

Abstract

The current statistics from the United Nations High Commissioner for Refugees indicate the existence of an urgent global refugee crisis. In response to this crisis the New Zealand Government has proposed immigration policy reform, primarily through the Immigration Amendment Bill 2012. In this thesis I place the domestic debate regarding these policy reforms within the context of the international, deontological debate regarding the justification and legitimacy of nation-states and their obligations toward refugees and asylum seekers, and provide a theological perspective on it. I am concerned specifically with the questions “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?”

In order to engage theologically with the deontological debate I apply the reasoning of ethicists Christopher Wellman and Philip Cole to a biblical-theology of nations and their use of power to determine their theological justifiability. With a focus on the work of Oliver O’Donovan, this investigation reveals that secular authority in the post-Christ era is responsible for maintaining law and order subject to various limitations, including the requirement to act in accordance with the principles of justice. In the treatment of refugees and asylum seekers, justice requires that a state upholds a duty of care derived from scriptural principles. Therefore, on the basis of this research, it can be concluded that a theological perspective supports the New Zealand Government’s right to develop and enforce its border policies if it acts within the stipulated theological limitations. This is because the nation can be understood as possessing a qualified sovereignty. However, when applying the duty of care owed by states to refugees, the current proposed policy reforms are inconsistent with this duty and need revision.

Sovereign State Power and the Refugee:

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

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Introduction

In light of the increase of incidences of the mass arrival of asylum seekers to countries such as Canada and Australia, in 2012 the New Zealand Government proposed amendments to New Zealand's refugee policies via the Immigration Amendment Bill (16-1) 2012 ("Bill") and accompanying policy reforms.¹ This Bill is presently being considered by parliament. These proposed amendments uphold the current quota system for refugees but also make provision for, amongst other things, the mandatory detention of asylum seekers for a period of up to six months in the case of a mass arrival; restrictions on family reunification; and changes to the citizenship application procedure. Many official public bodies have made submissions on the Bill, mainly focussing on the issue of whether the Bill's amendments are justifiable under New Zealand's domestic law and international obligations.

However, the debate should not be limited to analysis of the policies' adherence to existing law. In order to form a coherent and ethical refugee policy scheme in New Zealand, the wider context must be considered. Policies regarding refugees and asylum seekers need to be formed or reformed in light of international and ethical debates surrounding immigration and the refugee crisis. These provide a necessary context for New Zealand policy making, allowing a wider and more comprehensive perspective on the issue, attention to which will enable New Zealand to contribute constructively to the international effort to ease this great need.

¹ Please note that when I refer to 'refugee policy' or make reference to refugees in this thesis I intend this to include asylum seekers and policies related to them, unless stated otherwise.

Of these international debates, one of particular relevance is the deontological debate regarding the legitimacy of the nation-state and the use and regulation of territorial borders.² This debate calls into question the justifiability and legitimacy of the nation-state as a sovereign political entity and, consequently, addresses the issue of whether states possess the right to determine their immigration policies as they see fit. Ethicists and political philosophers Christopher Wellman and Phillip Cole state that the underlying motivation for the current escalation in the discussion on states and national borders is two-fold. One group, which promotes egalitarian concerns and advocates for more open border policies, is motivated by the injustice that a person's fate can be decided by a factor which is outside of their control - namely their place of birth - and find momentum in the rising importance placed upon human rights. The other group is motivated by the increasing threat that terrorism poses to the national security of various countries causing them to prefer that states impose stringent border restrictions in order to curb this threat.³ These two motivations are extremely powerful and both have merit. It is the negotiation of these concerns and the formulation of a just and workable political solution that poses a problem. In a time of great suspicion, and of great need, the plight of refugees and asylum seekers is inherently linked with this debate and their situation pushes these arguments to their extremes. It also brings the debate from a theoretical rights-based discussion of a duty of care, to a pressing issue which demands practical resolution.

² The Oxford Political Dictionary defines a "nation-state" as "the conjoining of political institutions and collective identity in a single sovereign unit." Iain McLean and Alistair McMillan, *The Concise Oxford Dictionary of Politics*, 3rd ed. (Oxford: Oxford University Press, 2009), June 2013, <<http://www.oxfordreference.com/view/10.1093/oi/authority.20110803100224764>> (27 June 2013).

³ Christopher Wellman and Phillip Cole, *Debating the Ethics of Immigration: Is There a Right to Exclude?* (Oxford: Oxford University Press: 2011), 2.

A theological engagement with issues of sovereign state power and the plight of the refugee and asylum seeker is desirable to equip the Church with informed opinions on such matters that may be used as a basis for offering appropriate responses. Luke Bretherton has argued that when policies which affect those most in need in our world are essentially dependent upon value judgements, a theological engagement provides foundational principles which may be used to inform such judgements, aiding the balancing of priorities inherent in the competition of the rights and needs of the parties involved.⁴ Therefore, this thesis addresses the following question: “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 unilaterally determine 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?” I primarily aim to answer this question by presenting a theological perspective on the deontological argument regarding the justifiability and legitimacy of states and their ability to restrict access at their borders to those seeking asylum (the “right to exclude”). I will then examine the limitations on state power created by the duty of care owed to refugees and asylum seekers as portrayed in scripture. In light of this, I will then seek to review the proposed New Zealand refugee policy reform in light of those findings in order to offer a theological perspective on the current situation.

