Between governance and sovereignty: remaking the borderscape to Australia's north

Brett Neilson

Abstract

'Tough but humane'—this was the political sound bite offered in October 2009 by Australia's Prime Minister to describe his government's approach to migrants attempting to reach Australia by boat. The pronouncement foreshadowed a series of events that would reshape the borderscape to Australia's north. Following the fate of migrants on board two boats, the *Oceanic Viking* and *Jaya Lestari 5*, this paper argues that these changes need to be understood in the context of a general fragmentation of normativity, where the gaps, discrepancies and differences between legal orders are at once uncertain and contested. Of particular interest is the role that the gaps and discrepancies created by borders play in the production of subjectivity. Exploring this problematic implies two claims. First, borders are at once spaces of control and spaces of excess, at once sites for the restriction of mobility and sites of struggle. Second, borders are social institutions involved in producing the very conditions for governance. Understanding the relation between these two claims means analysing how borders seek to convert ungovernable global flows into governable mobile subjects.

'Tough but humane'—this was the political sound bite offered in October 2009 by former Australian Prime Minister Kevin Rudd to describe his government's approach to migrants attempting to reach Australia by boat. The pronouncement foreshadowed a series of events that would reshape the borderscape to Australia's north. The story involves two vessels: the *MV Oceanic Viking* and the *KM Jaya Lestari 5*. The first is an Australian customs vessel which, at Indonesia's request, rescued 78 Tamil migrants from a distressed craft in Indonesia's Search and Rescue Region. These migrants were transported to Bintan Island near Singapore, part of Indonesia's territory that hosts an Australian-funded detention centre. At that point,

they refused to disembark. A standoff of over two weeks was punctuated with hunger strikes, diplomatic tension and threats to forcibly remove the migrants from the craft. Eventually it became clear that neither Australia nor Indonesia was prepared to deploy violence. The incident was resolved when Australia offered to fast track the asylum applications of the migrants on the boat.

The *KM Jaya Lestari 5* is a ten-metre boat that was carrying some 254 Tamil migrants, 109 of them already UNHCR recognised refugees, when it was intercepted in Indonesian waters at Australia's request. The Indonesian Navy towed the vessel to the port of Merak, where again the Tamils refused to disembark. The standoff lasted for over six months. During this time the migrants were offered only limited food and medical care. About 40 of them escaped, several fell ill and one died before the impasse was resolved. Although Sri Lanka claimed to have identified former members of the Tamil Tigers aboard the boat and Indonesia threatened to remove the migrants, such violent intervention never occurred. Eventually the Tamils disembarked when UN officials agreed to begin the process of resettling them to a third country. They were transported to the same detention centre on Bintan Island that the *Oceanic Viking* migrants had passed through. Just ten days before, the Australian government had suspended the processing of all new asylum claims from Sri Lankan and Afghan arrivals. It was as if the plight of the *Jaya Lestari* migrants had been generalised. All undocumented arrivals from these countries would be forced to wait months before their claims could be processed.

Three months later Australia removed the processing suspension for Sri Lankan migrants on advice from the United Nations that the country was safe to accept the return of those who had fled. By that stage, the Australian Prime Minister had changed, largely as a result of the electoral prospects of Rudd, whose waning popularity was partly due to the public impression that he was soft on unauthorised boat arrivals. One of the first announcements of the new Prime Minister Julia Gillard was the recommencement of offshore processing for migrants intercepted on their way to Australia. Her plan to set up a 'regional processing centre' in East Timor was a reworking of a failed proposal by the British government in 2003 to establish 'transit processing centres' outside the European Union.[1] Although this proposal was rejected by several EU member states, the notion of 'external processing' quickly became a mainstay of European migration management.[2] Importantly, the British plan was inspired by the so-called Pacific Solution instituted by the previous Australian government in 2001.[3] Gillard specified that the new 'regional processing centre' would be established in a country that had signed the United Nations Convention Relating to the Status of Refugees. This ruled out the reopening of the Australian-funded centre on the Pacific island of Nauru, which had been an important part of the Pacific Solution. But while Gillard suggested East

Timor as a possible location, that country seemed reluctant to accept the plan. Meanwhile, Nauru announced its intention to sign the UN convention.

