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Sovereign State Power and the Refugee:

A Theological Engagement with Issues of State Sovereignty and its Implications for Refugee Policy Reform in New Zealand



Afghan refugees arrive in New Zealand

Photo: Waikato Times 2013—www.stuff.co.nz

By Rebecca Heale

from the place which they called home. Severed from their Turangawaewae, they come to our shores, desperate for mercy and hospitality. Opinions in the public media I surveyed for my studies included arguments which portrayed refugees as opportunists who seek to drain our economy. This was in line with the govern-

One of the troubling reoccurring items which we have seen on the news in the past few years is that of refugees and asylum seekers being treated inhumanly. I don't know how many times I have found my heart breaking hearing of children who have tried to commit suicide rather than being taken to Nauru, or of families in detention being torn apart with parents not knowing where their children are. The fact is that the global refugee crisis is an issue of great concern for the world and for us as the Church, as mums, and as women, as citizens of a blessed country, with more and more displaced people suffering from persecution and instability.

People tend to forget that refugees and asylum seekers have been forced to flee for their lives

ment's scare mongering which occurred a few years ago, making New Zealanders think that there were tons of boats waiting to overwhelm our shores which required us to make more restrictive policy changes to our existing immigration laws. There is definitely an increase of displaced peoples in the world, but Aotearoa is far removed from the coal face of this crisis and my work proposed that policy reform should seek to offer more assistance to those in need, not less. Aotearoa's quota of 750 refugees per year has been in place many years now and is a tiny drop in the bucket of helping what seems to be a hopeless situation in the world. The situation will not ease while Governments refuse to acknowledge the problem as their problem and refuse to em-

brace these poor traumatised people as brothers and sisters.

My thesis sought to dig a bit deeper and ask the question about what right a nation state had to deny refuge to the people who come seeking aid and what did a theological perspective offer to the debate? Motivated by the prophetic tradition which encourages those who follow Christ to question unjust societal structures and to ask deeper questions regarding political systems and processes, I wanted to place my investigation within a current, wider and more fundamental debate regarding state

sovereignty. So I

placed my discussion of potential refugee policy reform in Aotearoa within the framework of a theological engagement with the deontological debate regarding the justifiability and legitimacy of states and whether this entitles a state to the right to exclude people at the border. By doing so I questioned the fundamental assumption that the New Zealand state has the right to determine unilaterally and enforce its own border policies as it sees fit. Thus my formal thesis ques-

tion: "does a theological engagement with the deontological debate regarding the justification and legitimacy of nation-states, and the nature of their power, support the assumption that the New Zealand Government possesses the right to determine unilaterally its immigration policies regarding refugees and asylum seekers as it sees fit? If it does not, what limitations should be applied to the power able to be exercised by the New Zealand government when forming or reviewing these policies?"

So I began to look at the secular philosophical or 'deontological debate' particularly examining the arguments of two prominent political philosophers regarding the rights of states, Christopher Wellman and Phillip Cole. These scholars employ the same moral reasoning and hold the same starting positions, but reach very different conclusions on the topic. Both scholars believe that the coercive nature of the state (its ability to do

put in place whatever policies it sees fit) could be justified if the state functioned to uphold the ultimate good of humanity which they believe to be the equal protection of fundamental human rights for all people. Wellman saw a network of nation-states as being the best way to achieve this - each caring for its territorially-determined citizenry. Therefore, he argued that a state has the right to sovereign control of its territory and legal/political systems if it maintains the rights and freedoms of its citizens. According to Wellman, as soon as a state ceases to serve this purpose it loses its moral legitimacy and is no longer

entitled to enjoy the rights of exclusive jurisdiction over its territory. He then argued that the duty of care owed to refugees and asylum seekers does not provide an exception to this sovereignty if the state can fulfil this obligation without granting them entry or citizenship.