Methodology

In accordance with the prophetic tradition, the method of political engagement employed in this thesis involves questioning the underlying assumptions of secular systems, which is why I have chosen to engage with the assumption of the

⁴ Luke Bretherton, *Christianity and Contemporary Politics: The Conditions and Possibilities of Faithful Witness* (Chichester: Wiley-Blackwell, 2010), 134.

sovereign power of states and its implications. Old Testament scholar Christopher Wright states that foundationally, politics and spirituality were inherently linked for the Jews, “politics was not something extraneous to their theological and spiritual faith.”⁵ Theological conceptions of power formed the basis of the prophetic message that the prophets of scripture shared with nations and individuals, gentile and Jew alike. It is this prophetic heritage in scripture that supports a theological ethic compelling Christians (and particularly theologians due to their academic expertise) to critique uses of power in their current contexts. This theological critique should not be bound by limitations of the political status quo. After all, it is the status quo which has marginalised refugees and asylum seekers, creating the present refugee crisis. Furthermore, unquestioningly working within secular frameworks can deny the true calling of the Church to draw attention to Christ’s present rule, and acknowledges that true authority lies with the state.⁶ Rather the Church should seek to examine the underlying assumptions of existing political structures.⁷ Therefore, I believe that a theological critique of the proposed immigration amendments should not be limited to the review of proposed legislation changes against the rules of the system which the New Zealand government dictates, as the current public debate has sought to do, but requires a deeper questioning of the ideas that underpin its political systems and motivate such proposals.

⁵ Christopher Wright, *Old Testament Ethics for the People of God* (InterVarsity Press: Illinois, 2004), 212-213.

⁶ Oliver O’Donovan, *The Desire of the Nations: Rediscovering the Roots of Political Theology* (Cambridge: Cambridge University Press, 1996), 224-226.

⁷ This critical engagement is the beginning of what Stephen Mott deems ‘creative reform.’ Mott’s ‘creative reform’ then involves making gradual reforms which, subject to limitations, seek to bring existing political structures in line with the determined theological conceptions of power. See Stephen Mott, *Biblical Ethics and Social Change* (Oxford: Oxford University Press, 1982), 202-203.

As an evangelical Anglican, I believe in the theological method of Richard Hooker's 'three legged stool' adopted by our tradition.⁸ This holds scripture, reason and tradition as central for theological inquiry, the latter two subject to the former.⁹ Therefore I believe that any theological inquiry into a political issue must primarily look to scripture, but should seek to engage with wide ranging secular discourse and existing Christian scholarship.

In this thesis I will employ a biblical-theology (or narrative-theology) approach; an approach which attempts to theologically synthesise biblical material over the whole of scripture, attempting to provide a coherent biblical overview of a topic.¹⁰ I believe that this method is desirable for this particular theological task as it enables and utilises an overall survey of scripture (although with particular foci) that best captures the changing theological understanding of the nation as a dynamic and evolving political entity and its purposes in God's unfolding redemptive plans for humanity.¹¹ This method seeks to produce a coherent alternative framework with which to effectively engage secular political discourse.

Importantly, a biblical theology avoids the methodological issue of uncritically applying scriptures, which were unique to their context, to a contemporary issue. A narrative approach necessarily involves an evaluation of the developing

⁸ For further discussion of Hooker's work see Nigel Atkinson, *Richard Hooker and the Authority of Scripture, Tradition and Reason: Reformed Theologian of the Church of England?* (Carlisle: Paternoster Press, 1997).

⁹ *Ibid.*, 32-33.

¹⁰ E. A Martins, "Biblical Theology," *Global Dictionary of Theology*, eds. William A Dyrness and Veli-Matti Karkkainen (Intervarsity Press: Downers Grove, 2008), 109-110.

¹¹ The Oxford Dictionary defines "nations" as "large bodies of people united by common descent, history, culture, or language, inhabiting a particular state or territory." Oxford Dictionary (Oxford: Oxford University Press, 2013), <<https://oxforddictionaries.com/definition/english/nation>> (27 June 2013).

understandings of subjects of inquiry throughout the biblical narrative.¹² Esther Reed in her work “Refugee Rights and State Sovereignty: Theological Perspectives on the Ethics of Territorial Borders” notes that in the past the Old Testament has been applied oppressively and without careful consideration in order to justify political action.¹³ Using N. T Wright’s conception of scripture as a five act Shakespearian play, if one neglects the nature of the fourth act (Jesus), and its relationship to the final act of the play (the Church), one can easily form an incomplete or skewed theological understanding.¹⁴

Despite all of the positive aspects of biblical theology, every method has its weaknesses. A biblical theology has the limitation of brevity. It is restricted in its biblical analysis as it attempts to cover such a vast historical narrative that it cannot undertake lengthy exegetical engagement with each relevant scripture. While it is not possible within the scope of this thesis to provide a comprehensive study of relevant biblical material, I hope, nevertheless, to represent accurately the general trajectory of biblical thought.

An important issue which I seek to avoid is identified by Samuel Wells in his book “Improvisation: the Drama of Christian Ethics. Wells criticises views of ethics which lead Christians to “confuse the church and the world, trying to make the

¹² For example, Paul Hanson asserts that it is important to hold theological discourse to the *telos* of creation: the eschatological hope in the reign of Christ and his complete instigation of the Kingdom of God. See Paul Hanson, *Political Engagement as Biblical Mandate* (Eugene, Oregon: Cascade Books, 2010), 36.

¹³ Esther Reed, “Refugee Rights and State Sovereignty: Theological Perspectives on the Ethics of Territorial Borders,” *Journal of the Society of Christian Ethics* 30:2 (2010): 63-64.