These events signal an ongoing remaking of the borderscape that connects Australia to the Asia-Pacific. While it is unclear how this process will unfold, it is possible to observe a couple of consistent aspects in the methods of border management being deployed in this part of the world. First is the process of externalisation, which involves the displacement of border control and its technologies beyond the territorial edges of formally unified political spaces. Whether this involves the establishment of offshore detention facilities, the interception and diversion of vessels, co-operation in deportation procedures, or the surveillance of routes and so-called carriers of migration, the defining aspect of externalisation is the involvement of third countries in the creation and management of the border regime. Such developments are by no means restricted to Australia's north but have their correlates in other regions. The policing of the 'external frontiers of Europe' involves similar strategies of intercepting and detaining migrants in territories adjacent to the European space. In this instance, as in the Australian case, there have emerged new forms of spatial organisation in which varying degrees of internality and externality substitute and blur the clear-cut distinction between inside and outside that was produced by the traditional border of the nation-state. The concept of the borderscape, introduced by Suvendrini Perera and others in 2007, describes the simultaneous expansion and contraction of political spaces produced by such measures as well as the 'multiple resistances, challenges and counterclaims' to which they give rise. Borderscapes are 'shifting and conflictual' zones in which 'different temporalities and overlapping emplacements as well as emergent spatial organisations' take shape.[4] Above all, they facilitate the filtering of migration flows by creating waiting zones, funnels and bottlenecks through which the timing, tempo and temporality of migration can be more precisely regulated.

This aspect of delay or temporal control of migration is the second feature of the emerging border regime that needs to be remarked. Whether it involves processes of administrative detention or the creation of stand-offs such as those that occurred on the *Oceanic Viking* and the *Jaya Lestari*, the strategy of delay is pivotal to regulating the timing and speed of migratory movements. To explain this phenomenon critical writers on migration have introduced the concept of 'temporal borders', which while not necessarily coextensive with spatial borders serve to reconfigure, strengthen or attenuate them.[5] Often temporal borders produce an interval of time in which procedures of selection and filtering can be executed, either in entirely technocratic ways or through violent interventions. On other occasions, they result from jurisdictional differences in which the gaps and discrepancies between legal orders become uncertain and contested. Temporal borders are an important feature of the migration regime in the making. Combined with the system of externalisation, they remake the border as a mobile and tension-ridden space

in which the unstable line between inside and outside, or between inclusion and exclusion, is tested and blurred.

This paper explores the implications of these strategies of externalisation and temporal delay for the changing configurations of governance and sovereignty that take shape at the border to Australia's north. Adapting the work of German legal theorist Gunther Teubner, I argue that these developments should be understood in the context of a general fragmentation of normativity, where a multiplicity of societal constitutions emerge outside of institutionalised politics and normative orders can no longer be firmly anchored to systems of law, either national or international.[6] It is important to understand that borders no longer exist only at territory's edge but have proliferated in '*the middle of political space*'.[7] Cities in particular are densely crisscrossed with borders, often policed by deputised agents assisted by new kinds of software infrastructures.[8] As the above discussion illustrates, even international borders tend no longer to exist as lines passing between territories but as shifting and conflictual zones that reorganise space and time in ways that can trouble the forms of political unity and territorial integrity they are supposedly established to protect. A primary concern of this paper is the role that this troubling plays in the production of subjectivity. Exploring this problematic implies two claims. First, borders are at once spaces of control and spaces of excess, at once sites for the restriction of mobility and sites of struggle. Second, borders are social institutions involved in producing the very conditions for governance. Understanding the relation between these two claims means analysing how borders seek to convert ungovernable global flows into governable mobile subjects.

Can the border be governed?

