

VISIBLE AND VIRTUAL BORDERS

Saving Lives by 'Seeing' Sovereignty

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Evidence is accumulating from Australia and elsewhere that border-control policies aimed at preventing arrival, when they fail to deter asylum seekers and other unwanted migrants from attempting illegalised¹ crossings, significantly increase the risk of fatalities. However, the chains of responsibility for border-related deaths are difficult to discern because the visible face of offshore border control is underpinned by a virtual border that is seldom brought into view. While the exercise of sovereignty is readily apparent in the spectacle of direct encounters between border authorities and border transgressors, the virtual border is enacted through electronic information exchange and largely unseen human operators. This bifurcation of the border function is typical of modes of governance in late modernity described by Haggerty and Ericson as 'surveillant assemblages' and referred to by O'Malley as 'simulated enforcement'. In this article I identify the visible and virtual aspects of Australian offshore border controls as parts of a surveillant assemblage, and argue that perceiving these elements as a single border-enforcement system is essential for saving lives and debating new ways of conceiving sovereignty in a globalising world.

The Spectacle of Death and Deterrence at Sea

Australians are accustomed to a daily diet of dramatic images on the front pages of their newspapers and on their television screens. These depict dilapidated fishing vessels approaching Australian shores. The vessels are often in distress, may be under the control of naval or customs personnel and are invariably filled with hopeful and apprehensive people who have committed their futures to the sea. It must be acknowledged that the images we see and the stories that accompany them are necessarily partial, that the information released to the public may be politically manipulated and that the images and stories themselves are open to multiple interpretations. Nevertheless, these spectacles of offshore border control, involving real men, women and children and equally real government agents, make a visceral impact and are immediately recognisable as performances of territorial sovereignty.

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¹ Although this is a cumbersome term, I use it here because it conveys the important point that states of illegality are not in any way natural, but are deliberately constructed through law and practice.

As the number of asylum-seeker vessels arriving in Australia's territorial waters began to rise again from around 2009 following a lull of several years, and as the death toll from drownings began to soar,² both government and opposition began to argue that ever more forceful displays of offshore border enforcement were necessary in order to save lives. In the wake of the report by the Expert Panel on Asylum Seekers in August 2012,³ the former Labor government announced the revitalisation of offshore detention, claiming that ramping up deterrence through the imposition of punitive outcomes was the only way to stop people risking their lives in dangerous sea voyages. These policies were pursued under the 'no advantage' principle advocated by the Houston Panel, which was intended to remove incentives for irregular travel in order to 'break the people smugglers' business model'. As these policies were aimed at changing behaviour through fear of adverse consequences, open communication of the potential risks of irregular journeys formed a central part of the strategy.⁴

As boat arrivals persisted and the death toll continued to mount in the months leading up to the September 2013 federal election, both major parties engaged in a frenzied competition to devise ever more hard-line border protection policies directed towards preventing irregular arrivals by sea. With a change of government after that election came a return to openly militaristic approaches reminiscent of the deployment of the navy during Operation Relax by the former Howard Coalition government. The naming of the new government policy as Operation Sovereign Borders⁵ left no doubt that the political mentality driving the strategy was an emphatic reassertion of territorial sovereignty through border control. While many elements of the previous government's deterrence-based policy remain in place, or have been further reinforced by the present government, the new policies place less reliance on influencing behaviour and more on physical risk-reduction measures such as forcefully returning boats to Indonesian waters. Consequently, rather than openly publicising government actions in relation to irregular arrivals (which was an integral part of Labor's attempted deterrence strategy), the Coalition government has shrouded its offshore interdiction activities in a veil of secrecy, citing 'operational' concerns as reasons for its lack of openness with the Australian population.⁶

Despite their differences, these border-control policies have significant commonalities. First, they all direct disproportionate attention to the spectacle of unauthorised arrival by sea. Although they involve different degrees of openness and secrecy, these offshore deterrence and interdiction policies are also united by their visibility – at least in the sense that they involve the actions of embodied agents of the state and take place in a time and space that is at least knowable, if not always known. Moreover, with

² For figures on boat arrivals, see Phillips and Spinks (2013).

³ Houston, Aristotle et al (2012).

⁴ See Pickering and Weber forthcoming.

⁵ Liberal Party (2014).