¹⁴ See N. T. Wright, “Can the Bible be Authoritative?” *Vox Evangelica* 21 (1991): 7–32. N. T. Wright explains that scripture is like a five act play in which the first four acts ((1)Creation, (2) Fall, (3) Israel, (4) Jesus) are given to the actors to rehearse and perform. However, the fifth act is lost and the actors must improvise this act based upon their understanding of the previous four acts and in light of their understanding of the Shakespearian style, language and cultural context.

world the church, or treating it as if it were...”¹⁵ This confusion can come from a transference of biblical principles onto ‘secular’ society which were intended, given their context, to be directives only for the people of God. Therefore, I want to clarify that this thesis presents a theological perspective on the issues in question and is not prescriptive of particular social action.

Structure

First, I wish to examine the context which I seek to critique. Chapter One will therefore provide an outline of New Zealand’s existing legislation and its international obligations, and then consider the proposed Bill, and its accompanying policy changes. I will present a brief summary of the critiques of the Bill and policies by various organisations including governmental bodies. I will also consider the submissions from two prominent Christian organisations in order to see the extent to which theology has been used to critique the policy amendments.

Through the lens of *The Right to Exclude: Debating the Ethics of Immigration: Is There a Right to Exclude?*, a recent work of Christopher Wellman and Phillip Cole, Chapter Two will summarise the international, deontological debate regarding the right of states to unilaterally create and enforce their own border policies as they see fit. The basic deontological debate involves assessing whether states are, in themselves, morally justifiable and legitimate, and whether their legitimacy entitles them to sovereign control over their affairs including the uninhibited unilateral control of their border policies. A pertinent issue stemming from this which the scholars address is whether the duty of care to accept refugees poses an exception to this sovereign control. This discussion is essential to lay foundations for theological engagement with the issue in Chapter Four.

¹⁵ Samuel Wells, *Improvisation: The Drama of Christian Ethics* (Grand Rapids: Brazos Press, 2004), 39.

In Chapter Three we will turn to review theological scholarship in this area, including the work of Luke Bretherton and Esther Reed who write specifically on the topic of state sovereignty and refugees. I will also discuss the work of Wolhart Pannenberg who has been foundational for such theological thought through his perspective on the sovereign power of states, and that of Joan Lockwood O'Donovan ("Lockwood O'Donovan") and Oliver O'Donovan ("O'Donovan") whose political theology touches on these issues. From this discussion I will show that these scholars value a biblical-theological approach, that theology provides a basis deeper than human rights as the foundation for assessments of a state's moral status and power, and that there is little theological scholarship in this particular area, and great potential for future work.

I will argue in Chapter Four that the present nation-state did not emerge in an historical vacuum, but stands in historical and theological continuity with the nations in scripture. Therefore, I will propose that scripture provides us with a theological framework by which to assess the justifiability and legitimacy of the nations which is appropriate to be applied to the nation-state.

In order to engage with the deontological debate regarding the right to exclude, I will then employ the moral reasoning from the secular debate in Chapter Two - that a state is morally justified if it functions to uphold the ultimate good of humanity- and use it to evaluate the nations as they are presented over the course of the biblical narrative. This will involve first, a brief discussion of how scripture suggests that the ultimate good of humanity is humanity's reconciliation and communion with God. Second, I will examine the theological concepts which are portrayed by the authors of the selected parts of scripture regarding the purpose of the creation of

the nations and their changing role throughout the biblical narrative, in order to determine whether or not they uphold this ultimate good of humanity. For this section I will engage with (and support) the work of Lockwood O'Donovan and O'Donovan who view the purpose of the nations christocentrically. They assert that although the ultimate goal of humanity's reconciliation with God remains constant, the theological role of the nation changes from being the vehicle of redemption before the Christ event, to the stage upon which the gospel is to be advanced and which must be maintained by judicial order after the Christ event. A further implication of this view is that nations will eventually become redundant upon the return of Christ as the *telos* of the nations is the "spirit-filled body of the exalted Christ."¹⁶

Chapter Five will then continue in its application of Wellman's moral reasoning to propose that a state's legitimacy depends upon its adherence to the limitation that it must function within its prescribed judicial role. However, I will assert that a theological understanding of power as delegated, and the implications which this brings, necessarily imposes another major limitation: that rulers must exercise power in accordance with the principle of justice. I will support this assertion with a study of the directions regarding, and examples of, the appropriate use of power by the nations in scripture, drawing particularly from the political theology of Stephen Mott.

I will conclude Chapter Five with a critique of the underlying Westphalian ideology of the nation-state system and will argue that the notion of unlimited state power conflicts with a theological understanding of delegated power. However, I will argue that in light of the current international debate regarding the implications and

¹⁶ Oliver O'Donovan and Joan Lockwood O'Donovan. *Bonds of Imperfection: Christian Politics Past and Present* (Grand Rapids: Eerdmans, 2004), 286.

limitations of 'sovereign' power, the understanding of sovereignty in Catholic Social Teaching as 'qualified sovereignty,' may enable a theologically congruent interpretation of the current state system which is not merely theoretical.

Chapter Six will show how the portrayal of the duty of care owed by a state to those seeking asylum is a practical outworking of the biblical requirement of acting justly determined in Chapter Five and therefore suggests practical limitations on a state's power when determining refugee policy. I will begin by critiquing Wellman's partialist view of the implications of the duty of care against a Christian cosmopolitan view, in order to highlight the primacy of the duty of care in a state's balancing of priorities. I will then argue that in light of the conclusions arrived at in Chapters Four and Five this balancing of priorities must hold both the duty of care and the possibility of undermining the purpose of the state as important. I will then turn to examine the scriptures in order to articulate a scriptural presentation of the duty of care. I will not propose that the exact responses to strangers in need suggested by scripture should be applied to national refugee policies as these are directed to the people of God, (and particularly in the New Testament at individual Christians), but I assert that the principles which underlie these legal and narrative directives do form guidelines for assessing the theological legitimacy of a state's policies.