Let me return to the credo with which I opened this discussion: tough but humane. Although the fortunes of the politician that first used it have subsided, the formula is still effective when it comes to describing the changing means of policing the borderscape to Australia's north. Presumably toughness consists in the forceful patrolling of borders—that is, in the interception of boats and the system of detention. Humaneness, by contrast, would seem to suggest a lack of violent intervention—for instance, the reticence to use military force to remove protesting migrants from boats. More importantly, humaneness implies a certain humanitarianism that might be claimed by policing borders according to UN protocols or observing principles of human rights. That Australia's current Prime Minister is at pains to emphasise that offshore detention should involve third countries that have signed the UN Convention Relating to the Status of Refugees attests the ongoing role of such humanitarianism in border policing. The formula 'tough but humane' registers a process that seems to be happening to borders across the world—they are both *hardening and softening at the same time*.[9] Devices and practices of border reinforcing are increasingly shaping the conditions under which border crossing is possible and actually practised and experienced.

It would be a mistake to correlate toughness with border reinforcing and humaneness with border crossing. These attitudes or dispositions are operative in both episodes of border reinforcing and border crossing. Toughness is a quality associated not only with the violence of interceptions and border reinforcement but also with the forced border crossing implicit in practices of deportation and *refoulement*.[10] Humaneness, by contrast, is a quality associated with the international system of human rights, which plays an important role in migration management. Human rights provide the dominant frame for negotiating questions of borders and migration in the world today. This is particularly the case within particular activist circles, the NGO sector and international and intergovernmental organisations such as the United Nations or the International Organization for Migration. To analyse the nexus of human rights and migration management means recognising that human rights play just as much a role in establishing the conditions under which border crossing can be blocked or slowed as those under which it is facilitated.

Consider the words of Prime Minister Gillard as she announced the lifting of the processing ban for Sri Lankan migrants on 6 July 2010. Citing a UNHCR report that 'confirmed the improved human rights and security situation in Sri Lanka', she announced that the Australian government would follow the report's directive by beginning to process asylum claims from Sri Lankans on a case-by-case basis. This was followed by:

> [A] message for people in Sri Lanka who might be considering attempting the journey to Australia: do not pay a people smuggler. Do not risk your life, only to arrive in Australian waters and find that you are far, far more likely than anything else to be quickly sent home by plane.[11]

Here a stance of respect for human rights and adherence to UN protocols provides the very condition by which the Australian commitment to the interception and return of unauthorised migrants can be reaffirmed to a national audience and presented as a warning to potential migrants.

A partial understanding of this approach to border control can be obtained by mobilising the category of governance. If the moral practice of humanitarianism is viewed as one of the principal governmental regimes pertaining to migration management, it becomes possible to analyse its connection to other systems of governance operative at the border, whether they are transnational or national in scale, private or public in character. Borders are becoming increasingly governmentalised or entangled with governmental practices that are not only bound to the sovereign power of nation-states but also flexibly linked to market technologies and other systems of measurement and control. They are sites where multiple governmental actors come into play.

Among these actors are NGOs and intergovernmental organisations. While many of these work across a variety of fields, the majority acquire specialist orientations that lead them to confine their actions to distinct areas of intervention such as health, education, religion, labour, policy, crime or media. In this respect they acquire a relative autonomy, leading to the creation of social subsystems that tend to escape territorial confines and constitute themselves globally. Other actors active at the border include police, military, customs and intelligence agencies. These usually fall under state control, but they can also acquire a degree of autonomy through co-operation agreements or the assumption of responsibility for co-ordinating such agreements. The Warsaw-based organisation Frontex, which co-ordinates the co-operation between European Union member states in the field of external border management, describes itself as 'a *community body* having *legal personality* and *operational* and *budgetary autonomy*'.[12] In countering the movements of migrants and the operations of so-called carriers of migration, agencies such as this, or at least their operatives, tend to enter into systematic and symbiotic networks with clandestine actors, leading them to further extend their powers beyond territorial borders and democratic control. There is also a tendency for the lines between police, military, customs and intelligence agencies to blur. In Indonesia the police and the military were only separated as recently as 2000 and are still under joint command in some parts of the country. Australian police work closely with military Special Forces as well as with agencies such as the Defence Signals Directorate (DSD) and the Defence Imagery and Geospatial Organisation (DIGO) to intercept migration flows.[13]