Cole however, found that states were illegitimate con-

structs to begin with, as their underlying justification mentioned above – the valuing of each human being equally – is denied by the very notion of a state due to its reliance upon exclusive membership. He asserted that the state discriminates unfairly between those who are within and outside of its territorial borders on the basis of the arbitrary qualifier of where a person happens to be born. Thus, for Cole, states themselves are inherently immoral and unjustifiable in conception. The only way in which Cole saw a state coming close to fulfilling this egalitarian mandate of equal treatment of all people was to have permanently open borders to all people. These are two very different opinions – I wanted to see which, if either, scripture supported.

After surveying existing theological scholarship on this topic which was reasonably scant, I developed a theological perspective on the justifiability and legitimacy of states which is very

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different from these two secular theories. I sought to engage in this debate by employing the same moral reasoning as Wellman and Cole, as I believe that scripture also lends itself to the application of such reasoning. However, unlike Wellman and Cole, I argued that existing scholarship, and my reading of scripture, suggested that the appropriate starting point for assessing the justification and legitimacy of the nation-state is not the upholding of human rights (although the values in scripture may be argued to uphold this view). Rather I deduced an alternative understanding of the role of the state based upon the biblical narrative's portrayal of the nature and role of the nation. I argued that as the nation-state did not appear in an historical vacuum, and that there exists an historical and theological continuity between the 'biblical nation' and the 'state', it is appropriate to survey the genesis and continued conception of the nation throughout scripture to draw conclusions which may be applied to the nation-state. Therefore, I began this investigation by surveying the nature of the establishment of the nation. I concluded from my discussion of Deut 32:8 (read in light

the biblical narrative, I looked at three periods of biblical history: The Old Testament period, the New Testament period, and the Eschatological period. I concluded that initially scripture portrays the nation as the vehicle through which God was to redeem his people to be in communion with him for eternity. However, as salvation history progressed, the nation of Israel failed to fulfil its redemptive purposes. God then sent Jesus Christ to fulfil all that the nation of Israel was meant to achieve. Christ's incarnation changed the way in which the nations functioned. I have critiqued and supported the view of Lockwood O'Donovan and O'Donovan: that the nations continued to uphold the good of humanity and its union with God but did so by adopting a new function. My engagement with various New Testament scriptures supported the assertion of O'Donovan that the role of the nations, as seen in their descriptions of the nature of secular authority, was to uphold justice in the maintenance of law and order. Importantly, the scriptures emphasise the divine appointment and oversight of those in positions of secular authority. Romans 13 particularly emphasises



On 10 December 2012, New Zealand Red Cross joined with Refugee Services Aotearoa to become the country's primary refugee resettlement agency.

Photo: www.redcross.org.nz

of Genesis 10-11), and Acts 17:26, that the nations were established by God for his redemptive purposes, to bring humanity back into communion with himself and, therefore, there exists a prima facie justification for them. Therefore, I concluded that humanity's unity and communion with God is what the state must uphold in order to justify its coercive nature. This concept is a bit open ended though, and needed further fleshing out.

I proceeded to confirm this assumption of justification and what it practically looks like through a thorough investigation of the presentation of the ongoing role of the nations in scripture. I argued that if the role of the nations, despite various challenges and changes throughout the biblical narrative, continued to serve the function of upholding the communion of humanity with God through supporting his redemptive plans, then the nation would be able to be deemed a justifiable construct.

In order to survey the changing role of the nation throughout

that the Governors of the nations were placed there by God and that maintenance of justice was upheld by God through them. It presents the nations as carrying out a divine purpose. In their work, Lockwood O'Donovan and O'Donovan argue that this judicial function, which the nation is now limited to, supports God's redemptive plans for humanity by enabling the effective spread of the gospel. Thus, the nation and, by extrapolation, the state, now serve God's redemptive purposes by enabling the missional work of the Church.

Therefore, the nation retained its justification as it continued to facilitate the ultimate good of humanity – the communion of humanity with God through mission. However, a full picture of this justification had to be completed by assessing its *telos*. I have argued that the future of the nation (and state) has an impact on its present justifiability and informs our understanding of the current situation. My interpretation of Rev 21:1-26 supported the cosmopolitan position suggested by Bretherton, Pannenberg and Lockwood O'Donovan that nations would

eventually become redundant as their *telos* is a unified worshipping community before God, devoid of political association other than to Christ*1. However, importantly, this new era will only happen after the parousia when God's kingdom will be established in its fullest sense. Therefore, at the close of biblical history, the nation retained its justification as it functioned to uphold God's redemptive plans to be in communion and unity with his people. This justification also applies to the present nation-state.