Chapter Seven will then review the specific policies proposed by the New Zealand Government in light of the theological principles of the duty of care determined in Chapter Six. Following on from my biblical study in Chapter Six, I will argue that these guidelines form a framework within which we should prioritise values in policy making. When applied to the policies regarding the quota system, mandatory detention and the other policy changes, I believe that the policy reforms do not adhere to this framework as they do not reveal God's justice in this specific

context. Therefore, I am in agreement with the sentiment of many of the formal submissions on the refugee reforms that, as proposed, the reforms are not desirable and need to be reviewed.

Limitations

It is important to note that this thesis seeks to engage theologically with the deontological issues regarding the right of the state to determine their own border policies, and whether a theological understanding of the power of the state and the duty of care owed by it to refugees imposes restrictions on this right. Therefore, as well as the limitations which I have already mentioned, this thesis will not directly address issues of human rights. Rather, I will address issues of the person as directed by scripture, and will not seek to frame them legally as this is not consistent with the purpose of this thesis. Nor will I discuss the Church's role in the reception of asylum seekers and refugees as my primary subject is the state.

Chapter One:

The New Zealand Context

In 1987 the New Zealand Government established a formal annual quota for the resettlement of refugees. Under this system, New Zealand currently accepts up to 750 people per year who are deemed “refugees” under the 1951 Convention Relating to the Status of Refugees (“Convention”). In the year 2010/2011, New Zealand accepted 527 refugees. In the following year 2011/2012 New Zealand accepted 679 refugees. This is very small in comparison to Australia which in the 2011/2012 year accepted 4766 irregular maritime arriving refugees, and 2272 regular refugees (“non-irregular maritime arrivals”); Australia has many more asylum seekers reaching its shores than New Zealand does.¹⁷

However, recently there has been increased concern about a mass arrival of asylum seekers coming to New Zealand by boat. There have been instances of mass arrival by boat in Canada since the 1970’s, and on one occasion, in 2010, the MV Sun Sea carrying 490 Tamil asylum seekers arrived there. Closer to home, there have been many instances of asylum seekers arriving by boat to Australia with numbers increasing over the years. The New Zealand Herald reported that as at July 31 2012, 6765 had already arrived in the seven months of that year, which

¹⁷ Australian Government, Department of Immigration and Citizenship, “Asylum Trends: Australia 2011-2012 Annual Publication,” 19, 31, <http://www.immi.gov.au/media/publications/statistics/asylum/_files/asylum-trends-aus-annual-2011-12.pdf> (10 May 2013).

was more than the 6555 in 2010 and 4500 in 2011.¹⁸ The Australian Government has responded to these arrivals by imposing provisions similar to the ones which the National Party introduced to Parliament on 30 April 2012 in the Immigration Amendment Bill (16-1) 2012. These mass detention provisions were met with mixed responses from the Australian public and have resulted in a financial drain on the Australian Government, as they have incurred greater costs for greater periods of detention.¹⁹

However, New Zealand is in a different position from Australia. Being that much further away from South East Asia, and being shielded by Australia, we receive far fewer asylum seekers than Australia. The catalyst for the proposed legislation in New Zealand was the arrival, in April 2012, of ten Chinese asylum seekers in Darwin. This caused New Zealanders concern as the people on the boat were holding signs stating that they were trying to sail to New Zealand. As this event made the possibility of a mass arrival to New Zealand appear imminent, the National Party responded by the introduction of the Bill. As at the beginning of July 2013, the Bill is before a select committee. The explanatory note of this Bill states that in order to deter potential people smugglers from choosing New Zealand as their destination, the Bill seeks to modify the existing Immigration Act 2009 to grant the Government greater ability to detain asylum seekers and to limit some of their freedoms. It also notes that changes to the Act are also intended to increase administrative efficiency in processing such an arrival should it occur.²⁰

¹⁸ Greg Ansley, "Record Level of Asylum seekers a Blow to Gillard." *New Zealand Herald*, 31 July 2012, <http://www.nzherald.co.nz/world/news/article.cfm?c_id=2&objectid=10823342> (6 August 2012).

¹⁹ The cost of detention for the year 2010/2011 was \$772.17 million. See Parliament of Australia, Senate Committees, Joint Select Committee on Australia's Immigration Detention Network, "Final Report," <http://www.apf.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=immigration_detention_ctte/immigration_detention/report/c07.htm clause 7.67> (10 May 2013).

²⁰ New Zealand Parliament, Immigration Amendment Bill 2012, Explanatory Note, 1.

In order to theologically engage fairly and constructively with the issues which this situation poses, we must first gain a deeper understanding of the current context. We will begin by briefly looking at the relevant parts of the Convention, the guiding international document in relation to refugees and asylum seekers, which New Zealand has acceded to. Then we will look more in depth at the New Zealand laws as they exist presently, before summarising the changes proposed by the Bill. With this understanding of the legal aspects, we will then turn to review the reception of the Bill through several important submissions to the Select Committee including, importantly, the United Nations Human Rights Commissioner's ("UNHCR") submission. Then, as this thesis aims to provide a theological analysis of the issue, we will look to the published submissions of two Christian denominational organizations, Caritas and the Salvation Army, in order to see what reasoning Christians have employed in their assessments of the Bill. Finally, we will briefly look at some informal public opinion, as this often reveals the general attitudes of the average New Zealander, providing a multi-faceted picture of the climate in New Zealand surrounding this policy debate.