Added to this panoply of agencies are also the many private organisations involved in the securitisation of the border. These include transnational security providers such as the firm G4S, which is contracted by the Australian government to run detention centres and immigration transit accommodation. The addition of such agencies to the other actors operative on the border means that private regimes of governance also come to bear upon migration management. Teubner notes the 'rapid quantitative growth' of such private governmental regimes and their development of 'a strong "norm hunger", an enormous demand for regulatory norms, which cannot be satisfied by national or international institutions'.[14] In the case of G4S, this takes the form of corporate governance and social responsibility protocols that cover areas such as human rights, the environment, local communities, business practices, accounting standards, labour relations and diversity and inclusion.[15] What needs to be noted is the way that these global private regimes 'make use of their own sources of law, which lie outside the spheres of national law-making and international treaties'.[16] Teubner observes the emergence of 'autonomous fragments of society, such as the globalised economy, science, technology, the mass media, medicine, education and transport'.[17] Encompassing not only private regimes but a whole host of civil society institutions, NGOs and private–public actors,

these 'create a sphere for themselves in which they are free to intensify their own rationality without regard to other social systems or to their natural or human environment'.[18] The border is a site where these regimes often come into sharp conflict with each other as well as entering into various degrees of discord with state agencies, intergovernmental and international organisations and the movements of migrants themselves.

Approaching the border in this way allows a greater understanding of the conflicts, struggles and stalemates that characterise contemporary border politics than a perspective grounded in either state legal rationalities or international law. In cases such as those involving the *Oceanic Viking* and *Jaya Lestari 5*, the precedents of national and international law tell us little about the reasons for the impasses. As one legal expert explained during the *Oceanic Viking* standoff, 'international law is silent on who has responsibility for disembarking the asylum seekers' from the vessel.[19] The situation on board the *Oceanic Viking* exposed the 'porous norms and mechanisms of international law'.[20] Australia was obliged to conduct a rescue at sea but, as a signatory to the UN Refugee Convention, it was also obliged not to return migrants to situations that might result in *refoulement*. This led to disagreement as to whether an agreement with Indonesia, which is not a party to the Convention, was permitted.[21] In the instance of the *Jaya Lestari*, an Indonesian vessel stopped in Indonesian waters, the role of Australia in requesting the interception raised questions about the country's interest and responsibility for the people on board. These concerns were heightened with the signing during the standoff of an MOU between Australia and Indonesia regarding collaboration on 'people smuggling' and human trafficking. The role of Australia in funding detention centres in Indonesia through contributions to the International Organization for Migration (IOM) also sparked claims for the country's complicity in the migration control regimes operating across the Indonesian space.[22] Such international and legal quandaries, while contributing to the overall context surrounding the migrants' refusal to leave the boats, do not explain the motivations or reasons for the standoffs.

Foremost in accounting for the delays must be the actions of migrants themselves. The decision of both groups to stay onboard the boats was not a passive reaction to changing circumstances but a deliberate and strategic act of refusal that confused and flustered both nation-states and international bodies. Importantly, the actions on board the *Oceanic Viking* and *Jaya Lestari* were interrelated. Due to the migrants' use of mobile phones and laptops, the Tamils on board the *Jaya Lestari* were able to learn of the deal brokered for those on board the *Oceanic Viking*. This tightened their resolve to stay on the vessel. As Sanjeev 'Alex' Kuhendrarajah, the controversial figure who emerged as the spokesperson for the *Jaya Lestari* passengers during the first part of the standoff, declared: 'We just want the same deal as the people on the *Oceanic Viking* … We are not leaving until that happens. Why would we get off?'[23] Despite the legal discrepancies introduced by the different

jurisdictions in which the vessels were registered and the different locations at which the migrants were initially intercepted, the demands made by the people on board the two craft were similar—both refused to disembark in Indonesia or return to Sri Lanka. The two groups of migrants also employed similar methods of protest and publicity, including hunger strikes, suicide threats, drawing attention to the plight of children and speaking to the media when possible. These were properly political actions carried out in excess of the evolving system of migration management. They were also productive of a mobile and plural subjectivity that embodied the tensions, violence and struggles that mark contemporary border regimes.

