skilled migrants and 'genuine refugees', have been included due to their ideal (im)mobile 'forms of life'.[2]

Even though traditional conceptions of sovereignty do not accurately describe Australia's contemporary sovereign structure, Westphalian sovereignty continues as a zombie by informing Australian political and public discourse. It obscures Australia's mobile borders through a rhetoric of stagnant political enclosure and hides the geographically disarticulated power exercised by the Australian state in significations of bounded territorial actions. While not actually existing, Australia's zombie Westphalian sovereignty inhabits a hegemonic position whereby it delegitimises alternate sovereign forms, including humanitarian claims to political community based on experiences of forced mobility (Darling 2017), and Indigenous claims to sovereignty based on mobile expressions of political authority (Keal 2016; Prout Quicke & Green 2018). To expose the exclusionary logic that underpins dominant variants of sovereignty, and to open the way for emancipatory versions of sovereignty embedded in the mobile experiences of people to be established, the zombie Westphalian ideas framing conceptions of sovereign states such as Australia must be publicly challenged.

Moving beyond Westphalian sovereignty

Sovereignty encompasses the expression of political authority over people and is seen as the fundamental relationship between a ruler or ruling entity and the population who are subject to their power (Yeatman 2003, p. 15). Traditionally sovereignty has been interpreted as territorially enshrined within a system of static states and their exercise of power within geographical borders (McNevin 2019, p. 3). This version of sovereignty is described as Westphalian because it is commonly said to originate from the 1648 Peace of Westphalia in which signatories agreed to a principle of non-intervention into each other's internal affairs (Conversi 2016, p. 486; Glanville 2011, p. 234). Enlightenment

philosophies promoting a 'social contract' provided the basis for this expression of sovereignty to be tied to the protection of at least some of the people residing within a sovereign's territory and this responsibility was extended through the French and American Revolutions to obligate sovereigns to express the will of their people (Conversi 2016, p. 487). Scholars have questioned the actual influence that the Peace of Westphalia and other celebrated historical antecedents have had over the development of modern sovereignty (Agnew 2018), but the ideal of a Westphalian static, container and popular sovereignty has dominated social scientific and public understandings of political power across the 20th Century.

However, the ability of Westphalian sovereignty to explain contemporary political relations has increasingly been subject to criticism (Agnew 2018; Earnest 2019; Levy & Sznaider 2006; McNevin 2019). John Agnew (2018) for instance queries the territorial assumptions of Westphalian sovereignty, arguing that power has never been territorially confined in a Westphalian form. Samantha Earnest (2019, p. 92) highlights the contested nature of sovereignty, stating that there are actually 'scales of sovereignty struggled over amongst multiple entities … each presenting itself as the one with the power above all others to control what happens in a given place.' Other theorists suggest that state-on-state interventions demonstrates that sovereign state rights are far from absolute (Levy & Sznaider 2006), and that ignored claims to self-determination made by minority populations illustrate that states are not inhabited by homogenous single nations (Barnsley & Bleiker 2008; Pitty & Smith 2011).

As well as critiquing the historical accuracy of Westphalian sovereignty, theorists argue that new post-Westphalian versions of sovereignty have formed (Hardt & Negri 2001; Lillie 2010; Ong 2006). Michael Hardt and Antonio Negri (2001, pp. 10, 34) suggest that sovereignty is expressed by a global 'Empire' implementing the ideology of capitalism through systems of global markets and Aihwa Ong (2006, p. 99) sees sovereignty as 'an ever shifting assemblage of planning, operations, and tactics' that can be implemented by corporations, Non-Government Organisations and other non-state actors. Daniele Conversi (2016, p. 488) draws on Bauman's notion of liquid modernity to argue that there has been a 'shift from solid (i.e. Westphalian) to liquid sovereignty' in which the sovereign power of states and powerful corporations

washes across populations impacting them often without any social contract or democratic accountability. Jonathan Darling (2017) shows that state sovereignty is contested by populations such as refugees who exercise political agency within complex spaces including cities. These accounts put forward unique perspectives on the modern expression of sovereignty, but they share a common postulation that static Westphalian theorisations of sovereignty fail to describe contemporary state political power, which is contested and fluid. This proposition is additionally supported by scholarship on bordering that identifies the fluidity of state divisions between 'insiders' and 'outsiders', and internal and external spaces (Bigo 2008; Burridge et al. 2017; Dickson 2015; Jones et al. 2017; Kurz 2012; Mountz 2011).

The theory of sovereignty most closely engaged with in this article, and which informs much of the recent theorisation on mobile borders, is put forward by Giorgio Agamben (1998, 2000, 2005). Agamben does not elaborate on the complete global context of sovereign states, instead focussing specifically on the logic and structure of state sovereignty. Agamben also does not discuss to any great level the significant ways that political authority is contested by populations, and thus I suggest his theories are largely limited to the analysis of state policies and sovereign formation. However, Agamben's theory of sovereignty is relevant to the Australian State's treatment of Indigenous Australians and MASs, because he sees sovereignty as constructed through the types of exclusion that such parties have been subject to. In following Carl Schmitt (1985), Agamben (1998, p. 28) argues that sovereign authority is not established by a social contract or interstate non-intervention agreement, but instead by an authority deciding who is part of the sovereign polity.

For Agamben (2000, pp. 7-8) people who are included into the sovereign polity are granted 'forms of life', political identities based on their membership, including those related to citizenship, work and property ownership. These identities are defined in comparison to excluded populations who are deemed to lack them, and are subsequently placed in the position of *homo sacer*, a Roman legal category that describes someone who can be killed with impunity but not sacrificed (Agamben 1998, p. 8). While polity members gain rights and consequently some degree of protection from sovereign action based on their politicised 'forms of life', these can always be extinguished by the sovereign

(Agamben 1998, pp. 126, 132). Thus, Agamben (2000, pp. 40-41) argues that the base political unit of both those included and excluded from the polity is the same; they are both 'bare life' because they are both subject to the sovereign decision over who is granted 'forms of life'.

I suggest that Agamben's theory is compatible with many contemporary accounts of state sovereignty, since it describes a mobile and deterritorialised form of state authority. For Agamben sovereignty is not based on spatial demarcations, but on the creation of relationships between a sovereign and 'bare life' as both polity member and *homo sacer*. Sovereign spaces are consequently produced by the sovereign-polity relationships that inhabit them, and the 'outside' of these spaces is enacted by the existence of sovereign-*homo sacer* relationships (Everuss 2020). As demonstrated by the theories of the new mobilities paradigm, such relational constructions of space are also mobile (Adey 2006, p. 78; Sheller 2017, p. 626), and hence sovereign spaces are constructed by the (im)mobilities of sovereign agents and 'bare life' moving across them (Everuss 2020). Agambenian accounts of sovereignty thus help to explain how sovereign authority is expressed in a mobile fashion and constructs fluid borders.

This is demonstrated in more detail below in relation to Australia's first nations people and MASs, both of whom have at times been fluidly removed from the Australian state in order to construct a specific sovereign polity and reinforce the constituting state power of exclusion. However, while Agamben's, and other critical accounts, of sovereignty have been used by social scientists and theorists to explain the government treatment of Australian minorities (e.g. Everuss 2020; Palombo 2009; Rajaram & Grundy-Warr 2004), these ideas have not regularly infiltrated the popular and political discourse surrounding Australian sovereignty. In the policies and political representations of the government treatment of Indigenous Peoples and MASs, Australian sovereignty is presented in stagnant and container terms. Indeed, this article argues that a largely Westphalian version of Australian sovereignty functions as a zombie category by being deployed to justify the mobile exclusion of populations and hide the mobile construction of the Australian state.