1951 Convention Relating to the Status of Refugees and its 1967 Protocol

The 1951 Convention is the "centerpiece of international refugee protection".²¹ In 1951 the Convention consolidated existing international instruments relating to refugees, and remains the most comprehensive international instrument regarding refugees. The Convention is described by the UNHCR as a "status and rights-based" instrument and is based upon several fundamental principals including non-

²¹ United Nations General Assembly "Draft Convention relating to the Status of Refugees," 14 December 1950, A/RES/429, <<http://www.refworld.org/docid/3b00f08a27.html>> (10 May 2013).

discrimination, non-penalisation and non-refoulement.²² Importantly, the Convention (and its subsequent protocol) sets out a definition of “refugee” which the UNHCR advocates should be used globally.²³ Article 1A(2) defines a refugee as a person whom:

“owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”

The convention sets out the basic human rights which refugees hold including, importantly, the rights of association, and access to courts, housing, education, work, movement, and travel documents.²⁴ It also lays out obligations which the refugees owe to their host country, including being bound by their laws and regulations.

This convention and its 1967 protocols have been acceded to by 142 countries to date, with a further five countries ascribing only to the convention or to its protocols.²⁵ New Zealand acceded to the Convention on 30 June 1960 and the Protocols on 6 August 1973. New Zealand is now bound, by international law, to honour this Convention. Due to the unenforceable nature of international treaties and conventions, the extent to which a state is bound by the Convention is

²² Non-refoulement is the principle that a refugee should not be forced to return to the country from which they have fled. See UNHCR, Convention and Protocol Relating to the Status of Refugees 1951, Introductory Note 3. <<http://www.unhcr.org/3b66c2aa10.html>> (10 May 2013).

²³ *Ibid.*

²⁴ *Ibid.*, articles 15-17, 21-22, 26-28.

²⁵ United Nations High Commissioner for Refugees, “State Parties to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol,” 1, <<http://www.unhcr.org/3b73b0d63.html>> (6 August 2013).

determined, in practice, by its codification in their domestic law. In New Zealand, the text of the convention is added as Schedule 1 to the Immigration Act 2009 to which I now turn.

Immigration Act 2009

New Zealand law on the immigration of refugees and asylum seekers is found primarily in the Immigration Act 2009. Part 1, clause 3(1) of the Act states that the purpose of the Act is “to manage immigration in a way that balances the national interest, as determined by the Crown, and the rights of individuals.” To achieve that purpose, the Act establishes an immigration system which provides the mechanics for dealing with all immigration related issues and processes.²⁶ Part 5 of the Act sets out the means for dealing with several essential issues in order to “provide a statutory basis for the system by which New Zealand determines to whom it has obligations under the United Nations Convention Relating to the Status of Refugees and the Protocol Relating to the Status of Refugees...”²⁷ Importantly, this Act defines who is a refugee, and who can claim refugee status; the process and rules regarding making and determining a claim for refugee status; what happens after a claim has been determined; what happens in the case of a loss or cancellation of refugee status; and the rules and processes around special cases.

The Act has been assessed positively by the UNHCR as upholding the principles of the Refugee Convention and has earned New Zealand a good reputation in this area.²⁸ It has also been considered by the Refugee Council of New Zealand’s

²⁶ New Zealand Parliament, Immigration Act 2009. s3(2)(g) states that this system “supports the settlement of migrants, refugees, and protected persons.”

²⁷ *Ibid.*, part 5.

²⁸ United Nations High Commissioner for Refugees, “Submission by the Office of the United Nations High Commissioner for Refugees New Zealand Immigration Amendment Bill 2012,” 8 June 2012, s5,

spokesperson Deborah Manning as providing New Zealand with a reputation of being “among the best examples of fairness and humanitarian principles upholding the UN Convention.”²⁹ However, the Bill proposes to amend this Act in ways which have been criticised in the media and in the submissions that I will address shortly.

Immigration Amendment Bill (16-1) 2012

The Bill proposes to make the following substantial amendments to the Immigration Act 2009:

- It establishes a definition of a “mass arrival group.”³⁰
- It enables an Immigration Officer to apply to a District Court Judge for a “mass arrival warrant” to authorise the mandatory detention of those who have arrived as part of a “mass arrival group” for an initial period of up to six months.³¹
- It allows for suspensions of determining refugee claims.³²
- It makes new limitations in the claims process for refugee status particularly the circumstances in which an oral hearing can be conducted.³³
- It restricts access to judicial review by allowing it only in cases where the Immigration and Protection Tribunal has issued its final determination, and then only with leave of the High Court.³⁴

<http://unhcr.org.au/unhcr/images/2012_0608_UNHCR%20Submission%20to%20the%20NZL%20Immigration%20Amendment%20Bill.pdf> (10 May 2013).

²⁹ Refugee Council of New Zealand, “United Nations Slams Government Immigration Bill,” 15 June 2012, <<http://www.scoop.co.nz/stories/PO1206/S00208/united-nations-slams-government-immigration-bill.htm>> (10 May 2013).

³⁰ Ibid., Clause 5 (new s9A). This definition is as follows: In this Act, mass arrival group means a group of more than 10 people, each of whom falls within 1 or more of the classes of person described in paragraphs (a) to (f) of section 115(1), who arrive in New Zealand

“(a) on board the same craft; or

“(b) on board the same group of craft at the same time; or

“(c) on board the same group of craft and within such a time period or in such circumstances that each person arrived, or intended to arrive, in New Zealand as part of the group.”