It is important not to ignore the differences between the two cases. In each instance there were specificities of time, geography and negotiation that came to bear. In Merak, for instance, access to the boat on the part of the UNHCR and the IOM was restricted by the Indonesian authorities.[24] About one month into the standoff the IOM withdrew altogether, citing fears that their staff would be taken hostage by the people on the boat.[25] Funded by Australia to provide welfare and assistance to asylum seekers, claims emerged that the IOM was deliberately withholding food, medicine and other necessary materials in an attempt to force the migrants from the boat.[26] At one point, a Canadian and two Australian refugee advocates who were attempting to meet with the people on the *Jaya Lestari* were deported from Indonesia.[27] Complications were introduced by the revelation in the Sri Lankan media that 'Alex' Kuhendrarajah was not, as he had claimed, a businessman with a MBA, but an ex-Toronto gang member who had been deported from Canada.[28] After 'Alex' left the boat in March 2010 the endgame began. Thirty-six men fled the vessel in mid-April when they received the news that the Australian government had suspended processing claims for Sri Lankan and Afghan asylum seekers.[29] Within a week, the remaining migrants left the boat without resistance when Indonesian authorities intervened with promises that the UNHCR would begin their resettlement in third countries.[30]

In the case of the *Oceanic Viking*, an 'independent' negotiator, Paris Aristotle from the Victorian Foundation for Survivors of Torture, played a key role in mediating between the migrants and the Australian and Indonesian governments.[31] These negotiations occurred against the backdrop of talks between the Australian and Indonesian foreign ministries regarding the vessel's security clearance to remain in Indonesian waters, surveillance of the boat by the Indonesian military, scrutiny of Australia's externalised immigration policies by groups such as Amnesty International and Human Rights Watch, strained relations between Indonesian and Australian security agencies, statements from the Indonesian Department of Foreign Affairs that the country would not become a 'transit place' for 'illegal migrants', and threats from the governor of Indonesia's Riau Islands not to allow the migrants to disembark in the province.[32] Upon resolution of the situation, the Australian government issued a letter to the migrants promising, among

other things, the assistance of Australian officials with UNHCR processing, the assistance of the Red Cross in tracing family members, and continued contact with Paris Aristotle during processing and resettlement.[33] While in this case, as in that of the *Jaya Lestari*, the forced removal of the migrants from the vessel was a relatively straightforward military proposition, it is necessary to track how government agencies (including police, customs, intelligence, diplomatic corps and military), NGOs, intergovernmental and international organisations, activists and media all sought to influence the situation. The political refusal of the migrants to disembark the vessels was the trigger that activated these diverse agencies. With no authority in sight to undertake the co-ordination of the state and social fragments at play, the resulting impasses are best understood as the effects of collisions between various governmental actors.[34] A certain confusion and deadlock can follow from the fragmentation of normative orders and their subjection to uncertainties of jurisdiction and location. The border begins to appear ungovernable or, perhaps more accurately, the transnational flows that broach the border cannot be brought under immediate control.