Having established this justification, I turned to assess the next step of engagement with Wellman's argument: that a state's legitimacy depends upon its performance of its task. In order to evaluate the legitimacy of the state I had to determine what standards of justice scripture presents as prescribed by God for the nation, and therefore, what the scriptures show to be the proper delimitations of its authority. Therefore, I focussed on the limitations upon a state's power as set out in scripture.

A closer examination of O'Donovan's work in this area showed that the state's present role of governance is restricted to actions that uphold justice, and that this places significant limitations upon its power. I also argued that a theological understanding of the nature of power places further limitations upon a state's use of power. I showed that scripture portrays all power as delegated and, as such, it is to be used in accordance with the principles of justice, in a way that is congruent with God's will and nature. From a theological understanding, due to the delegated nature of a state's power, a state could never be considered to hold unlimited power, even if it was considered a legitimate state. Therefore, I supported the view of the Catholic Church that, from a theological perspective, the sovereign power that a state holds can only be understood as 'qualified sovereignty,' as this is the only way in which to reconcile a theological understanding of power with the present international state-system.

I then looked at the how the duty of care owed by a state to a refugee, as described in scripture, forms one of the necessary limitations on state power, as it is a practical outworking of the scriptural notion of justice. The particulars of the duty of care are articulated throughout scripture. Old Testament law shows that biblical justice required a special care for those who were marginalised in society. Not only did it provide that those strangers or foreigners who sought to join the community would

have equal rights under the law, but it also prescribed provisions which placed a positive obligation on the community to attend to some of their basic needs. The respect for human life and the identification with the needy that the law was premised upon, formed a requirement for those in positions of power to act with compassion toward the foreigner as this compassionate action is an avenue of God's justice and his care for all people. The New Testament upheld the sentiments of the law but extended and personalised them through the use of narrative. As the scriptural prescriptions regarding the duty of care were intended for specific audiences at specific historical moments, I concluded that direct application of the standards prescribed in scripture to the present policy making process may be inappropriate. However, I have argued that the underlying principles of compassion, equality before the law, non-discrimination, and respect for the dignity of the person, are useful for developing a duty of care to assess and guide policy reform from a theological perspective.

I concluded that there is no conflict of interest caused by the fulfilment of the duty of care between the members of a state and refugees or asylum seekers wishing to enter it. However, a potential conflict does exist between the purposes of the state and the needs of a refugee or asylum seeker, thus requiring a balancing of priorities. I concluded that if the acceptance of a refugee or asylum seeker would jeopardise the stability of a state, then the stability of the state is to be favoured, and only

Photo: East & Bays Courier 2011—www.stuff.co.nz



Burmese refugees Win Naing Tun Chun and his wife, Phyn Phyn Lwin Chun and their son, Harry Mon and volunteer Rob Munnik

*1—O'Donovan, "Nation, State and Civil Society in the Western Biblical Tradition," 286

then would rejection of a refugee or asylum seeker be considered appropriate.

In sum so far before I applied my findings to the context in Aotearoa I concluded that a theological engagement with the deontological debate has revealed that the nation-state, as a construct, is theologically justified as it was created to, and continues to, serve the ultimate good of humanity. This engagement also revealed that a state may be considered to be legitimate if it exercises its power in accordance with that purpose. However, this engagement does not support the assumption that the New Zealand Government may determine its immigration policies as it sees fit, as sovereignty, understood as unlimited power, is in conflict with the limitations placed upon the use of power by scripture. As well as the limitation of acting in accordance with its purpose, a theological understanding of power places a further restriction on the exercise of a state's power, namely, that it must act in accordance with the principle of justice. In the context of New Zealand refugee policy reform, the principle of justice finds practical expression in the duty of care owed by the New Zealand state to a refugee or asylum seeker. The scriptural articulations of this duty suggest that refugee policy formation or reform should be guided by, and reflect, the principles of compassion, equality before the law, non-discrimination, and respect for the dignity of the person.