³¹ Ibid., Clause 12, (new s317).

³² Ibid., Clause 7, (new s135A).

³³ Ibid., Clause 9, (new s233).

The Bill was referred to the Select Committee and submissions on the Bill closed on 9 June 2012.

Accompanying Policy Changes: Hon Nathan Guy's Press Release

National Immigration Minister Nathan Guy issued a press release explaining the Bill and other policy changes which would accompany it if it were successfully passed as an Act of Parliament. He claimed that the policy reform was due to an increased risk of illegal immigrants entering New Zealand.³⁵ Importantly, Mr Guy stated that policy changes accompanying this Bill would include:

- Reassessing a claimant's refugee status after three years, with permanent residence being withheld unless this reassessment is approved.³⁶
- For those who are granted residency, family reunification rules will be restricted to sponsoring only immediate family to join them in New Zealand, excluding extended family members.³⁷

Mr Guy finished by adding that New Zealand will still fulfil its international obligations by continuing to accept its annual quota of 750 UNHCR mandated refugees.³⁸

³⁴Ibid., Clause 10, (new s249).

³⁵ Nathan Guy, "New Measures to Deter People Smugglers Announced," 30 April 2012, <<http://www.national.org.nz/Article.aspx?articleId=38387>> (10 May 2013).

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid.

Responses to the Proposed Policy Reforms

Submissions to the Select Committee by Statutory Bodies

Some of the major submissions to the Select Committee have been made publically available and are useful in gauging the elements of the debate.³⁹ As discussed above, the UNHCR is the body which oversees the implementation of, and adherence to, the principles of the Convention in countries which have acceded to it. It provided a submission to the select committee in which it raised several concerns, and made various recommendations which, in its opinion, would have to be acted upon in order for the Bill to uphold New Zealand's international obligations. Also several New Zealand statutory bodies, the Human Rights Commission ("HRC"), the Ministry of Justice ("MOJ"), and the New Zealand Law Society were required by statute to make submissions on the Bill. Amongst all of these submissions, only the MOJ found the Bill to be congruent with existing New Zealand domestic law.⁴⁰ All of these bodies either advised the Government to seek further advice on its international obligations or condemned the Bill as being in breach of these. The policy proposals accompanying the Bill were also considered and contested by the HRC and UNHCR. Putting aside the issues regarding the legality of the policies (as this is outside the scope of this thesis) we will look at the other concerns which were raised in these submissions.

The UNHCR and the HRC were the only two bodies that voiced issues regarding the well-being of the refugees. Their concerns are interesting for understanding the level of the duty of care believed to be owed to refugees. Both bodies stated

³⁹ I have been unable to access any academic publications regarding this Bill, perhaps due to the timing between the proposition of the Bill and the time of this research.

⁴⁰ The counsel believes that detention in the case of a mass arrival group is administratively justifiable, and that the restricted access to judicial review was also justifiable. They also are satisfied with the safeguards provided in the Bill. See Attorney General of New Zealand, "Immigration (Mass Arrivals) Amendment Bill," 3 April 2012, s23, 29, <<http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/immigration-mass-arrivals-amendment-bill>> (10 May, 2013).

their concern about the mental and emotional toll on the individual seeking asylum that might be occasioned by the suspension of their claim and by thus keeping them “in limbo.” They believe that this would translate into poor settlement outcomes for them.⁴¹ They were also concerned about the wellbeing, and the successful settlement, of individuals who are subject to the withholding of permanent residency status until a three year reassessment of a grant of refugee status has been undertaken.⁴² They both also had concerns in this regard with respect to the family reunification process, as family reunification is critical for effective settlement.⁴³ The UNHCR asserted that family reunification should be done in culturally sensitive and case specific ways that reflects the real nature of the bonds of kinship, responsibility and dependency.”⁴⁴

Published Submissions to the Select Committee From Christian Organisations

As this thesis aims to provide a theological engagement with this issue, it will be wise to consider, in slightly more detail, published submissions made by Christian organisations in order to see their concerns with the legislation and to gauge the level of theological engagement thus far. The most prominent submission is that of Caritas, who has also held a public forum on this topic in Wellington. We will also briefly discuss the submission from the Salvation Army.

⁴¹ Human Rights Commission, “Submission by the Human Rights Commission: Immigration Amendment Bill 2012,” 8 June 2012, s39, <http://www.hrc.co.nz/wp-content/uploads/2012/06/Submission-on-Immigration-Bill_NZHRC.pdf> (10 May 2013). United Nations High Commissioner for Refugees “Submission by the Office of the United Nations High Commissioner for Refugees”, s65.

⁴² United Nations High Commissioner for Refugees, “Submission by the Office of the United Nations High Commissioner for Refugees”, s65(d); Human Rights Commission, “Submission by the Human Rights Commission,” s47.

⁴³ United Nations High Commissioner for Refugees, “Submission by the Office of the United Nations High Commissioner for Refugees,” s88-91; Human Rights Commission, “Submission by the Human Rights Commission,” s49.

⁴⁴ United Nations High Commissioner for Refugees, “Submission by the Office of the United Nations High Commissioner for Refugees,” s90.

1. Submission from Caritas

Caritas is a Catholic organisation which delivers aid and supports development overseas, as well as working for justice in New Zealand and abroad. Caritas states that its submission is based upon the following aspects of Catholic Social Teaching:⁴⁵

- “Natural Justice
- Preferential treatment for the poor and vulnerable
- Human dignity
- Families are the fundamental unit of society
- The protection of the Refugee Convention is a minimum standard, not an aspirational goal
- We must address the causes as well as the symptoms.”