Zombie Sovereignty

The concept of 'zombie categories' was developed by the sociologists Ulrich Beck and Elisabeth Beck-Gernsheim to help describe the persistence and power of social ideas that no longer accurately described their subjects. In Beck's (2001, p. 262) words: 'Zombie categories are "living dead" categories which govern our thinking but are not really able to capture the contemporary milieu.' When Beck and Beck-Gernsheim (2002) first defined 'zombie categories', they attributed their (non)existence to the process of 'individualization' occurring in contemporary societies. They suggested that basic social forms—such as the job market, the welfare state, education, etc.—are disintegrating and changing, which is generating a 'compulsion, albeit a paradoxical one, to create, to stage manage, not only one's own biography but the bonds and networks surrounding it and to do this amid changing preferences' (Beck & Beck-Gernsheim 2002, p. 4). In line with this theory, Beck and Beck-Gernsheim (2002, pp. 2, 18) argued that sovereign states are 'zombie categories' because they are believed to be constituted by a collective identity—a nation or other homogenous polity—and collective action—democratic processes and state acts that unify a polity—but, sovereign states through their welfare, economic and political activities actually create individuals who are personally responsible for their state membership.

In drawing on Agamben's theory, individualization can be seen as functioning in the foundational sovereign process of polity formation. Westphalian polity membership is tied to general collective categories of citizenship, as 'the status of persons is conflated with their membership of a state' (Yeatman 2003, p. 15). However, Agamben (2000, pp. 19-20) argues that states create a mass of individuals with no inherent shared identity, since they produce 'bare life' that is subject to exception. There are political identities granted by the state—'forms of life'—but these are ephemeral and the burden of maintaining them is placed on individuals (Agamben 2000, p. 6). When individuals are deemed not to behave in the correct ways, they are stripped of citizenship and/or sovereign membership and cast as *homo sacer*. Claudio Minca (2006) demonstrates this process in the death of a Brazilian electrician in London in 2005, who when followed by plain clothes police, decided to run and was chased down and shot five times to the head. Minca (2006, p. 387) states that

the electrician's behaviour rendered him *homo sacer*. It was accordingly the responsibility of the individual to maintain his position within the polity, regardless of his residency status and political rights.

Individualization is not the only process that Beck identified as disintegrating the traditional features of sovereign states. In line with much of the theory outlined above, Beck (2005, pp. 148-49) argued that globalization was making container-based understandings of nation-states untenable because it caused state power to be: deterritorialised and attached to the ability to control and promote economic flows; privatised and controlled by non-state actors; and, restricted by necessary state participation in global economic affairs. However, even globalisation does not in Beck's opinion shift the dominance of zombie versions of national statehood, leading Beck (2005, p. 146) to describe contemporary social thought as gripped by 'methodological nationalism'. What is important to note, however, is that through methodological nationalism, and as a 'zombie category', Westphalian sovereignty is more than merely an out-of-date social concept as it lives on shaping contemporary debates (Beck 2005, p. 147).

Beck and Beck-Gernsheim's writings on zombie categories and methodological nationalism are predominantly a critique of social scientific study and their field of sociology (e.g. Beck 2001, p. 264; 2007, p. 289). In this article I extend Beck and Beck-Gernsheim's concepts beyond academia and focus them more centrally on the political discourse and policy that continue to reinforce traditional notions of sovereignty. Political discourse has likely become the more important field for analysing the presence of zombie categories as, since many of Beck's and Beck-Gernsheim's key writings on the topic, academic examination of sovereignty has continued to criticise Westphalian assumptions. The critical and reflexive discourses that have challenged academic usage of Westphalian sovereignty have not gained the same prominence within the political sphere (McNevin 2019, p. 3). Conversi (2016, p. 489) for instance recognises the ongoing power of static ideas of sovereignty in the statist decision making of contemporary world leaders, stating that: 'the endurance of a Westphalian definition of territory as inviolable space has led political leaders to prioritize state "interests" over global ones.'

In this article I demonstrate the existence and power of zombie Westphalian sovereignty in shaping the representation of Australian state exclusion of Indigenous Australians and MASs. While my focus is on sovereign exclusion, it is important to note that Indigenous Australian populations and MASs retain agency and engage in acts of resistance and political engagement (Owens 2009; Prout Quicke & Green 2018). For example, Indigenous Australian communities have never ceded their sovereignty and continue to claim it 'through a long line of sovereign entreaties to the Australian state, culminating most recently in the Uluru Statement' (Larkin & Galloway 2018, p. 337). MASs also repudiate their lack of political authority through meaningful acts of protest, including hunger strikes and lip sewing (Owens 2009, p. 577). However, this paper studies state policies that combat and attempt to diminish the political rights of outsiders, and specifically, how exclusion occurring through the enactment of a post-Westphalian version of Australian sovereignty is hidden by the symbolic construction of a traditional Westphalian Australian state.

Post–Westphalian sovereignty in Australia

Underpinning the establishment of colonial, Westphalian and settler sovereignty in Australia was the enactment of the myth of *terra nullius*. For British colonisers to claim sovereign authority over the landmass that was later defined as Australia, and grant property rights to members of the British polity, the sovereign claims of Indigenous inhabitants were ignored (Larkin & Galloway 2018, p. 337; Watson, I 2014a, p. 5). This was achieved by employing the fiction that the land was unoccupied and subsequently nobody's or *terra nullius* (Larkin & Galloway 2018, p. 337). While *terra nullius* is a spatial articulation (Moreton-Robinson 2009, p. 64), it was implemented through the movement of British sovereign agents within complex mobility systems, including their maritime journeys to the colonies made possible by highly networked naval systems (Clarsen 2015, p. 42; Ellinghaus & Healy 2018, p. 45). Additionally, the movements of British soldiers and settlers across the Australian landmass spread settler sovereignty by performing political authority in a more material way than proclamations over imagined territories (Clarsen 2017b; Moreton-Robinson 2009; Palombo 2009).

The same British mobilities that established sovereignty destroyed Indigenous culture, infrastructure and settlements (Ellinghaus & Healy 2018; Pascoe 2018). Bruce Pascoe (2018, pp. 11-12) shows that destruction occurred through the purposeful demolition of houses and food stores, and as an incidental outcome of settler mobilities, such as the ruin of Indigenous yam farms under the hard hooves of European transport and grazing animals. In referring to this process, Georgine Clarsen (2017b, p. 52) states:

> [t]he processual erasure of Indigenous landscapes and the production of settler landscapes is an ongoing project, achieved via the unfettered mobilities (and motilities) of the newcomers, who became "native" to that land through their practices of moving across it.

Far from the Westphalian depiction of static Australian sovereignty being constituted by a social contract with British settlers or international agreements between colonial powers embodied in concepts such as *terra nullius*, British sovereignty was actually enacted through mobile and fragmented interactions and conflicts between settlers and local inhabitants creating polymorphic borderscapes across the Australian continent. These borderscapes '"(dis)located" Indigenous people "outside the nation" as "non-citizens"' (Palombo 2009, p. 616), and in an Agambenian sense, constituted white, colonial and settler sovereignty by positioning Indigenous Australians as *homo sacer*.