⁶ News.com (2014).

varying degrees of sincerity, they have all been presented as solutions to the tragedy of loss of life at sea. This justification for harsh border controls directed towards irregular boat arrivals has been particularly prevalent since the Christmas Island disaster of December 2010. Fifty lives were lost in that incident, in which a disabled asylum seeker vessel was dashed against rocks in a terrible spectacle witnessed by island residents and viewed through graphic media images by the mainland population.⁷ The rebranding of deterrence and interdiction policies as life-saving measures has been made possible because the spectacle of irregular maritime arrival is constructed as a story that begins when asylum seekers pay a people smuggler to come to Australia. However, closer examination reveals this to be merely the endgame of a much longer sequence of events in which a largely invisible border will have already completed most of the work of expressing Australia's territorial sovereignty.

The Relative Invisibility of the Virtual Border

In the heated debate that surrounds spontaneous boat arrivals in Australia, there is an obvious question that seems never to be publicly aired: why don't people who pay people smugglers for passage on barely seaworthy vessels simply use their hard-earned cash to purchase an airline ticket? The answer, for the most part, is that an invisible border has been put in place specifically to prevent them from doing so. This virtual border pushes the most desperate asylum seekers into risky sea voyages against which the visible measures of interdiction at sea and offshore detention are then deployed. The invisible border that blocks access to legally regulated transport routes is constructed through risk-based visa regimes, networks of overseas liaison officers posted at key transit points, carriers' liability legislation that requires airline staff to deny boarding to 'inadequately documented passengers' and advanced passenger-processing technologies that direct these decisions via processes of remote control with only minimal human intervention.⁸ Australia's universal visa requirement obscures the operation of the virtual border still further by normalising the expectation that crossing the Australian border invariably requires a visa, despite the protestations of refugee supporters that Article 31 of the UN Refugee Convention⁹ acknowledges the frequent necessity for refugees to travel without documents.

In Britain, the strategic deployment of visa regimes coupled with offshore enforcement regimes has been much easier to trace. From the 1980s onward, when increasing numbers of asylum seekers began arriving there, visa requirements were imposed on one trouble spot after another, beginning with barriers against the arrival of Sri Lankan Tamils in 1985. This was the first time a visa regime had been erected against the citizens of a Commonwealth country and marked a turning point in British border

⁷ See Hope (2012).

⁸ See Weber (2007); Wilson and Weber (2008).

⁹ Convention Relating to the Status of Refugees, 1951.

control. As British immigration barrister Frances Webber explains: ‘The pattern was to become familiar over the next two decades: an exodus of people fleeing repression or civil war would be met by the erection of a visa requirement to stop them coming here.’¹⁰ From 1985 to 2002, visas were imposed on citizens of Iran, Iraq, Somalia, Zaire, Turkey, India, Pakistan, Nigeria and Ghana, followed by nationalities emerging from the violent break-up of Yugoslavia, then – during the height of the Zanu PF’s murderous attacks – on Zimbabweans. The overall number of nationalities requiring pre-arranged visas to travel to the United Kingdom increased from just nineteen in 1991 to 108 in 2008.¹¹ A recent media exposé revealed that the British government kept a ‘secret blacklist’ of 44 countries with the ‘worst immigration records’ in order to target them for ‘discriminatory action’, an admission that was seen to be highly politically embarrassing.¹²

By comparison, the Australian government has been far less circumspect about its risk-based visa system, which is based on aggregate risk calculations for particular national groups. The Department of Immigration and Nationality (DIAC) website lists 34 countries whose nationals are eligible for Electronic Travel Authorities (ETAs) that can readily be obtained via the internet, because their citizens are considered ‘low risk’.¹³ The list includes all the countries of Western Europe, plus Canada, the United States, Malaysia, Hong Kong, Japan, Taiwan and South Korea. There is no explicit list of ‘high-risk’ countries, but the main refugee-producing countries such as Afghanistan, Iran, China, India, Iraq, Pakistan, Syria and Sri Lanka are noticeably excluded from the low-risk category, with the result that their nationals are subjected to far more detailed checking by visa-processing officers. Although it has failed to make headline news, Australia’s risk-based visa policy has attracted criticism from informed observers, particularly in relation to asylum seekers. An audit of the electronic visa system in 2007 by the National Audit Office cast doubt on the usefulness of nationality-based assessments and confirmed that the statistical probability of asylum claims was counted at that time as a negative risk factor for the purpose of aggregate risk assessments.¹⁴ Since then, the requirement for individual consideration has been supported by case law; however, the onus is on the applicant to overturn an initial negative assessment.¹⁵

Australia’s universal visa system has helped to keep many of the most discriminatory aspects of the risk-based visa system out of the public eye. Unlike the British context, where refugee advocates could point to the strategic imposition of visas on countries which had not previously had a visa requirement, the necessity for all non-citizens to have a pre-arranged visa in order to come to Australia appears to be self-evident, and masks the

¹⁰ Webber (2012), p 20.