The resolution to these situations emerges not through a central power that issues a verdict or directive but by means of loose connections that are negotiated between the governmental actors involved. These often involve selective processes of networking that strengthen already existing factual networks between the various parties. Clearly there are situations in which these already existing linkages are strong, and in these cases borders tend to operate efficiently. But in those circumstances where conflicts ensue, the mediation between these relatively autonomous systems takes time to unfold. Teubner argues that the question of human rights needs to be recast as one about how these boundary conflicts themselves impinge upon the rights of groups or individuals rather than one about the violation of rights by specific legal personalities. As there is no paramount court for these conflicts, they 'can only be solved from the viewpoint of one of the conflicting regimes', for example when 'the normative principles of one sector' is 'brought into the other's own context as a limitation'.[35] For Teubner, the attempt to confront 'the human rights problem' using the resources of law is an 'impossible project'.[36] The 'justice of human rights can … at best be formulated negatively. It is aimed at removing unjust situations, not creating just ones'.[37]

Returning to the questions of externalisation and temporal borders, there is a need to recognise that human rights do not provide 'horizontal effects' that transfer guarantees of freedom between different sectors. The international system of human rights is only one governmental regime among others operative at the border. In some cases it wins out, effectively providing a limiting context for other regimes. In other instances it is disregarded or sidelined. To claim that borders are becoming increasingly governmentalised is to acknowledge this fact. As Didier Bigo comments,

> [D]iscourses concerning the human rights of asylum seekers are de facto part of a securitisation process if they play the game of differentiating between genuine asylum seekers and illegal migrants, helping the first by condemning the second and justifying border controls.[38]

Such a realisation is crucial for any analysis that seeks to explain how borders convert ungovernable global flows into governable mobile subjects. If, as Foucault and his followers argue, the articulation of power through multiple regimes of governance is an attribute of the contemporary world, it is necessary to interrogate the role of human rights in this arrangement of power. It is also important to ask how this governmentalisation of power intersects the transformations of sovereignty. Far from being a site where sovereign logics fall away, the border is a space where sovereign and governmental powers interact. An understanding of this interaction must inform the critical debate about the role of borders and border struggles in the production of subjectivity.

Logistics of the border

To speak of the governmentalisation of the border is not merely to highlight the conflictual interaction of governmental regimes in situations where the border has been highly securitised. It is also necessary to account for the regular operation of migration programs, visa systems and the like. While there have always been bureaucratic means of filtering migration flows and establishing hierarchical statuses and degrees of informality in labour markets, these mechanisms are becoming increasingly fine-tuned. We can talk about a logistics of the border in this sense. On the one hand, the border serves to filter and create efficiencies in the circulation of people and things. On the other hand, logistics calibrates and co-ordinates movements across different borders, taking into account the varying conditions that apply across them. The aim of logistics is not to eliminate these differences but rather to work with them. Gaps, discrepancies and governmental conflicts become the parameters from which efficiencies are produced.

In the case of Australia, such logistical operations are evident in refinements to the country's points-based migration system, which involve attempts to correlate the entry of highly skilled migrants with statistically constructed shortages in the national labour market. Most recently, this has involved adjustments to skilled migration programs that raise the bar for international students who seek to obtain permanent residency.[39] Although points-based migration systems have been present in Canada and Australia since the 1970s, their recent diffusion to countries such as Britain and Germany exhibits the growing desire of 'countries of destination' to attune ever more finely flows of migrants to their real or imaginary economic and social needs. The border regime described by the formula 'tough but humane' must be understood both in connection to these transnational developments and to the evolution of border policing practices between various Australian, Indonesian, international, intergovernmental and nongovernmental

agencies. Far from being merely a system of exclusion, it involves processes of differential inclusion for the selective filtering of migrants according to various economic, social and humanitarian protocols.[40] Externalisation and temporal borders are important aspects of the evolving border regime. In this regard, it is important that the majority of boat arrivals who pass through the detention centres administered or funded by Australia end up obtaining entry to the country.[41]

These governmental developments have sovereign ghosts. That the dream of a 'just-in-time' and 'to-the point' migration system is precisely a dream is attested by the frequent but often unreported deaths that occur across the world's borderscapes. The prevalent mode of theorising these and other instances of human suffering at the border has been established by Giorgio Agamben and involves resort to the concept of the sovereign exception.[42] The notions of *nuda vita* and *homo sacer* have monopolised a certain way of approaching the politics of borders, migration and camps, particularly in the worlds of academia and art. Such an approach is in many ways the flipside to the human rights perspective in migration politics. Agamben's schema supposes either a wholesale stripping of the migrant's rights or the existence of a full legal plenitude.[43] The problem is that the concept of a sovereign exception does not provide any impetus for the critique of power in its normative moments. It also fails to explain one of the most important factors at stake in cases such as those of the *Oceanic Viking* and the *Jaya Lestari*—that is, the fragmentation of normative orders and the role of conflicts between different governmental regimes in creating the impasses.