The internal and external spaces of Australian settler sovereignty were also established by acts of concretisation and immobility. Settlers exercised sovereign authority by building towns, farmsteads and infrastructures that were concretely tied to place. At the same time, Indigenous Australians were trapped in camps and other static 'spaces of exception' where they could be treated as if they were not part of the same politically and racially defined landmass as settler Australia (Ellinghaus & Healy 2018, pp. 45-47; Prout Quicke & Green 2018, p. 651). However, scholars from within the new mobilities paradigm point out that even apparent sites of stasis are mobile as they form part of mobility systems that move across and shape space (Adey 2006). For example, the entrapment of Indigenous Australians in camps and sedentary state structures—including housing policies that have 'consistently sought to confine Indigenous spatial mobilities' (Prout Quicke & Green 2018, p. 652)—is part of

the mobility systems that let settlers travel and cultivate the land of Indigenous Australians (Ellinghaus and Healy 2018, p. 47). Additionally, the roads, post offices, camel depots and other static infrastructure of European Settlers formed key components in the new colonial mobility systems that were reshaping the Australian landscape (Clarsen 2015, pp. 44-45).

While *terra nullius* has been successfully challenged in Australia's courts, notably in the celebrated 1992 *Mabo (No 2)* decision (Watson, I 2014), Indigenous Australians continue to be excluded in order to define Australian sovereignty. This fits within Agamben's (1998, p. 83) theories of sovereignty, as he sees the creation of *homo sacer*, and consequently that of sovereignty, not just as an originary moment occurring during a state's genesis, but as an ongoing process continually performed to (re)constitute states by guaranteeing their ultimate ability to exclude people from polities. The ongoing exclusion of Indigenous Australians is evident in the Northern Territory Emergency Response (NTER), a government policy initiated in 2007 that is still in force in an amended form. The NTER involves a series of disciplinary measures with the stated objective of protecting children from sexual abuse in rural Indigenous communities in Australia's Northern Territory (Macoun 2011; Moreton-Robinson 2009). As the NTER treated Aboriginal Australians in ways not permissible for other Australians its application required the suspension of the *Racial Discrimination Act 1997* (Altman & Klein 2018, p. 133). This allowed restrictions to be placed on Aboriginal peoples' possession of alcohol and pornography, the compulsory acquisition of Aboriginal lands and the government management of social security payments to Aboriginal Australians (Proudfoot & Habibis 2015, pp. 171-72; Watson, N 2009, pp. 1-2). Other policy measures included 'administrative scrutiny and control of Aboriginal organisations and their assets, the abolition of Community Development Employment Projects and restrictions on consideration of customary law by Courts' (Macoun 2011, p. 522). Together, the NTER policy framework (re)created an exclusionary legal system for Aboriginals, which Nicole Watson (2009, p. 1) argues constitutes 'a form of apartheid'.

Researchers, advocates and community leaders have argued that the NTER was not an effective response to the issue of child neglect in rural Indigenous communities (Macoun 2011; Moreton-Robinson 2009). The NTER's policies

did not for instance implement the recommendations of the Northern Territory Board of Inquiry 2007 report into the Protection of Aboriginal Children from Sexual Abuse (the *Little Children Are Sacred* report), which was said by the Australian government to have sparked their actions (Watson, N 2011, pp. 148-49). Indeed, recommendations that highlighted government neglect were ignored in order to individualize the problem of Indigenous disadvantage (Moreton-Robinson 2009, p. 75). The individualization of social dysfunction by problematising aboriginal people was particularly 'jarring', as many of the child abusers identified in the *Little Children Are Sacred* report were white (Macoun 2011, p. 523). Instead of protecting children, scholars argue the NTER's real goals were controlling the bodies of Aboriginal people and extinguishing their property rights, (Watson, N 2009), as well as 'reinforcing the legitimacy and sovereignty of the settler state' (Macoun 2011, p. 521). These goals were achieved in an Agambenian fashion by placing Aboriginal Australians in the position of *homo sacer*—where the government decision acts more directly on bodies and is not mediated by legal and political protections—and subsequently producing the spaces of the state in terms of areas of exclusion and normality (Agamben 1998, pp. 3-4).

Significantly, exclusionary territories created by the state treatment of Indigenous Australians are often attached to the bodies of Aboriginal and Torres Strait Islander peoples. This is evident in the NTER's policies on income management, which exclude Indigenous Australians as they move within Australia's liberal and capitalist setting (Klein 2016; Mendes 2013). While income management has been extended to cover non-Indigenous Australians and accord with the *Racial Discrimination Act*, it still primarily targets Indigenous communities (Mendes 2013, p. 503). For Indigenous Australians subject to income management, personal spending, a celebrated behaviour and expression of freedom within contemporary neoliberal societies, is turned into a form of paternalistic government control (Klein 2016). Consequently, spaces that are normal for Australians who are not subject to income management, become exclusionary when inhabited primarily by Indigenous Australians. In this sense the policies of the NTER continue the process of defining the outside of Australian settler sovereignty and nationhood at the mobile site of Indigenous Peoples (Macoun 2011, p. 528).

Aspects of the sovereign exclusion of Indigenous Australians have been mirrored in the Australian State's treatment of MASs. MASs have travelled towards Australia in clusters connected to specific global disruptions and persecutory political regimes, the first of which was the Vietnam War resulting in 2,059 MASs in the late 1970s (McMaster 2002, p. 70). More recent cohorts have mainly included ethnic minorities, such as Tamils from Sri Lanka, Kurds from Iraq and Hazara people travelling from Afghanistan and Pakistan, who are similarly seeking to escape conflict and persecution.[3] The vast majority of MASs are found to be genuine refugees, but they are prominently represented as a 'folk devil' of the Australian political landscape (Martin 2015) and subject to harsh and exclusionary government policies (McNevin 2019; Phillips & Spinks 2013). These policies include mandatory detention, long delays in refugee status processing, resettlement refusals and being pushed or towed away from Australian land (Coddington 2019; Crock et al. 2006; Tazreiter 2015). Claudia Tazreiter (2015, p. 102) sums up the policy framework stating that 'the Australian state through successive governments has practiced the most comprehensive exclusion of asylum seekers among Western states.'

While the exclusion of MASs is driven by a range of factors, including historical insecurities surrounding invasion by sea and racial 'otherness' (McMaster 2002; Perera 2009; Tazreiter 2015), it is also designed to perform and (re)constitute Australian sovereignty (Dauvergne 2008; McNevin 2019). This is an Agambenian form of sovereignty in which MASs are positioned as *homo sacer* in order to demonstrate the ability of the Australian sovereign state to decide who can enter the polity. It is a state performance that Catherine Dauvergne (2004, p. 2) describes as the 'last bastion' of sovereignty because states are becoming less able to control the global flows that cross their borders. As a form of mobility not explicitly driven by global markets, asylum seekers and refugees are increasingly seen as one type of movement that is excludable, and therefore are commonly targeted by governments in order to enact their base sovereign powers (Hollifield 2004; McNevin 2013).