¹¹ Reynolds and Muggeridge (2008).

¹² Travis (2012).

¹³ See www.immi.gov.au/immigration/eta-eligible-passports.htm.

¹⁴ Auditor General (2007), paras 7.5 and 7.13.

¹⁵ Crock and Berg (2011).

bureaucratic processes by which visas are issued or denied. But risk-based visas are just the starting point for the construction of the virtual border. The co-option of airline staff into visa-enforcement roles and the strategic placement of overseas liaison officers to assist in the interception of 'inadequately documented passengers' at overseas airports are now well-entrenched strategies in all developed countries that have enacted carriers' liability legislation and possess the requisite technology to implement it. The important point for this discussion is that these information technologies do not simply make the everyday operation of border control more efficient at sorting desired from undesired travellers. Although they shore up territorial sovereignty, these practices effectively deterritorialise the border.¹⁶ In contrast to patrol boats, which are a visible and physically located technology aimed at detecting and interdicting irregular travel, the virtual border is powered by electronic data exchange, with minimal and highly selective human intervention that enables an individual's entitlement to travel to Australia to be checked at multiple times and places during preparation for travel, embarkation and transit. By shifting the locations at which travellers are selected for entry to or exclusion from Australian territory, the virtual border shapes travel opportunities in powerful ways that may be difficult to track, with significant implications for those seeking international protection.¹⁷ As Webber observes in relation to the ongoing development of technology-enabled pre-emptive controls in Britain:

When it is fully implemented, anyone whose biometric data does not match that in the travel document, or whose data shows an adverse immigration history or other 'undesirability', can be refused boarding, wherever in the world that person is and whatever perils he or she faces, at the click of a mouse of an immigration officer sitting at a computer terminal in the UK.¹⁸

The British Refugee Council found that outposted British immigration officials and third parties operating technology-led interception activities on behalf of British authorities were completely unmonitored, and had no instructions about avoiding the *refoulement* of refugees to danger.¹⁹ Likewise, in Australia, where Advanced Passenger Processing has been fully operational for some years, it has been observed that nobody knows the fate of the several hundred passengers a year who are refused boarding at transit airports as a result of Australian immigration systems.²⁰ Australian immigration authorities are more guarded about these aspects of the virtual

¹⁶ Pickering and Weber (2006).

¹⁷ Many asylum seekers still manage to obtain visas of course, either using their own identities or by obtaining expensive fraudulent documents, a point that has consistently been made in Australia in relation to the highly punitive treatment reserved for those who circumvent these procedures altogether.

¹⁸ Webber (2012), p 30.

¹⁹ Reynolds and Muggerridge (2008).

²⁰ Taylor (2005).

border than they seem to be about the risk-based visa system that drives it, citing 'security reasons' for failure to reveal the locations and activities of their outposted officers.²¹

Circumstances will vary widely, but first-hand reports from asylum seekers confirm that they are often forced to travel initially to an interim destination, which they can reach under the protection of the law, but where they may have little likelihood of securing protection, and then have no option but to continue through unregulated means. The account by one Hazara refugee, Ali Shah, who reportedly paid a people smuggler \$6000 to fly him legally to Thailand, then transport him over land and sea to Indonesia, from where he hoped to reach Australia, is no doubt representative of many such voyages.²² In this example, Australian border controls, with their transnational reach, constructed the illegality that characterised the final section of the journey Ali Shah would have made had he not been killed while still in Pakistan. The chronicler of Ali's last days claimed that the pressure applied by Australian authorities in the name of 'disrupting' people smuggling had resulted in the Pakistani government sealing off its borders to Hazaras trying to escape. He concludes: 'In the same way that Hazara people's features make them a target of jihadi killers, their ethnicity now inhibits their travel – at Australia's apparent urging'.²³

While patrol boats that are the visible representation of offshore border control are required to operate within established legal frameworks and recognised territorial boundaries, the hidden border operates largely in 'informed spaces' that transcend borders via remote internet access, greatly expanding the locations in which Australian sovereignty is expressed. While lack of access to visas and regulated travel may not be the only factor forcing asylum seekers and other migrants into dangerous journeys,²⁴ the largely unseen operation of the virtual border fuels the problem (of irregular travel, people smuggling and sinkings) for which the spectacle of the militarised border is then invoked as the solution. If the preservation of life were really a significant concern within border control policy, ensuring that asylum seekers could travel safely through legally sanctioned channels by dismantling or at least recalibrating the virtual border would be the best way to achieve that goal. However, public debate about offshore arrivals and deaths at sea proceeds largely as if there is no connection between the visible and virtual elements of the border.