Apart from the legality of the Bill, the primary concern of Caritas was the same as that of the HRC: that the rationale for the Bill is flawed, and so the legislation is unnecessary.⁴⁶ Caritas wrote in the submission about the incompleteness of the knowledge of the Convention which the members of parliament hold and drew attention, in particular, to the naming of asylum seekers in the Bill’s proposal not as claimants of refugee status, but as “illegal immigrants” or “queue jumpers”.⁴⁷ They were concerned that this lack of knowledge had led to the flawed rationale and motivations of the Bill.

⁴⁵ CARITAS, “Submission to the Transport and Industrial Relations Select Committee on the Immigration Amendment Bill 2012,” 8 June 2012, s5, <<http://www.caritas.org.nz/sites/default/files/Caritas%20submission%20-%20Immigration%20Amendment%20Bill%202012.pdf>> (14 May 2013).

⁴⁶ *Ibid.*, s6.

⁴⁷ *Ibid.*, s11-19.

With regard to the detention provisions, Caritas deemed that the reasons for detention are not sufficient, “We do not accept ‘effective management of mass arrivals’, ‘efficiency of the immigration system’ or ‘efficient functioning of the District Court’ as valid grounds for detention of people based only on their method of arrival to New Zealand and the number of people they arrived with.”⁴⁸ Again, they took issue with this section of the Bill on the grounds of traumatising of the individuals detained.⁴⁹

Caritas also commented on the proposed policy changes which would accompany the Bill. It believed the policy to allow only immediate family reunification to be harsh and unnecessary, and gave the example of a spouse being killed in conflict thus prohibiting the bringing in of any other adult support.⁵⁰ It also opposed the delaying of a grant of residency for three years for mass arrival claimants who subsequently have their claim for refugee status approved. They pointed out that Australia enacted similar provisions which have now been abandoned by the Australian Government. The delaying of residency “created huge anxiety for refugees, and delayed family reunification for immediate family members, further encouraging women and children to make the same journey by boat.”⁵¹

2. Submission from the Salvation Army

The much briefer Salvation Army submission began by taking issue with the emotive language used in the presentation of the Bill by Nathan Guy. It was concerned that language such as “ulterior motives” and “mass arrival” would incite

⁴⁸ *Ibid.*, s23.

⁴⁹ *Ibid.*, s26.

⁵⁰ *Ibid.*, s36-37.

⁵¹ *Ibid.*, s38.

fear and apprehension into the general public and result in discrimination against refugees already in New Zealand.⁵²

The Salvation Army stated that the provisions of the Bill are contrary to the Universal Declaration of Human Rights. It took issue with the term “mass arrival” stating that refugees and asylum seekers are not a homogeneous group.⁵³

“Purely by reason that they have arrived together by the same mode of transport is not in itself justification for individual people/family groups to be viewed or treated as if they are exactly the same. Whilst travelling from the same country their individual circumstances/family background and experiences might well be very different. A ‘one size fits all’ approach could be detrimental to people seeking appropriate help related to their individual needs.”

It quoted from the Australian Medical Association (“AMA”) regarding the health of detained refugees, arguing that the AMA have found detention to be detrimental to the health of those detained, particularly children.⁵⁴ It was also concerned, like Caritas, about the psychological impact which detention has on a refugee who has already suffered trauma in their own country.⁵⁵

Informal Public Opinion

Organisations and individuals submitted their opinions on the Bill to the Select Committee, whilst opinions have also been shared in an informal manner on various news websites. The NZ Herald is the most widely read paper among New

⁵² The Salvation Army, “Immigration Amendment Bill, Transport and Industrial Relations Select Committee, The Salvation Army (New Zealand, Fiji and Tonga) Submission,” s2, <<http://www.salvationarmy.org.nz/uploads/file/20130415SPPUImmigration%20Amendment%20Bill%20submission.pdf>> (14 May 2013).

⁵³ *Ibid.*, s4.1

⁵⁴ *Ibid.*, s4.2.

⁵⁵ *Ibid.*

Zealanders and, therefore, gives the widest opportunity for public comment on issues of the day through opinions posted online, and in “letters to the editor.”⁵⁶ The editorial “Govt Should Open Arms to Boat People,” the only article on this topic that allowed readers to post responses, received just over 40 posts on the paper’s website. The range of posts revealed mixed concerns regarding the proposed policy reform but the majority were in favour of the Bill.

Another public expression regarding the proposed policy changes is the “We’re Better Than That” campaign, promoted by various New Zealand entertainers via a Facebook group and a youtube clip. This campaign seeks further discussions on this issue. It claims that the policy changes are negative, that they politicize people’s pain, and that they are unnecessary. It presents the overall message that New Zealand is “better than that.”⁵⁷

Conclusion

From the above discussion we can see that from the formal to the informal there has been debate surrounding the policies concerning refugees and asylum seekers. However, the field of concern has been rather limited. The only issues raised have concerned the welfare of the refugees and the compatibility of the new Bill with existing law, including the state’s self limitations which it has assumed through its accession to international conventions. However, the underlying assumptions of the state’s right to exclude and detain appear not to have been

⁵⁶ The daily newspapers’ circulation numbers for the period January - December 2012 places the New Zealand Herald as the most circulated paper with an average national circulation of 155139, whereas the next highest is the Dominion Post with 77900. See New Zealand Audit Bureau of Circulation Inc, “Press Audit Results,” 2012, <http://newspaper.abc.org.nz/audit.html?org=npa&publicationid=%25&mode=embargo&npa_admin=1&publicationtype=19&memberid=%25&type=%25> (14 May 2013).