Australia's asylum seeker policies violate its international obligations and common law principles (Dickson 2015, p. 449; O'Sullivan 2016, p. 247), and subsequently rely on MASs being positioned outside the legal jurisdiction of Australia, while still being managed in a biopolitical manner by the Australian

Government (McNevin 2019; Phillips & Spinks 2013, p. 15). This positioning was reinforced in 2001 by the former conservative Australian Government led by Prime Minister John Howard, which excised territories including Christmas Island, Ashmore Island, Cartier Island and the Cocos Islands from Australia's migration zone under the 'Pacific Solution' (Crock, et al. 2006; Perera 2009). The territorial excisions were coupled with the enhanced management of excised and foreign spaces including sites within the Pacific Island nation of Nauru and Papua New Guinea (PNG) that were used as Offshore Processing Centres in exchange for substantial aid and development funding (Dickson 2015, p. 440; Gordon 2007, p. 75). Following a drop in MAS numbers, the social democratic Labor Government led by Prime Minster Kevin Rudd wound-up the 'Pacific Solution' and closed offshore detention Centres in 2007, but in 2013, with increasing numbers of MASs and resulting public criticism, the Centres were reopened by a subsequent Rudd Labor Government (Herold et al. 2016, p. 239). Since this time, conservative political parties have held Government in Australia and they have renamed Australia's asylum policies 'Operation Sovereign Borders', increased the frequency of 'boat tow backs' and 'push backs', limited media and public access to information about the treatment of MASs and further militarised Australia's migration management and discourse (Peterie 2017).

Alison Mountz (2011) describes the Australian government's asylum seeker policies, especially the excisions and extensions of territory, as a form of 'state mobilities'. The concept of 'state mobilities' can also be said to include the movements of naval vessels travelling across and outside Australian waters; patrol flights monitoring potential MAS travel zones; and border guards along with government officials and other professionals moving within the mobility systems of Australia's border zones; all of which work together to enact Australia's sovereign territory (Coddington 2019; Dickson 2015; Everuss 2020). Andonea Dickson (2015, pp. 446-48) suggests that when such state mobilities trap MASs on Australian Defence Force Vessels, these military crafts are transformed into mobile spaces of exception. Indeed, as I have shown elsewhere (Everuss 2020), Australia's borders have in some instances been removed from geographical territory altogether and tied to the bodies of MASs. This occurred in 2012 when new legal categories of exclusion made it

impossible for MASs intercepted within excised regions to ever technically enter Australia's migration zone, even if they were taken to the mainland (*Migration Legislation Amendment (Regional Processing and other Measures) Act 2012 (Cth)*). A legal difference was consequently established between asylum seekers intercepted in excised offshore places and those who claim asylum after flying to Australia, the latter of which are more commonly granted bridging visas and allowed to remain in the community until their claims are processed (Phillips & Spinks 2013, p. 13).

The Australian externalisation of MASs was further expanded in 2013 when an excluded category of person was legislatively constructed to apply to all future MASs, deeming them never to reach Australia's migration zone regardless of their landing or interception point (*Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Act 2013*). Accordingly, the outside of Australian territory was embodied by MASs, who brought spaces of exception with them as they were moved around Australian controlled territory (Everuss 2020). This created the type of regime that Joshua Kurz (2012, p. 38) sees as causing the 'erosion of the [Westphalian] inclusion/exclusion dialectic we have for so long associated with nation-state sovereignty'. However, despite the power of Australia's bordering processes, Kate Coddington (2019) demonstrates that asylum seekers and Australian polity members resist and subvert them, such as through protests, pro bono legal aid, and refugee advocacy services that cause 'fissures' in Australia's 'border continuum'. The (re)constitution of Australian sovereignty through exclusion is therefore not only post-Westphalian because it is mobile and untied to a specific container territory, but because it is also contested. Like the territorial claim of *terra nullius* being underpinned by invasive pioneer mobilities, met with Indigenous resistances, and tied to mobile bodies; new territories of Australian sovereignty constructed through the attempted exclusion of MASs exist as a series of official and counter mobilities shaping the spaces in which they occur.

Enacting the Westphalian myth through exclusion

This article has shown how Australian sovereignty has been constructed through the exclusion of Indigenous Australians and Maritime Asylum Seekers

in a mobile, contested and ongoing fashion, consequently undermining the Westphalian depiction of Australian sovereignty as a static container in which the government has indivisible authority. However, Westphalian sovereignty still inhabits political discourse and frames understandings of the Australian state, which is what in Beck's (2001, p. 262) terms keeps zombie categories such as Westphalian sovereignty alive. I argue that this has occurred in Australia through the ways that the mobile and contested exclusions of populations are politically represented, including through the valorisation of certain forms of (im)mobility to accord to Westphalian ideals. Hence, even though the legal structure of Westphalian Sovereignty is a fiction, the discourse of Westphalian Sovereignty is a powerful sorting mechanism incorporated into the actual establishment of sovereignty through mobile exclusion.

The idea of Westphalian Sovereignty was for instance used to justify the colonial settlement of the Australian landmass by framing Indigenous Australians as lacking 'forms of life', and in comparison, British settlers as having valuable political identities. In particular, the fixed nature of political participation in Westphalian terms underpinned the notion that static settlement was the height of political and social sophistication (Prout Quicke & Green 2018; Watson, I 2014a, pp. 5-6). Consequently, the apparently nomadic existence of Indigenous Australians vindicated the doctrine of *terra nullius* and obscured the rich political and social traditions of Indigenous communities (Banner 2005, pp. 104-08; Van Krieken 2000, p. 64). Hence, while the zombie notion of Westphalian sovereignty does not accurately describe how colonial Australian sovereignty was founded or is maintained, it has been a powerful discursive tool employed to disposes Indigenous Australians because of their symbolically constructed 'deviant mobilities' (Prout Quicke & Green 2018). Indeed, the notion of deviant nomadic indigenous mobilities became a self-fulfilling prophesy, with the actions of European settlers driven by (or in order to produce) the belief that Indigenous Australians were nomadic, destroying the farms, houses and food stores that supported the sedentary features of Indigenous Australian social and political life (Pascoe 2018; Ellinghaus & Healy 2018). Accordingly, the discursive and material deployment of Westphalian Sovereignty helped to build a bordering dichotomy between 'sedentary Australians' and 'mobile Indigenous outsiders.'

Similar bordering dichotomies have continued to separate Indigenous Australians from other Australians in ways that exclude the former and reinforce the political identities of the latter. For example, the representation of Indigenous Australians engaging in deviant (im)mobilities was used to justify the NTER. In this instance it was not the movement of Aboriginal people that was highlighted, but their stagnation. They were framed as the wrong type of sedentary since they did not buy private homes and land to the correct extent, instead deviantly inhabiting space by sharing public housing, receiving government welfare and not participating in Australia's capitalist markets (Altman & Klein 2018, p. 139; Watson, N 2009, p. 4). Nicole Watson (2009, p. 11) argues that this is a particularly aberrant position in modern Australia as private 'home ownership has become a signifier of personal virtue.' The failure to properly care about home ownership is framed as part of an ongoing pattern of irregular Indigenous Australian relationships to land that also includes collective ownership via native title (Prout Quicke & Green 2018; Watson, N 2009). Accordingly, Westphalian sovereignty, in terms of proper settlement within the dominant culture of a homogenous polity, was deployed and reinforced through the casting of Indigenous Australians as *homo sacer* because of their unsuitable forms of immobility and settlement.