²¹ Steketee (2012).

²² Belford (2012).

²³ Belford (2012).

²⁴ Other reasons could be lack of infrastructure due to generalised conflict, targeted persecution necessitating clandestine exit, or lack of financial resources whereby debt bondage to a people smuggler becomes a workable option.

Seeing the Border as a Surveillant Assemblage

Using the analytical device of the surveillant assemblage helps us to unite the visible and invisible elements of the border and view them as parts of the same border control system. Social analysts such as Deleuze, and Haggerty and Ericson, see technological surveillance as displacing the disciplinary institutions of modernity described by Foucault.²⁵ Although surveillance, sometimes enhanced by technology, has long been a feature of modern institutions and continues to be so under contemporary conditions, these writers claim that surveillance is being transformed into a new and distinctive modality of governance. Deleuze describes these developments as a ‘crisis of institutions’, and argues that contemporary disciplinary societies governed by institutions of modernity are being replaced by societies of control.²⁶ These societies are characterised by ‘ultrarapid forms of free-floating control’ through which he claims a new system of domination is emerging.²⁷ Haggerty and Ericson explicate this system in more detail through the concept of surveillant assemblages. These authors claim to be witnessing a convergence of previously discrete and more human-centred surveillance systems into far more automated and pervasive ‘assemblages’, which ‘introduce processes designed to capture flows’.²⁸ Rather than conceiving of these systems as directed exclusively towards establishing domination by the state, these authors consider that surveillant assemblages are more diffusely targeted in pursuit of governance, commerce and control. O’Malley has applied similar ideas within the realm of law enforcement. In this context, he describes these impersonal and highly automated systems as forms of ‘simulated governance’ which, he claims, exist ‘primarily not to govern fixities such as individuals but to modulate mobile and contingent life-flows and circulations’.²⁹

The advent of surveillant assemblages represents a paradigm shift in modes of governance. But even more significantly, all these authors argue that it alters the salient characteristics of those subject to their control, and transforms the relationship between government and the governed. The subject to be governed is not addressed in terms of flesh and blood but as the coded occupant of a particular risk category. As expressed by Haggerty and Ericson: ‘The surveillant assemblage does not approach the body in the first instance as a single entity to be molded, punished, or controlled. First it must be known, and to do so it is broken down into a series of discrete signifying flows.’³⁰ Moreover, these systems operate by ‘abstracting human bodies from their territorial settings’, which are then ‘reassembled in different locations as discrete and virtual “data doubles”’, where they can be targeted

²⁵ Deleuze (1992); Haggerty and Ericson (2000).

²⁶ This terminology was used as early as the 1960s by Guy Debord (1967).

²⁷ Deleuze (1992), p 4.

²⁸ Haggerty and Ericson (2000), p 608.

²⁹ O’Malley (2010), p 796.

³⁰ Haggerty and Ericson (2000) p 612.

for possible intervention.³¹ In other words, the subjects of automated surveillant assemblages are effectively rendered ‘virtual’ as well. Viewed from within the system, they are transformed into ‘pure information’, reduced to a ‘decorporealized body’, a ‘data double of pure virtuality’, a ‘cyborg’ or even a ‘flesh-technology information amalgam’.³² To add to this list of technologically inspired terms, Deleuze uses the word ‘dividual’ to connote individuals stripped of their *individuality* within codified systems, a term O’Malley equates to being ‘anonymous while at the same time specific’ and ‘empty of [human]content’.³³ These transformations are not merely esoteric exercises, but serve a specific governmental purpose, as Haggerty and Ericson explain: ‘Data doubles circulate in a host of different centres of calculation and serve as markers for access to resources, services and power in ways which are often unknown to its referent.’³⁴ Moreover, these authors note that surveillant assemblages may operate to limit access to places and information, suggesting that their ideas may be applicable to the border-control function.