In my application I specifically I took issue with the quota system. I believe that the duty of care to refugees suggests that a set quota system, although a step in the right direction in helping to ease the refugee crisis, is exclusionary in nature and does not treat the refugees who are over and above New Zealand's relatively small quota, with the dignity or respect required to fulfil the duty of care. When determining whether the state can accept refugees and asylum seekers, a balancing of priorities on a case by case basis must take place. When balancing priorities "we should do so against the equally complex background of persons created with dignity, security, belonging and

relationship."^{*2} With an attitude of compassion, each case must be balanced against the realistic possibility of destabilisation (with an honest admission that such destabilisation may never actually occur, due to New Zealand's isolated circumstance).

I further concluded that proposed policies of mandatory detention, restrictions on family reunification and reassessment of claims to residency after three years in New Zealand, all fall short of meeting the standard of duty of care as I see it presented in scripture. Thus I recommended that a revision of these policies would need to be undertaken if they are to be considered consistent with a theological understanding of the duty of care.

After concluding my research, my final thoughts on the matter accord with those of Pope Benedict XVI. Pope Benedict made clear in his 2012 address for The World Day of Migrants and Refugees that "Migrants and refugees can experience, along with difficulties, new, welcoming relationships which enable them to enrich their new countries with their professional skills, their social and cultural heritage and, not infrequently, their witness of faith, which can bring new energy and life to communities..."^{*3} Openness to the other, celebration of their difference, and the welcoming of their possible contributions to society, are attitudes that I believe scripture conveys and should be employed when critiquing policy decisions in New Zealand.

^{*2} Paul Sydnor, "Understanding Forced Displacement of Refugees in Terms of the Person," *Transformation: An International Journal of Holistic Missions Studies* 28 (2011): 55.

^{*3} Pope Benedict XVI, "Message of His Holiness Pope Benedict XVI for The World Day of Migrants and Refugees," 21 September 2011. <http://www.vatican.va/holy_father/benedict_xvi/messages/migration/documents/hf_ben-xvi_mes_20121012_world-migrants-day_en.html> (4 June 2013).

**Sovereign State Power and the Refugee:
A Theological Engagement with Issues of State Sovereignty and
its Implications for Refugee Policy Reform in New Zealand**

Rebecca Fleming (now Heale), Master of Theology Thesis, available from the University of Otago, 20 September 2013. Electronic copy also available from Kinder Library, St John's Theological College, Auckland.

Since Becky graduated she gave birth to her beautiful son Aidan, was ordained a Deacon, and is currently the curate half time at St Chads, Meadowbank. Becky is also studying with Spiritual Growth Ministries in the Spiritual Directors Formation course.



Gender Representation Survey

2014 Results

By Revd Erice Fairbrother

On a first reading these results can look disappointing. Given the history of women, particularly laywomen who in the 1970's worked so hard with the soon to be ordained women to achieve a greater sense of acceptance as full members of the body of Christ (not to speak of the church as well), it is tempting to ask the question – why such a poor representation? A gender survey of the Pauline writings of the New Testament may in fact make better statistics – given the shared leadership model Paul has with women, his ease of inclusion of women and expectations that where he had ministered, men and women were sharing in the spread of the gospel and local leadership. The temptation this presents us with is to question the church - has the church gone backwards? The sin that leads to is to blame something/ someone. The temptation to doubt - were all the gains we made for nothing? Can lead to a loss of hope. On a face value reading we can be lead away from a more profound implication.