The Westphalian mobility discourses that reinforce the depiction of static Australian sovereignty by defining Indigenous Australians as unable to be members of it—in Agamben's (2000, pp. 6-8) terms, as lacking the 'forms of life' tied to sedentary settlement—are inherently racial (Macoun 2011; Moreton-Robinson 2009). The depiction of Indigenous Australian mobilities is negative, not just because of their apparent movement or stasis, but because that (im)mobility is undertaken by a racial 'other' (Clarsen 2017b). Mimi Sheller (2018, p. 10) sees this as an intrinsic feature of mobilities since they exist and are interpreted within intersectional hierarchies, including those based on race, ethnicity and nationality. In Australia, the notion of deviant Aboriginal nomadism is made intelligible by a racist narrative that holds ideals of Westphalian European settlement to be the embodiment of worthy (im)mobility (Ellinghaus & Healy 2018; Pascoe 2018; Prout Quicke & Green 2018). The movement of indigenous Australians is accordingly another ground for, in the words of Alison Macoun (2011, p. 521), Aboriginality to be 'represented as

savage or threatening and in need of settler control and discipline, as well as primitive and in need of development or erasure in the face of (inevitable and inescapable) modernity.'

Indeed, the notion that Aboriginals are primitive and undeveloped is itself a meta-discourse based on stagnation in the past, in which a racial 'other' is signified as lacking the ability to move forward within 'a linear, chronological view of civilizational and human, racial progression' (Hinkson & Fullenwieder 2019, p. 165). It is a discourse continually reinforced by a mobility dichotomy between white Australians as kinetic elites and Indigenous Australians as limited mobility 'others', which is held in place by unequal access to movement technologies and other mobility inequalities. Clarsen (2017b, p. 52) demonstrates this in relation to automobility, which has 'materialized [settler colonial] territorial domination, … [and] simultaneously constituted a rich medium of communication that installed settlers as mobile moderns.' However, Clarsen (2017a, p. 530) also shows that once Indigenous Australians gained access to cars, they 'embraced automobility with alacrity whenever they could, not by imitating settlers, but [by] crafting automobility according to their own cultural imperatives and the material possibilities open to them.'

Political representations of MASs have also been framed by, and in the process established, the zombie concept of Westphalian sovereignty. For example, the discourse surrounding MASs depicts Australian sovereignty and territory as an indivisible Westphalian container that is under threat (McKay et al. 2017; Peterie 2016; Tazreiter 2015). This was clearly signified by the often-quoted statement of former Prime Minister John Howard targeting MASs following the 'Tampa Affair'[4] in which he said, 'we will decide who comes to this country and the circumstances in which they come' (Howard 2001, as cited in McKay, et al. 2017, p. 184). Howard's statement is emblematic of the symbolic approach to MASs developed by Australian governments, which hold MASs to pose a threat to Australia's coastal sovereign borders because Australia does not expressly select them for entry (Peterie 2016). It is a narrative that has continued through the current Government's appropriately titled 'Operation Sovereign Borders' policy (McKay, el al. 2017, p. 184), about which former Prime Minister Tony Abbott stated '[T]his is our country and we determine who comes here' (Abbott 2016, as cited in Peterie 2017, p. 360). What makes such

statements resonate with the Australian people is a deep-seated historical fear that Australia is a vulnerable container colony with extensive coastal boundaries subject to potential invasion from hostile and racially different outsiders (Perera 2009; Tazreiter 2015).

In addition to defining the Australian state as a cohesive container, political representations of MASs uphold the Westphalian assumption that this container is inhabited by a homogenous polity (Lueck et al. 2015, p. 622). In the 1990s when MASs were framed as a threatening 'Asian other', their exclusion reaffirmed the White settler identity of the Australian polity (McMaster 2002). Since this time researchers have identified a range of grounds on which MASs are differentiated from Australians in order to create the image of a homogenous national polity (Every & Augoustinos 2008; Hodge 2015, p. 129; Leach 2003). For example, Michael Leach (2003) shows how following the 'Children Overboard Incident',[5] MASs were cast as lacking the family values shared by Australians, and Danielle Every and Martha Augoustinos (2008) illustrate that through representations of 'jumping the queue', MASs are signified as unable to share the moral values enshrined in Australia's collective identity. While the grounds of their comparative exclusion vary, the policies applied to MASs continue to 'work to cultivate and maintain citizen and non-citizen subjectivities' (Hodge 2015, p. 129).

The use of MASs to sort populations in Westphalian terms is not limited to the citizen-outsider dichotomy as they are also used to sort and define the 'forms of life' applicable to other mobile populations. MASs are, for example, cast as an illegitimate form of mobility in comparison to migrants arriving in Australia that are deemed to be 'legitimate' (Lippi et al. 2017). This dichotomy separates MASs from other migrants based on their mode of transportation, with the irregular boat travel of MASs used to legally and symbolically distinguish them from plane arrivals, including those who are asylum seekers and treated in a more hospitable fashion (Martin 2015, p. 310). Likewise, MASs are compared to forms of migration that are believed to contribute to Australia's economy, such as skilled and business migration (Stratton 2009). Regular, modern and market-based human movements are accepted by the Australian state because they are symbolised as profitable and occurring through Australia's accepted immigration system. Financially motivated MASs on the other hand are deemed

to be an economic burden to Australia and thus opposed by the state (Lueck, et al. 2015; Stratton 2009). Such framings of MASs in relation to more 'legitimate' and accepted forms of mobility, extends Westphalian principles into the global realm, defining mobile elites that can travel freely without impinging state rights and those who must be constrained in order to defend sovereignty.

A Westphalian dichotomous framing of mobilities is similarly evident in terms of forced migrations. Westphalian sovereignty includes a state obligation to provide hospitality to outsiders and creates a legitimate form of mobility that can be inhabited by forced migrants (Shabani 2007). However, as outlined by Jacques Derrida (2000, p. 25), the type of hospitality practiced by states is highly conditional and requires those requesting it to follow conventions of entry. This aligns to the ethics of hospitality put forward by Immanuel Kant (1970, p. 106) who suggested that hospitality is a two-way and conditional relationship between strangers and locals beginning at the border in which 'the natural right of hospitality, i.e. the right of strangers, does not extend beyond those conditions which make it possible for them to attempt to enter into relations with the native inhabitants.' There are therefore conditions on the appropriate forms of mobility that strangers can use to attain rights to hospitality. For hospitality to be granted, a guest must demonstrate a necessary degree of immobility by stopping to request entry and waiting for an appropriate period so that the host can respond.

This is the type of immobility required for people to possess the 'form of life' of the 'genuine refugee', which has been formalised into a 'correct' refugee journey involving the 'official' UNHCR system and 'the refugee queue' (Everuss 2020; Rowe & O'Brien 2014).[6] Additionally, the hegemonic status of refugee immobility has enshrined the camp as the appropriate space for displaced people (Darling 2017, p. 182). In other words, while refugees are stripped of the 'forms of life' that were embedded in their previous attachments to places, nations, homes and jobs (Bauman 2004, pp. 77-79), they can gain a new humanitarian 'form of life' but only if they engage in the appropriate refugee immobility. This immobility is acceptable because it is seen as occurring on 'Australia's' terms and not diminishing Australian sovereignty. Such framings of asylum mobilities is a way of bringing the mass forced migrations and border

crossings of the contemporary epoch into alignment with the Westphalian assumptions that proper social and political formation is sedentary and that states have an indivisible right and absolute power to control their borders. MASs are represented as failing to engage in the correct form of humanitarian mobility as they are deemed to 'jump the queue' and are subsequently 'bogus asylum seekers' who are naturally rejected by the Westphalian Australian state (Rowe & O'Brien 2014; Tazreiter 2015).