Perceiving the border as a surveillant assemblage has significant implications for both the practice of border control and the objects of surveillance. Technologically driven border functions are able to span time and space while being virtually imperceptible, while the individuals subject to them become effectively neutralised and disembodied within the system. Applying these ideas to real-world systems of law enforcement (using the example of on-the-spot fines), O’Malley discusses systems of ‘telemetric policing’, which involve various degrees of human intervention guided by electronic information: ‘I am policed, judged and sanctioned but no-one has seen me, nor have I been “sensed” in any human way. In key respects I have not been there: my electronic trace has been there and that is what registers for the purpose of governance. This is simulated justice, where the real and the virtual converge.’³⁵ In contrast to traditional forms of institutional enforcement, such as practiced by police – or, of more relevance to this discussion, border-control officials – simulated governance operates through the virtual exclusion from participation of those who are policed. As O’Malley explains, in these enforcement contexts there is ‘no need for the individual to be brought into being, no presence is required ... sight is displaced by digital code’.³⁶ Whereas traditional modes of enforcement often rely on the *dehumanisation* of those subject to particularly intense surveillance – the criminal, illegal entrant or people smuggler³⁷ – the subject

³¹ Haggerty and Ericson (2000), p 605.

³² Haggerty and Ericson (2000), p 611.

³³ O’Malley (2010), p 796.

³⁴ Haggerty and Ericson (2000), p 613, citing Bauman.

³⁵ O’Malley (2010), p 795.

³⁶ O’Malley (2010), p 802.

³⁷ See Pickering (2001, 2004).

of simulated policing is marked for intervention by far more routine processes that *neutralise* their humanity.³⁸

Simulated governance effected through surveillant assemblages can therefore be expected to generate relatively little political resistance, since these systems are ‘buried in the transactions of everyday life’.³⁹ This mode of operation is both powerful and efficient, since it ‘simultaneously expands the reach of policing while at the same time reducing its unit cost and visibility, and minimising the friction imposed upon “good” circulations’.⁴⁰ While the outcome of these systems in many cases will be benign, this new way of operating has significant implications for the pursuit of individualised justice. Within these depersonalised systems, simulated justice is often ‘simply a matter of one machine “talking” to another’,⁴¹ leaving little or no room for human intervention and the exercise of discretion. This describes well the airline employee refusing to board an inadequately documented passenger at the ‘click of a mouse’, to recall Webber’s graphic description, regardless of the risks this poses to the individual involved. The real-world consequence of reliance on inflexible systems of telemetric policing is the near-obliteration of considerations of human rights and individualised justice.⁴² As O’Malley notes, whereas ‘*individuals* are the bearers of rights and create political costs; *dividuals* simply have to be registered and coded’.⁴³

This is not to say that automated systems of enforcement are entirely incapable of recognising individual circumstances. However, individuals only come into view as a result of their explicit resistance (for example, challenging a refusal to grant a visa) or when they cross a ‘risk threshold’, whether intentionally or inadvertently. As O’Malley explains, ‘we are revealed and hailed as individuals either when we choose to resist and demand to be treated as individuals, or when we cross a risk threshold. At this point we shift from the simulated anonymity of the world of machines and codes into the realm of living agents and disciplinary institutions.’⁴⁴ Asylum seekers who resist their exclusion from legally regulated channels by embarking on undocumented travel can be conceived of as crossing this threshold, thereby bringing themselves within the ambit of the disciplinary institutions of offshore detention and interdiction. Those who fail to bring their actions into conformity in the face of these risk-based governmental measures are to be dealt with instead through ‘the widening reach of the

³⁸ See Cohen (2001) for a discussion of dehumanisation and neutralisation.

³⁹ O’Malley (2010), p 797.

⁴⁰ O’Malley (2010), p 797.

⁴¹ O’Malley (2010), p 805.

⁴² Clearly, the human rights of those subject to the more visible aspects of border control, such as interdiction and administrative detention, are also routinely disregarded. But this requires explicit and sustained ideological work to keep political protest at bay, as will be discussed later in relation to Stanley Cohen’s work on the sociology of denial.

⁴³ O’Malley (2010), p 796, emphasis added.