There is a need to understand how borders crystallise a confrontation between sovereign and governmental powers. At an abstract level, the concept of sovereignty posits the existence of political unity as a condition of rule, while governmentality understands such unity and coherence as results of its own action. But a precise material analysis of the sovereign logics that come into interaction with governmental processes at the border requires an understanding of the transformations of sovereignty. A sense of this can be obtained from Saskia Sassen's arguments concerning the evolution of specialised global assemblages, the uncertainties of authority and territory, and the growing incapacity of sovereign orders 'to legitimate and absorb all legitimating power, to be the source of the law'.[44] For Sassen, sovereignty 'remains a systemic property' but its contemporary forms 'are far more complex than notions of mutually exclusive territorialities can capture'.[45] 'State bordering capabilities centered on nineteenth- and twentieth-century geographic concepts of the border' switch 'into nongeographic bordering capabilities operating both transnationally and subnationally'.[46] As a consequence, 'particular legal protections get detached from their national territorial jurisdictions and become incorporated into a variety of often highly specialised or partial global regimes and thereby often become transformed into far more specialised rights and obligations'.[47] Sassen's account of the transformations of sovereignty is similar to Teubner's account

of legal pluralism and the fragmentation of normative orders. Importantly, neither thinker endorses a full-blown governmentalism by which an emphasis on process, efficacy and outcomes can supply the agents of governance with an ex post legitimacy.

Such a view of sovereignty and governance allows an analysis that moves beyond the by now familiar point that liberal governance requires and perpetuates 'illiberal' practices of security and securitisation as the very conditions of freedom and circulation.[48] It also contrasts sharply with the approach of theorists of liberal governance for whom sovereignty remains an outdated, if still operative, form of power. Consider the work of Paul Rabinow and Nikolas Rose, who describe sovereignty as 'precisely a diagram of a totalised and singular form of power not a description of its implementation'.[49] By positing a historical break between sovereign powers that work by 'making die' and governmental powers that function by 'making live', they sideline any consideration of the transformations of sovereignty. For them, sovereignty remains associated with the power of states to designate 'states of exception'. Citing as examples the totalitarian regimes of the early twentieth century as well as a number of detention camps, from Guantanamo Bay to those used to incarcerate migrants in Europe, they suggest that these do not form 'part of a single configuration of biopower'.[50] By contrast, they find the Foucauldian concept of governmentality, which they understand to imply an intertwining of coercion and consent, to provide a more adequate account of the workings of power in the contemporary world.

One problem with this approach is theoretical. Foucault's distinction between governance and sovereignty is not at all clear-cut. In his lecture of 17 March 1976 he explains the emergence of the governmental paradigm in the nineteenth century as follows: 'I wouldn't say exactly that sovereignty's old right—to take life or let live—was replaced, but it came to be complemented by a new right which does not erase the old right but which does penetrate it, permeate it'.[51] In this way, Foucault posits the continued presence of the sovereign paradigm within the governmental horizon. Yet, in the same lecture, he also forwards the opposite hypothesis, describing an 'excess of biopower' that liberates a vital force 'beyond all human sovereignty'.[52] As Roberto Esposito writes, this is 'the point of maximum tension' as well as 'the point of possible internal fracture of the Foucauldian discourse'.[53] It is not that Foucault is indecisive about the split of sovereignty and governance, but rather that these two forms of power are 'superimposed in a threshold of originary indistinction that makes one both the ground and the projection, the truth and the surplus of the other'.[54] Thus Foucault can write on the one hand of a 'sovereign right that is in excess of biopower' and, on the other hand, of a 'biopower that is in excess of sovereign right'.[55] This mutual relation of excess is crucial for understanding the complexity of the relation between governmentality and sovereignty.