What is common to both the exclusionary policies targeting Indigenous Australians and MASs is that there is a disconnect between the form of sovereignty they materially and symbolically construct. The exclusion of Indigenous Australians and MASs has created an increasingly fluid and mobile Australian state, while at the same time upholding the notion of stagnant Westphalian sovereignty. This aligns with Ann McNevin's (2019, p. 3) statement that the '[m]ethods employed in [Australia's] border policing belie the certainties of international space, even as they are justified with reference to the defence of clearly demarcated sovereign territories.' Indigenous Australians and MASs are respectively represented as nomadic travellers and irregular 'boat people' in order to cast them as deviating from the Westphalian norms of container state and static polity membership; norms that are contravened by the mobile and exclusionary state treatment of these populations.

Conclusion: Exposing the zombie and embracing multiple sovereignties

Through this article competing theories of sovereignty have been analysed and used to examine the expression of political authority in Australia through the exclusion of Indigenous Australians and MASs. It has been shown that the Australian sovereign structures brought to life through exclusion are dynamic, mobile and contested, which accord to contemporary geographical and sociological theorisations of sovereignty as fluid and not strictly tied to stagnant territories inhabited by contained political communities (Agnew 2018; Hindess 2003). Australian sovereignty is materialised by policies that imbue areas of political exclusion and inclusion at the site of mobile bodies, as opposed to geographical boundaries (Everuss 2020). This not only occurred in the original

dispossession of Australia's first nations peoples, but in the ongoing policies that legally and physically exclude both them and MASs, such as the NTER (Macoun 2011; Moreton-Robinson 2009) and 'Operation Sovereign Borders' (Hodge 2015; Peterie 2017). The underlying logic of Australian sovereignty, I have argued, consequently accords with the theories put forward by Agamben; of the defining of the polity and its political identities in relation to those who are deemed unable to sustain those identities and are cast out as *homo sacer*.

However, this has not consigned Westphalian sovereignty to political irrelevance. The key ideas of Westphalian sovereignty—notably that of container societies, geographically demarcated and stable borders, and the notion that settlement pre-exists political action—remain central to Australian politics. I have demonstrated this by showing how Westphalian concepts are incorporated into the sovereign ordering of polity members and *homo sacer*, even though the process through which the ordering is implemented is post-Westphalian. Therefore, Westphalian sovereignty acts as what Beck and Beck-Gernsheim (2002) describe as a 'zombie category', a concept that no longer accurately describes the social phenomenon to which it was once connected but continues to influence how that phenomenon is understood and functions. From the framing of Indigenous Australians as nomadic or settled in inappropriate and uneconomic ways (Clarsen 2015; Prout Quicke & Green 2018), to the defining of MASs as moving deviantly towards Australia (Lippi, et al. 2017; Stratton 2009), Westphalian assumptions about the proper way to inhabit Australian space are used to define the state and its *Homo sacer*.

When the hegemony of Westphalian sovereignty is embraced by state governments in this way it leaves little room for other forms of sovereign authority and political community to be formally acknowledged (Keal 2016). As sovereignties and political communities are unsettled, fluid and overlapping (Agnew 2018; Darling 2017), they create multiple and overlapping 'forms of life' in terms of political identities with associated rights. For instance, across Europe local authorities and civic organisations often offer sanctuary to asylum seekers in contradiction to state policies partly because asylum seekers are seen 'as contributing to the social and cultural life of their "host" communities' (Darling 2017, p. 185). Likewise, Indigenous Australian populations express their political authority by engaging in acts of mobile resistance towards official

state sovereignty and by forming and participating in local community activities (Ellinghaus & Healy 2018; Pitty & Smith 2011; Prout Quicke & Green 2018).

However, these alternate forms of political authority and community are hampered by government insistence on the indivisibility of Westphalian state rights and absolute authority over state polities and territories (Keal 2016). In Australia, the Westphalian denial of Indigenous Sovereignty was recently evident in the Government's rejection of the 'Uluru Statement from the Heart' (Larkin & Galloway 2018). This consensus document from Australia's diverse Aboriginal and Torres Strait Islander communities—which requested constitutional recognition of first nations' unseeded sovereignty alongside the sovereignty of the crown enshrined in an Indigenous voice to Parliament—was rejected outright by the Australian Government who saw it as a degradation of the current Australian State's sovereign authority (Larkin & Galloway 2018). Similarly, Westphalian principles have led (or allowed) politicians to frame the rights of asylum seekers and refugees as a direct challenge to the sovereign power of the government (McKay, et al. 2017), and United Nations' criticism of asylum policies as foreign meddling in Australian affairs (Cox 2015). If Australian state sovereignty was more accurately described as a relational series of movements, instead of a homogenous container with only one possible authority, then alternate and overlapping forms of sovereignty and political rights would pose less of a challenge to the state.

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Acknowledgements

References

Adey, P 2006, 'If mobility is everything then it is nothing: towards a relational politics of (im)mobilities', *Mobilities,* vol. 1, no. 1, pp. 75-94.

Agamben, G 1998, *Homo Sacer: Sovereign Power and Bare Life*, Stanford University Press, Stanford, California.

—— 2000, *Means without end: Notes on politics*, University of Minnesota Press, Minneapolis.

—— 2005, *State of Exception*, University of Chicago Press, Chicago.

Agnew, J 2018, *Globalization and sovereignty: Beyond the territorial trap*, Rowman & Littlefield, Lanham, Maryland.

Altman, J & Klein, E 2018, 'Lessons from a basic income programme for Indigenous Australians', *Oxford Development Studies,* vol. 46, no. 1, pp. 132-46.

Australian Refugee Council 2019, 'How many people seeking asylum have come by boat?', viewed 1 July, 2019, https://www.refugeecouncil.org.au/asylum-boats-statistics/

Banner, S 2005, 'Why Terra Nullius? Anthropology and property law in early Australia', *Law and History Review,* vol. 23, no. 1, pp. 95-131.

Barnsley, I & Bleiker, R 2008, 'Self-determination: From decolonization to deterritorialization', *Global Change Peace and Security,* vol. 20, no. 2, pp. 121-36.

Bauman, Z 2004, *Wasted Lives: modernity and its outcasts*, Polity Press, Cambridge.

Beck, U 2001, 'Interview with Ulrich Beck', *Journal of Consumer Culture,* vol. 1, no. 2, pp. 261-77.

—— 2005, 'The cosmopolitan state: redefining power in the global age', *International Journal of Politics, Culture, and Society,* vol. 18, no. 3-4, pp. 143-59.

—— 2007, 'The cosmopolitan condition: Why methodological nationalism fails', *Theory, Culture & Society,* vol. 24, no. 7-8, pp. 286-90.

Beck, U & Beck-Gernsheim 2002, *Individualization*, Sage, London.