⁴⁴ O’Malley (2010), p 805.

repressive arm of the state'.⁴⁵ This results in hybrid forms of control in which refugees, along with the poor, welfare recipients and petty criminals, are relegated to the 'neoclassical' domain of deterrence and just deserts.⁴⁶

In contrast to the imperceptible operation of much of the virtual border, the business of offshore border control often creates a visible spectacle. When Guy Debord hailed the arrival of the 'society of spectacle' in his classic text of 1967, he proposed that spectacle, in both form and content, 'serves as total justification for the conditions and aims of the existing system'.⁴⁷ However, the visible spectacle of the offshore border opens up possibilities for dispute over interpretation as well, in which accounts of events by governments are subject to challenge. It must also be acknowledged that the relative visibility of these parallel border-control systems does not correspond to their effectiveness. As O'Malley argues in relation to the simulated (invisible) and institutional (visible) branches of the criminal justice system: 'The judicial-disciplinary apparatus is a sector of justice with a political media and popular profile that dwarfs that of simulated justice, but statistically in terms of the volumes of governance effected, things are quite the reverse'.⁴⁸ We may have reason to believe that the virtual border is equally potent because of its scope, efficiency and near-imperceptibility.

Although the visible and virtual elements of the border work in tandem as a matter of governmental praxis, they remain largely disconnected in everyday perception and public debate. As a result, the role played by border controls themselves in shaping the risks faced by asylum seekers receives little scrutiny, enabling political parties to argue that attempts to prevent arrival could save lives, if only they could be more comprehensively implemented. The next section considers the evidence for claims that intensified border patrols reduce border-related deaths, and argues that understanding the connections between border control and the risks faced by irregular border crossers requires viewing the visible and virtual aspects of the border holistically as a single surveillant assemblage.

The Roles of Visible and Virtual Borders in Border-related Deaths

Connections between migrant deaths and the institutions of border control are easiest to discern where direct physical contact occurs between agents of the state and those who die, or where there is an absence of appropriate action by state officials in circumstances where their intervention might save lives.⁴⁹ Forty-year-old Admad al-Akabia, 20-year-old Miqdad Hussain and

⁴⁵ Inda (2006), pp 176–7.

⁴⁶ Pratt (2005).

⁴⁷ Debord (1994), p 5 – originally published in 1967 in French.

⁴⁸ O'Malley (2010), p 805.

⁴⁹ I am not claiming here that responsibility for individual deaths follows unproblematically from recognition of the role played by particular policies.

19-year-old Mohammad Asif Ata would not have died in Australian detention centres if there had not been a government policy of mandatory detention, if their self-harming had been predicted and monitored by detention centre guards, and if their claims for refugee status had not been denied.⁵⁰ The family of Jimmy Mubenga, who died at the hands of private security agents on a British Airways flight out of London, would still have a husband and father had there not been a policy of forcible deportation of non-citizen criminal offenders, coupled with the use of inadequately trained and constrained personnel.⁵¹ The loss of 50 lives when an asylum seeker boat foundered on the rocky shore of Christmas Island prompted questions about the adequacy of Australia's offshore surveillance and rescue capacity.⁵² And 19-year-old Juan Patricio Peraza Quijada would not have been shot by Border Patrol authorities on the streets of El Paso, Texas had the US government not instigated an aggressive strategy of internal document checks.⁵³ The proximity, or sometimes absence, of government agents in these illustrative cases, and the duty of care that this implies, invite an immediate, although sometimes superficial, assessment of the factors leading to these avoidable fatalities.

However, an account that includes the operation of *both* the visible and virtual borders is needed if we are to understand border-related deaths that occur as a result of 'structural violence' – that is, violence that is produced by the often unseen operation of government policies and other systemic factors.⁵⁴ As explained by Roberts: 'These structures are rarely easy to imagine. Nor do they readily take concrete form. Many of the structures surrounding our lives may appear benign when in fact they can be unintentionally (or intentionally) malignant.'⁵⁵ When pre-emptive border controls fail to deter unwanted border crossing, as they often do, those who cross borders without the protection of law face far higher risks than they would have done had they been able to access regular modes of travel.⁵⁶ For example, as Webber observes: 'As airlines turned them away, undocumented travellers were forced to travel overland [to Europe], by train or hiding in lorries, to get to the country they believed would offer sanctuary and respect for their rights.'⁵⁷

⁵⁰ These deaths are documented at Border Crossing Observatory (2014).

⁵¹ See Monaghan (2013).

⁵² Hope (2012).

⁵³ Border Network (2006).

⁵⁴ Weber and Pickering (2011), Ch 4.

⁵⁵ Roberts (2008), p 20.

⁵⁶ There is no intention in this section to deny the role played by the material conditions driving migration, the actions of people smugglers or the decision-making of asylum seekers and migrants themselves. The focus of this article is on the often unacknowledged contribution of border control to these deaths.

⁵⁷ Webber (2012), p 22.