I suggest there is a deeper analysis that we need to take into consideration. These outcomes of the survey show not that we haven't worked hard enough, or spoken out clearly enough, or educated enough in the past, but rather indicate the deeper challenge of the enduring paradigm and culture of patriarchy. That a few committed men (well quite a few) worked hard for women' ordination, (and then, inclusive language and representation in the body of Christ), indicates that it's neither a women's issue nor a gender based issue – but an issue of the culture itself which needs continual challenge and attention. Patriarchal thinking and disposition does not reside in individuals. Some men taking it on board, some men in leadership helping to progress change is significant but in the end the paradigm itself remains implacable. The reality of patriarchy is that it is a paradigm that shapes all within it generally and individually. Problematically, it shapes us all unconsciously to accept that the paradigm itself is as normative

ANGLICAN BOARDS & GENERAL SYNOD COMMITTEES / COMMISSIONS	Total Number on this Board / Group	Total Number of Women	Chairperson Male /
St John's College Trust Board	9	2	M
Te Kotahitanga	9	2	M (Deputy F)
General Synod Standing Committee	18 (1 vacant)	6	M x 3
Social Justice Commission	9	3	None yet
Three Tikanga Youth Commission	12	8	F
Council for Anglican Women's Studies	6	6	F
Anglican Historical Society	n/a	n/a	n/a
Anglican Insurance Board	7 (1 vacant)	3	M
Anglican Missions Board	13	4	M
Kinder Library Oversight Committee	7	3	M
NZ Anglican Church Pension Board	7 (1 vacant)	0	M
Commission on Communications	suspended	n/a	n/a
Common Life Liturgical Commission	6+2 co-opt	2	M
Council for Ecumenism	6+1 co-opt	2	F
Judicial Committee	9	4	M (Deputy F)
Archives & History Committee	12	4	M
Committee on Treaty & Partnership Issues	6	3	None yet
Treaty/Tiriti, Church & Nation Commission	6	3	None yet
Tribunal on Doctrine	15 (1 vacant)	3	None yet
Tribunal under the Church of England Empowering Act 1928	14 (1 vacant)	7	None yet
Distribution Advisory Committee (Finance)	6	1	M
Employment Sub-committee of GSSC	4	1	n/a
Order Paper Committee GSTHW	5	2	n/a
A Way Forward Working Group	14	6	M
St Stephens and Queen Victoria Schools TB	8	3	M
2014 Bicentenary SWG	14	3	M x 2
HR/OM Small Working Group	7	2	n/a
SJC Restructure SWG	4	2	n/a
Decade of Mission Commission	13 (1 vacant)	4	M
General Church Trust Board	6	1	M
Statutes and Canons Committee	4	0	n/a

and as a cultural determinative.

As I look at the survey, it is not so much a challenge for the male leadership, or for us as women wanting systemic change, or about equity or equality or shared positions. The greater challenge is theological. It is a theological challenge to take the paradigm shift that the gospel calls us to make and live out, as a spiritual and ecclesial priority.