Using as their primary example the forms of governance pertaining to the extraction, circulation and redistribution of genetic materials that are perceived to carry certain vital qualities, Rabinow and Rose seek to explain the emergence of liberal paradigms of governance in which values of self-responsibility and enterprise compel (or even force) subjects to conduct their lives as free agents. The difficulty with this approach is that it can only account for the infinite repetition of nuanced variations of the same version of subjectivity—that of the entrepreneurial neoliberal subject that dominates in market societies such as Australia. What is absent from this picture is an account of how the production of the neoliberal subject is always accompanied by the production of other kinds of subjectivities for whom the moments of coercion and consent are far from indistinct. Those migrants who undergo the experience of interception and/or detention are one such group of subjects. The gap between coercion and consent in this context is stark. But, unlike Rabinow and Rose, who see this kind of experience only as an exception to governmentality, I maintain, as outlined in the above discussion of externalisation and temporal borders, that this is precisely an internal but conflictual element of the complex operations of governmentality. Thus in the cases of the *Oceanic Viking* and *Jaya Lestari* the recognition that the migrants' political refusal to disembark triggers multiple governmental responses (from diplomatic corps, NGOs, the media, intergovernmental agencies, etcetera) does not eliminate an analysis that emphasises the operation of partial assemblages of sovereignty. Just as it is necessary to account for the complexity of governmental actions in these instances, so it is also important to recognise the presence of fluid and centripetal sovereign powers that exercise coercive force over the migrants without providing a comprehensive juridical frame that either legitimates such coercion or allows the standoffs to be legally resolved.

Sovereignty, in this sense, is neither prior nor external to governmentality. In fact, the machine of governmentality, if viewed from another angle, could be seen as a sovereign machine. It is not a matter of placing an either/or between these concepts but rather a question of tracking how the evolution of governance crosses the transmutations of sovereignty. Borders are particularly strategic sites to undertake such an investigation, since the productions of space, time and subjectivity carried out on, across and along them attest the ways in which coercion and consent, freedom and control, ethics and power, often remain violently separated. Crucial to this approach is the need to investigate how the border crystallises conflicts of labour and capital. A longer analysis would need to explore this aspect of border struggles both theoretically, by rethinking the relation between Foucault and Marx, and empirically, through consideration of specific labour struggles that unfold at the border.[56] Another issue that warrants further theoretical and empirical elaboration is the development of logistical technologies that manage the relations between sovereign and governmental powers.[57]

It would be a mistake to correlate the quality of toughness with sovereignty and that of humaneness with governance. Nonetheless these categories provide a background against which to analyse the ongoing remaking of the borderscape to Australia's north. Crucial to such an analysis is attention to the actions and movements of migrants themselves and not merely to the role of state, governmental, nongovernmental and intergovernmental actors. If it is necessary to posit the emergence of autonomous governmental regimes, so it is also necessary to speak of the 'autonomy of migration', both in the sense that migratory movements obtain strategic-political priority over those of capital and the state and because people undertake migration as a strategy.[58] Border struggles, which are the principal expression of the autonomy of migration, are the flipside to the flexible practices of migration management that I have described as the logistics of the border. Whether they involve the refusal to disembark, as in the cases of the *Oceanic Viking* and *Jaya Lestari 5*, the pressing of borders, or labour protests such as those associated with groups of undocumented migrants in the United States and Europe, border struggles challenge us to invent new modes of political action and a new theoretical language of political subjectivity.

Brett Neilson <b.neilson@uws.edu.au> is Director of the Centre for Cultural Research at the University of Western Sydney. He is author of Free Trade in the Bermuda Triangle and Other Tales of Counterglobalization *(Minnesota, 2004) and has published in journals such as* New Formations, Theory & Event, Cultural Critique, Theory, Culture and Society, Subjectivity, Culture Machine *and* Textual Practice.

Endnotes

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