The link between policies of non-arrival constructed through both virtual and visible borders, and deaths due to displacement into riskier journeys involving unsafe modes of transport, can be grasped by examining the evolution of border controls and patterns of border deaths in Europe. The Paris-based organisation Migreurop has used data on over 16,000 border deaths collected by the NGO network United for Intercultural Action⁵⁸ to produce a series of maps showing the evolution of border-related deaths. In the early 1990s, the maps depict deaths at the internal borders and detention centres of Europe, but very few known deaths at sea.⁵⁹ As visa controls and carrier sanctions start to block options for safe arrival by air, deaths at sea begin to mount, initially at the shortest crossing points across the Straits of Gibraltar and via Malta to Italy. Over time, intensified maritime patrols begin to target these routes, and longer routes start to open up from West Africa to the far-flung Spanish territory of the Canary Islands. The dangers of these long voyages are made visible in later Migreurop maps through a cascade of large bubbles stretching down West Africa to Senegal,⁶⁰ painting a trail of death that mirrors the expansion of people smuggling-disruption programs. The pattern of these deaths is a reflection, initially, of the virtual border that denies access to legally regulated modes of travel, compounded by the secondary effects of the visible border consisting of physical patrols.

The record of deaths at the United States–Mexico land border also challenges political claims that fortifying borders can prevent deaths during irregular crossings. As walls and checkpoints began to appear through the 1990s at previously open crossing points (sometimes dividing previously unified communities), and border patrols supplemented by local vigilantes spread out across large sections of the border, unauthorised crossings were pushed further and further into remote and inhospitable terrain.⁶¹ With severely reduced opportunities for legal crossing, bodies began to accumulate in the Arizona desert. The proximate causes of these deaths were mostly environmental exposure or the violent actions of criminal gangs. Although Border Patrols were sometimes implicated in deaths, the vast majority of border fatalities were not directly at the hands of officials. The Border Patrol responded to concerns over mounting deaths by setting up the Border Safety Initiative aimed at saving lives, while at the same time intensifying efforts to intercept unauthorised border crossers. Despite these life-saving intentions, the most authoritative quantitative analyses have consistently demonstrated that the net effect of increasing border patrols has been to significantly increase the risk of death.⁶² While local border patrols regularly released statements claiming to have saved lives by reducing risky border crossings in their area of jurisdiction, more comprehensive

⁵⁸ Available at www.unitedagainstracism.org/pdfs/listofdeaths.pdf.

⁵⁹ Migreurop (2009), p 118.

⁶⁰ Migreurop (2013), p 140.

⁶¹ See for example Andreas (2009); Nevins (2002).

⁶² Binational Migration Institute (2013); GAO (2006); Haddal (2010); Jimenez (2009).

examinations of the patterns of deaths and border crossing across the system as a whole have led to a different conclusion.

The construction of irregular border crossing as a problem of people smuggling has been vital in distracting attention from the underlying role played by the operation of the virtual border.⁶³ First, all the harm that undoubtedly arises from these unsafe journeys can be laid at the feet of people smugglers, obviating the need to examine their motives or look any further for factors driving their illicit trade. At the same time, their imputed criminality provides a more palatable public justification for harsh measures that usually fall most heavily on the asylum seekers themselves. Asylum seekers opting to embark on perilous voyages at sea are transformed, in this interpretation, from wilful border transgressors into hapless victims, and harsh deterrents such as transportation to indefinite detention and forcible return are presented as necessary to protect them from risking their lives through their own mistaken decisions.

Given this complexity, it seems that simply ‘seeing’ the operation of the visible and virtual borders and highlighting their mutual contribution to border-related deaths is not likely to lead in a straightforward way to the abandonment of preemptive border policies. Cohen’s work on the sociology of denial, which is focused on traditional, embodied and potentially visible governmental practices that breach human rights, affirms that it is possible for human beings to know and at the same time not know about harmful official practices.⁶⁴ Even policies that increase risks to asylum seekers may be publicly justified through political processes of authorisation and denial. Authorities may engage in literal denial (the vessel did not sink), or more nuanced forms of denial (people smugglers are solely to blame for the loss of life – or it is unfortunate that people died, but protecting the security of our borders is an absolute imperative).

To date, the spectacle of the *visible* border has produced neither accountable government nor total government domination over events. It has at least opened up a space of contestation; however, it is a space from which public discussion of the *virtual* border is generally absent. Seeing the exercise of sovereignty at play through the virtual border may be only the first step towards identifying less lethal ways of governing borders, but it is a necessary, if not sufficient, precondition for achieving progress on this global issue.