Bigo, D 2008, 'Detention of Foreigners, States of Exception, and the Social Practices of Control of the Banopticon', in PK Rajaram & C Grundy-Warr (eds), *Borderscapes: hidden geographies and politics at territory's edge,* University of Minnesota Press, Minneapolis.

Burke, A 2002, 'The perverse perseverance of sovereignty', *Borderlands journal,* vol. 1 no. 2.

Burridge, A, Gill, N, Kocher, A & Martin, L 2017, 'Polymorphic borders', *Territory, Politics, Governance,* vol. 5, no. 3, pp. 239-51.

Clarsen, G 2015, 'Introduction: Special Section on Settler-Colonial Mobilities', *Transfers,* vol. 5, no. 3, p. 41-48.

—— 2017a, '"Australia – Drive It Like You Stole It": automobility as a medium of communication in settler colonial Australia', *Mobilities*, vol. 12, no. 4, pp. 520-533.

—— 2017b, 'Revisiting "Driving While Black": Racialized Automobilities in a Settler Colonial Context', *Mobility in History,* vol. 8, no. 1, pp. 51-60.

Coddington, K 2019, 'Fractures in Australia's Asia-Pacific border continuum', in K Mitchell, R Jones & J Fluri (eds), *Handbook on Critical Geographies of Migration*, Edward Elgar, Cheltenham, UK.

Conversi, D 2016, 'Sovereignty in a changing world: From Westphalia to food sovereignty', *Globalizations,* vol. 13, no. 4, pp. 484-98.

Cox, L 2015, 'Tony Abbott: Australians "sick of being lectured to" by United Nations, after report finds anti-torture breach', *The Sydney Morning Herald*, 9 March 2015, viewed 5 November 2019,

https://www.smh.com.au/politics/federal/tony-abbott-australians-sick-of-being-lectured-to-by-united-nations-after-report-finds-antitorture-breach-20150309-13z3j0.html.

Crock, M, Saul, B & Dastyari, A 2006, *Future Seekers II*, The Federation Press, Sydney.

Darling, J 2017, 'Forced migration and the city: Irregularity, informality, and the politics of presence', *Progress in Human Geography,* vol. 41, no. 2, pp. 178-98.

Dauvergne, C 2004, 'Making People Illegal', in P Fitzpatrick & P Tuitt (eds), *Critical beings: Law, nation and the global subject*, Ashgate, Aldershot.

—— 2008, *Making people illegal: What globalization means for migration and law*, Cambridge University Press, Cambridge, UK.

Derrida, J 2000, *Of Hospitality*, Stanford University Press, Stanford, California.

Dickson, A 2015, 'Distancing Asylum Seekers from the State', *Australian Geographer,* vol. 46, no. 4, pp. 437-54.

Earnest, S 2019, 'Sovereignty as a scalar process', *Political Geography,* vol. 73, pp. 92-102.

Ellinghaus, K & Healy, S 2018, 'Micromobility, Space, and Indigenous Housing Schemes in Australia after World War II', *Transfers*, vol. 8, no. 2, pp. 44-66.

Everuss, L 2020, 'Mobile sovereignty: The case of "boat people" in Australia', *Political Geography*, vol. 79, https://www.sciencedirect.com/science/article/pii/S096262981930232X

Every, D & Augoustinos, M 2008, ''Taking advantage'or fleeing persecution? Opposing accounts of asylum seeking', *Journal of Sociolinguistics,* vol. 12, no. 5, pp. 648-67.

Glanville, L 2011, 'The antecedents of 'sovereignty as responsibility'', *European Journal of International Relations,* vol. 17, no. 2, pp. 233-55.

Gordon, M 2007, 'The 'Pacific Solution'', in D Lusher & N Haslam (eds), *Yearning to Breathe Free*, The Federation Press, Sydney.

Hardt, M & Negri, A 2001, *Empire*, Harvard University Press, Cambridge, Massachusetts.

Herold, N, Kortt, MA & Dollery, B 2016, 'If it ain't broke: An evaluation of the Australian asylum program under Rudd and Gillard', *Economic Papers: A journal of applied economics and policy,* vol. 35, no. 3, pp. 230-44.

Hindess, B 2003, 'Responsibility for others in the modern system of states', *Journal of Sociology,* vol. 39, no. 1, p. 23.

Hinkson, M & Fullenwieder, L 2019, 'Imaging crisis in Indigenous Australia and Canada', *Visual Studies,* vol. 34, no. 2, pp. 164-81.

Hodge, P 2015, 'A grievable life? The criminalisation and securing of asylum seeker bodies in the 'violent frames' of Australia's Operation Sovereign Borders', *Geoforum,* vol. 58, pp. 122-31.

Hollifield, J 2004, 'The Emerging Migration State', *International Migration Review,* vol. 38, no. 3, pp. 885-912.

Jones, R, Johnson, C, Brown, W, Popescu, G, Pallister-Wilkins, P, Mountz, A & Gilbert, E 2017, 'Interventions on the state of sovereignty at the border', *Political Geography,* vol. 59, pp. 1-10.

Kant, I 1970, *Kant: Political Writings*, Cambridge Universtiy Press, Cambridge.

Keal, P 2016, 'Indigenous Sovereignty', in T Jacobsen, C Sampford & R Thakur (eds), *Re-envisioning Sovereignty: The End of Westphalia?*, Routledge, Oxon, pp. 288-301.

Klein, E 2016, 'Neoliberal subjectivities and the behavioural focus on income management', *Australian Journal of Social Issues,* vol. 51, no. 4, pp. 503-23.

Kurz J 2012, '(Dis)locating Control: Transmigration, Precarity and the Governmentality of Control' *BEHEMOTH-A Journal on Civilisation*, vol. 2, no. 1, pp. 30-51.

Larkin, D & Galloway, K 2018, 'Uluru Statement from the Heart: Australian Public Law Pluralism', *Bond Law Review,* vol. 30, p. 335.

Leach, M 2003, '"Disturbing practices": dehumanizing asylum seekers in the refugee" Crisis" in Australia, 2001-2002', *Refuge,* vol. 21, no. 3, pp. 25-33.

Levy, D & Sznaider, N 2006, 'Sovereignty transformed: a sociology of human rights', *The British journal of sociology,* vol. 57, no. 4, pp. 657-76.

Lillie, N 2010, 'Bringing the offshore ashore', *International Studies Quarterly,* vol. 54, no. 3, pp. 683-704.

Lippi, K, McKay, FH & McKenzie, HJ 2017, 'Representations of refugees and asylum seekers during the 2013 federal election', *Journalism*, pp. 1-19.

Lueck, K, Due, C & Augoustinos, M 2015, 'Neoliberalism and nationalism: Representations of asylum seekers in the Australian mainstream news media', *Discourse & society,* vol. 26, no. 5, pp. 608-29.

Macoun, A 2011, 'Aboriginality and the Northern Territory intervention', *Australian Journal of Political Science,* vol. 46, no. 3, pp. 519-34.

Martin, G 2015, 'Stop the boats! Moral panic in Australia over asylum seekers', *Continuum,* vol. 29, no. 3, pp. 304-22.

McKay, FH, Hall, L & Lippi, K 2017, 'Compassionate deterrence: A Howard government legacy', *Politics & Policy,* vol. 45, no. 2, pp. 169-93.