DIOCESE or HUI AMORANGI	Auckland		Christ- church		Dunedin		Nelson		Wellington		Manawa o te Wheke		Tairāwhiti		Te Upoko	
	Total	No. of Women	Total	No. of Women	Total	No. of Women	Total	No. of Women	Total	No. of Women	Total	No. of Women	Total	No. of Women	Total	No. of Women
ROLES OF RESPONSIBILITY:																
Archbishop													1	0		
Bishops	1	0	1	1	1	0	1	0	1	0	1	0			1	0
Assistant Bishops	1	0														
Vicar General & Deputy Vicar General	2	1	2	1	2	0	1	0	1	1	1	0	1	0	1	0
Chancellors & Deputy/Vice Chancellors	2	2	1	0	1	0	1	0	2	1			1	1		
Deans / Acting Deans	1	1	1	0	1	0	1	0	1	0						
Archdeacons (*emeritus)	3	2	6	4	4	1	1	0	5	4	3*	0	1	0	8	3
Diocesan & Hui Amorangi Clerical Canons			5	1	3	0	4	2	4	3	4	2	2	1		
Diocesan & Hui Amorangi Lay Canons			5	3	2	2	4	2	6	2					5	2
Diocesan & Hui Amorangi Chaplains / Hospital Chaplains / School Chaplains / Prison Chaplains	14	8	12	5	4	3	3	2	32	15	2	1	6	4	2	0
Diocesan & Hui Amorangi Registrar / Manager / Secretary	1	0	1	1	1	0	1	0	1	0	1	0	1	0	1	1
Diocesan & Hui Amorangi Educators / Ministry Educators	1	1	1	0	2	0	1	0	1	1	4	0	2	1	1.5	0.5
Diocesan & Hui Amorangi Youth Ministry Lead- ers	1	1	4	2	1	0	1	0	1	1	1	0	2	1	1	1
Diocesan & Hui Amorangi Stipendiary - Parish Vicars / Priest / Priest Assistant / Deacons / Kaikarākia / Minita a Rohe	78	29	78	29	25	5	28	6	64	25	1	0	4	3		
Diocesan & Hui Amorangi Non-Stipendiary - Parish Vicars / Priest / Priest Assistant / Dea- cons / Kaikarākia / Minita a Rohe	213	63	60	36	69	37	6	4	93	43	120	58	63	34	48	27
Ministry Enablers			2	1									1	1		
Local Shared Ministry Enablers	6	4			1	1										
Examining Chaplains / Ordination Selection Committee	11	6	8	4	6	4	8	4	10	5						
Theologians			1	0	2	0			1	1			4	3		
Diocesan & Hui Amorangi Representatives on General Synod Committees other than Bishops	3	3	6	3	5	1	5	1	7	3	9	2	5	2	2	1
DIOCESAN COMMITTEE'S																
Diocesan & Hui Amorangi Standing Committee	16	10	12	5	10	6	8	3	10	3	23	10	27	0	7	3
Diocesan & Hui Amorangi Finance Committee			7	2	5	2	7	2	10	4	14	5				
Diocesan & Hui Amorangi Trust Board	8	2	9	3	10	1	8	0	6	2	4	1	10	2	4	1
Ordinations / Licensed Ministry							12	7	13	5						
School Board Committees (in total)					18	11			13	?						
Education / Bicultural Education			6	4	12	1										
Social Services / Anglican Care	4	2	7	5	8	4	1	1								
Mission	9	5			31	22			1	0			6	3		
Children & Family Ministry							1	1	47	43						
Youth Ministry							1	0	18	3					1	1
Elder Ministry			5	3	37	15	1	0								
Family Ministry					11	7										
Social Justice	6	3	3	2												
Diocesan & Hui Amorangi Pension / Stipends & Pensions	7	3	7	3									4	2		
Tairāwhiti C Class Trust													3	1		
Climate Change Action	9	6														
Legal Business	5	2														
Communications Steering Group	4	1														
Advisory Committee on Faculties	8	2														
	414	157	250	118	272	123	105	35	348	165	185	79	144	59	82.5	40.5
	23/05/15		22/10/14		23/10/14		29/10/14		1/11/14		24/10/14		21/11/14		25/03/15	

NB: Unfortunately, no response was received from the invitation/s to submit survey results to the 2014 Diocesan/Hui Amorangi Survey from Waiapu, Waikato & Taranaki, Polynesia, Tai Tokerau or Te Waipounamu

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The Centre for Anglican Women's Studies, commonly known as the **Women's Studies Centre** was set up to serve and to advance the interests and needs of the women of this Church particularly those undertaking Theological training.

The Link Representatives from each Diocese and Hui Amorangi have been chosen for their leadership ability to identify, gather, facilitate, resource and encourage women in their educational preparation for ministry whether lay or ordained. It is hoped that the Women's Studies Centre can continue to enjoy the support of each Diocese and Hui Amorangi in this endeavour.



The issue of increasing numbers of women in representative positions across the councils and committees of the Church is seen as a high priority and the practice of intentional mentoring by those already in national and international representative roles is seen as a good way to expose women of this church to fulfill their potential as leaders.

Ensuring that women's voices and stories are heard now and in the future is also one of our continued aims whether it be by traditional methods of publication or using more contemporary technologies like website publication. We remain optimistic that through continued support, the needs of women throughout this Province will be valued and recognized.



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EDITORIAL DISCLAIMER: *The Women's Studies Centre is committed to encouraging and enabling women's voices and perspectives from across the diversity of the Church to be shared more widely. We acknowledge that women's experiences of church differ considerably and that resultant theological perspectives also differ considerably. In general the WSC does not exercise editorial control, rather we welcome as many voices as are willing to contribute.*