Conclusion: Saving Lives by ‘Seeing’ Sovereignty

In order to debate what practices should and should not be allowed in defence of territorial sovereignty, it is first necessary to ‘see’ sovereignty in all its guises. The advent of information technologies and their application to border surveillance have created a bifurcation between the visible and invisible aspects of border enforcement. Accounts that begin the story of

⁶³ See, for example, Pickering (2004).

⁶⁴ Cohen (2001).

illegalised travel at the point at which asylum seekers entrust their lives to people smugglers ignore or downplay the role that pre-emptive border controls have played in shaping that decision. By recasting the debate as a problem of people smuggling, and failing to acknowledge the role pre-emptive border controls play in creating markets for illicit travel, the search for solutions starts and ends in the wrong place, and the options available for saving lives are artificially narrowed. In many ways, the spectacle of the visible border in Australia has operated as a diversion from this goal, obscuring the need to delve deeper into the less visible operation of virtual border enforcement that does the routine yet potent work of everyday border control. Because the political debate has been situated elsewhere, critics of offshore border control in Australia, such as the Australian Greens, generally discuss the promotion of safe pathways for asylum seekers in terms of faster processing in countries of transit, avoiding explicit reference to the deliberate denial of legal modes of travel that has shaped the journeys of many asylum seekers long before they reach Indonesia or Malaysia.

Revealing the ways in which sovereignty is exercised through the virtual border is essential for honest debate. However, it opens up seemingly intransigent questions about the extent to which states are justified in restricting access to their territory. These questions are spawning a growing interdisciplinary literature that cannot be fully canvassed here.⁶⁵ One set of explicit recommendations has been put forward by the British Refugee Council, which has advocated the provision of special asylum-seeking visas and training for personnel operating 'remote control policies' at overseas airports to ensure that interdicted asylum seekers are not put at risk by being prevented from lodging asylum claims.⁶⁶ However, it seems unlikely that recommendations such as this will gain political purchase unless there are fundamental changes in the way states view their sovereignty, accompanied by a readiness for supranational cooperation in relation to mass population movements, something that is not yet apparent. As Webber concludes: 'The [UK] government has occasionally recognised that refugees have no legal and safe way of getting here, but the "solutions" are based on keeping them out.'⁶⁷

Unmasking the operation of the virtual border, and debunking claims that greater levels of enforcement can save lives, reveals that sovereignty itself may be one of the institutions of modernity that is facing a crisis.⁶⁸ Political theorist Rainer Bauböck argues that 'once we have understood [the] moral complexity of migration claims, we should be less tempted to rank them according to their moral urgency or to postpone the goal of freedom of movement to a distant ideal world'.⁶⁹ Assisting this process of 'understanding' – and recognising the need to act differently – has been

⁶⁵ But see, for example, Bauböck (2009); Carens (2013); Juss (2004).

⁶⁶ Reynolds and Muggerridge (2008).

⁶⁷ Webber (2012), p 32.

⁶⁸ Deleuze (1992).

⁶⁹ Bauböck (2009), p 28.

marked out as a goal by other commentators grappling with the new realities of globalisation:

Our borders, economies and identities are far more complex than conventional spatial frames allow us to see, and our political response to the movement of people requires a corresponding degree of sophistication. The task of political theory, therefore, is to generate thinking space for alternative expressions of sovereignty and new modes of political belonging that are more dynamic and less life threatening for those who currently find themselves on the wrong side of sovereign terrain.⁷⁰

The experience of the last several decades suggests that evidence of the failure and harm of contemporary border-control policies on its own cannot displace the self-evidence of sovereignty and the imperative to shore it up against the uncertainties of global change. Even bringing to light knowledge about border-related deaths seems insufficient to displace the resilient view that borders exist to be defended, and that ever-stronger border controls are needed to save lives. Unmaking, as opposed to merely unmasking, the invisible border therefore requires a radical shift in the preparedness of governments and populations to countenance an alternative reading of borders. If we were serious about safety, some of the research budget proposed by the Houston panel (whose recommendations, admittedly, have now been overtaken by a change of government) could fruitfully be used to investigate the degree to which pre-emptive border controls are putting lives at risk in our region, in order to identify a wider range of options that are globally focused while still cognisant of state interests and the sensibilities of the Australian population. To continue down the current path is to knowingly sacrifice lives for the sake of what eventually will become an outmoded conception of sovereignty.

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⁷⁰ McNevin (2011), p 92.

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