McMaster, D 2002, *Asylum Seekers: Australia's Response to Refugees,* Melbourne University Press, Victoria.

McNevin, A 2013, *Contesting citizenship: Irregular migrants and new frontiers of the political,* Columbia University Press,

—— 2019, 'Mobility and its discontents: Seeing beyond international space and progressive time', *Environment and Planning C: Politics and Space,* DOI: 10.1177/2399654419871966

Mendes, P 2013, 'Compulsory income management: a critical examination of the emergence of conditional welfare in Australia', *Australian Social Work,* vol. 66, no. 4, pp. 495-510.

Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Act 2013 (Cth)

Migration Legislation Amendment (Regional Processing and other Measures) Act 2012 (Cth)

Minca, C 2006, 'Giorgio Agamben and the New Biopolitical *Nomos*', *Geografiska Annaler: Series B,* vol. 88, no. 4, pp. 387-403.

Moreton-Robinson, A 2009, 'Imagining the good indigenous citizen: Race war and the pathology of patriarchal white sovereignty', *Cultural Studies Review,* vol. 15, no. 2, pp. 61-79.

Mountz, A 2011, 'Specters at the port of entry: Understanding state mobilities through an ontology of exclusion', *Mobilities,* vol. 6, no. 3, pp. 317-34.

O'Sullivan, M 2016, 'The ethics of resettlement', *The International Journal of Human Rights,* vol. 20, no. 2, pp. 241-63.

Ong, A 2006, *Neoliberalism as Exception*, Duke University Press, Durham.

Owens, P 2009, 'Reclaiming 'bare life'?: Against Agamben on refugees', *International Relations,* vol. 23, no. 4, pp. 567-82.

Palombo, L 2009, 'Mutations of the Australian camp', *Continuum: Journal of Media & Cultural Studies,* vol. 23, no. 5, pp. 613-27.

Pascoe, B 2018, *Dark Emu: Aboriginal Australia and the birth of agriculture*, Magabala Books,

Perera, S 2009, *Australia and the Insular Imagination*, Palgrave Macmillan, New York.

Peterie, M 2016, '"These Few Small Boats": Representations of Asylum Seekers During Australia's 1977 and 2001 Elections', *Journal of Australian Studies,* vol. 40, no. 4, pp. 433-47.

—— 2017, 'Docility and desert: Government discourses of compassion in Australia's asylum seeker debate', *Journal of Sociology,* vol. 53, no. 2, pp. 351-66.

Phillips, J & Spinks, H 2013, *Boat arrivals and boat "turnbacks" in Australia since 1976,* Australian Parliamentary Library, Parliament of Australia, Canberra.

Phillips, J 2017, *Boat arrivals and boat "turnbacks" in Australia since 1976,* Australian Parliamentary Library, Parliament of Australia, Canberra.

Pitty, R & Smith, S 2011, 'The indigenous challenge to Westphalian sovereignty', *Australian Journal of Political Science,* vol. 46, no. 1, pp. 121-39.

Proudfoot, F & Habibis, D 2015, 'Separate worlds: A discourse analysis of mainstream and Aboriginal populist media accounts of the Northern Territory Emergency Response in 2007', *Journal of Sociology,* vol. 51, no. 2, pp. 170-88.

Prout Quicke, S & Green, C 2018, '"Mobile (nomadic) cultures" and the politics of mobility', *Transactions of the Institute of British Geographers,* vol. 43, no. 4, pp. 646-60.

Rajaram, KP & Grundy-Warr, C 2004, 'The Irregular Migrant as Homo Sacer: Migration and Detention in Australia, Malaysia, and Thailand', *International Migration,* vol. 42, no. 1, pp. 33-64.

Rowe, E & O'Brien, E 2014, '"Genuine" refugees or illegitimate "boat people"', *Australian Journal of Social Issues,* vol. 49, no. 2, pp. 171-93.

Schmitt, C 1985, *Political theology: Four chapters on the concept of sovereignty*, University of Chicago Press, Chicago.

Shabani, OAP 2007, 'Cosmopolitan justice and immigration', *European journal of social theory,* vol. 10, no. 1, pp. 87-98.

Sheller, M 2017, 'From spatial turn to mobilities turn', *Current sociology,* vol. 65, no. 4, pp. 623-39.

—— 2018, *Mobility Justice: The politics of movement in an age of extremes*, Verso, London and New York.

Sherrell, H 2019, *Migration—permanent and temporary visa trends*, Parliamentary Library of Australia, Canberra.

Stratton, J 2009, 'Uncertain lives: migration, the border and neoliberalism in Australia', *Social Identities,* vol. 15, no. 5, pp. 677-92.

Tazreiter, C 2015, 'Lifeboat politics in the Pacific: Affect and the ripples and shimmers of a migrant saturated future', *Emotion, Space and Society,* vol. 16, pp. 99-107.

Van Krieken, R 2000, 'From Milirrpum to Mabo: The High Court, Terra Nullius and moral enterpreneurship', *UNSWLJ,* vol. 23, p. 63.

Watson, I 2014a, *Aboriginal peoples, colonialism and international law: Raw law*, Routledge,

—— 2014b, 'Re-centring First Nations knowledge and places in a terra nullius space', *AlterNative: An International Journal of Indigenous Peoples,* vol. 10, no. 5, pp. 508-20.

Watson, N 2009, 'Of Course It Would Not be Done in Dickson! Why Howard's Battlers Disengaged from the Northern Territory Emergency Response', *Borderlands e-journal,* vol. 8, no. 1, pp. 1-20.

—— 2011, 'The Northern Territory Emergency Response—Has It Really Improved the Lives of Aboriginal Women and Children?', *Australian Feminist Law Journal,* vol. 35, no. 1, pp. 147-63.

Yeatman, A 2003, 'Global ethics, Australian citizenship and the 'boat people'–a symposium', *Journal of Sociology,* vol. 39, no. 1, pp. 15-22.

Notes

[1] In this article I use the term Indigenous Australians to refer to Australian Aboriginal and Torres Strait Islander Peoples.

[2] It is a central tenet of the 'new mobilities paradigm' that movement is differential and relational, and that mobilities are inherently underpinned, made possible and create immobilities. This is particularly the case for the mobilities of populations as the movement of some, including the hyper mobile 'kinetic elite', are made possible by the immobilities of other. For this reason, the term (im)mobilities is used to describe not only the movement of people, but also their fixity and stagnation, which are always part of mobility relationships and networks. For further discussion of this see (Adey 2006; Ellinghaus & Healy 2018, p. 45).

[3] MASs peaked in 2012 with 17,204 and 2013 with 20,587 arrivals respectively. However, these years are an anomaly, with total numbers only going over 3,000 per year 6 times between 1976 and 2019, and the number of arrivals more commonly in the low hundreds (Phillips 2017; Australian Refugee Council 2019).

[4] The Tampa Affair occurred when the Australian Government refused entry and ordered military troops to board and control a Norwegian Freighter Vessel, the *MV Tampa*, that had rescued MASs.

[5] The 'Children Overboard' Incident occurred in October 2001 when the Government

misreported that MASs had purposefully thrown their children into the water to force their rescue by an Australian vessel.

[6] The refugee queue does not exist 'as once the UNHCR has granted refugee status to an individual there is no orderly process of resettlement based solely on one's place in a "queue"' (Rowe and O'Brien, 2014, p.182).