⁵⁷ We’re Better Than That Group (Various members), <http://www.youtube.com/watch?v=18rX4Z_OkBY> (4 June 2013). The Facebook group (as at 4 June 2013) has 672 likes, <<https://www.facebook.com/WeAreBetterThanThat>> (4 June 2013).

questioned, and the international debate regarding this issue has apparently not been introduced.

The two submissions by Christian groups took issue with the motivations behind the reforms and the harmful effects which they would have on those refugees who are subjected to them. Although Caritas stated principles derived from their faith, they did not provide any theological arguments in the submissions, nor did they articulate the scriptural origin of the principles which they stated underlay the submission. Neither of the Christian organisations challenged the underlying assumptions of existing power structures, or engaged with the wider secular debates which seek to do so.

As I have mentioned, I believe that the debate needs to be broadened to address the wider international debates regarding the rights of states and refugees in order to achieve a coherent and ethical refugee regime. I will now turn to that wider debate in order to provide a critical theological engagement with the New Zealand Government's underlying assumption that it possesses the right to determine unilaterally its own refugee policies as it sees fit.

Chapter Two:

The Deontological Debate on the Justifiability and Legitimacy of Nation-States and the Duty of Care to Refugees

This thesis seeks to engage theologically with the deontological debate regarding the justification and legitimacy of states and their right to determine unilaterally and enforce their own border policies as they see fit. As I mentioned in my introduction, the benefit of such engagement is two-fold. First, it informs a theological perspective in response to this contemporary debate and highlights points of engagement with secular discourse. Second, where the current debate lacks in arguments from principles deeper than human rights or the 'common good,' a theological perspective can provide a more fundamental basis from which to argue. I will now summarise the debate through a brief historical overview and then a summary and critique of the recent work of political philosophers Christopher Wellman and Philip Cole.

The deontological debate essentially poses a two-fold question which it seeks to answer with regard to refugees. First, do states have a right to determine unilaterally and enforce their border policies, which in the extreme case involves the right to exclude immigrants generally from their territories? Second, does the duty of care which is owed by states to refugees pose an exception to this right to exclude and require a state to fulfil their obligation by accepting refugees even

when this is undesirable in the view of the state? These questions can also be framed in terms of whether a state owes a greater duty of care to its citizens or to those in desperate need seeking to enter their borders. As Luke Bretherton has highlighted, the issue arises because the Refugee Convention provides rights for refugees to enter into a polity but it does not necessarily follow that these polities have an overriding duty to accept the refugees, particularly if their acceptance jeopardises the wellbeing of the state's existing members.⁵⁸ We will keep these questions in mind as we turn to summarise and critique the current debate.

The Development of the Debate

The guiding principle of current international law is the sovereignty of nation-states. According to Cornelia Navari, the traditional school of thought holds that this concept of state sovereignty began to form the consciousness of the emerging European international community between 1414 and 1713.⁵⁹ This idea of the self-determination of a state was clearly articulated in the Peace of Westphalia 1648, and thus the term "Westphalian Sovereignty" became the common way of describing this new international order. In order to bring peace to Europe, that document declared that states were.⁶⁰

“established and confirmed in their ancient rights, prerogatives, liberties, privileges, free exercise of territorial right both in ecclesiastical and in political matters, in their lordships and sovereign rights, by virtue of this present transaction: that they never can or ought to be molested therein by any whomsoever upon any manner of pretence.”

⁵⁸ Bretherton, *Christianity and Contemporary Politics*, 129.

⁵⁹ Cornelia Navari, "States and State systems: Democratic, Westphalian or Both?" *Review of International Studies* 33 (2007): 577.

⁶⁰ The Avalon Project (reproduced by), "Treaty of Westphalia: Peace Treaty between the Holy Roman Emperor and the King of France and their respective Allies," LXIV, Yale Law School, <http://avalon.law.yale.edu/17th_century/westphal.asp> (14 May 2013).

However, philosophers like Immanuel Kant realised that this unfettered sovereignty would not work effectively to ensure perpetual peace. Kant recommended that a “Federation of Free States” be established which would uphold the sovereignty of states with a “republican civil constitution” and subject them to an international code which prioritised peace and hospitality.⁶¹ Kant’s idea of *ius cosmopolitanum* has been drawn on by many advocates of a cosmopolitan position since.

Due to the rise of immigration at the turn of the nineteenth century, the debate over the right of a state to exclude immigrants began. As David Miller explains, the writings of H. Sidgwick, a popular political writer of this period, were quite straightforward: states had the right to admit “aliens” on their own terms, and could apply any legal restrictions or disabilities upon them which it deemed expedient. Once accepted into the country the state could “treat them in any way it thinks fit.”⁶² This view, understandably, has been debated since that time, particularly due to the fairly recent establishment of the concept of universal human rights. However, the fact remains that the basic ideals of Westphalian Sovereignty underpin our modern state system and have formed the basic framework upon which our international law has developed.⁶³

Building on the past, the contemporary debate surrounding this issue is vast, but can be essentially split into two schools of thought.⁶⁴ On the one hand there are partialists who see states as distinct communities with existing frameworks of obligations and relationships within their members. They emphasise the duty owed

⁶¹ Immanuel Kant, “Perpetual Peace: A Philosophical Sketch,”

<<https://www.mtholyoke.edu/acad/intrel/kant/kant1.htm>> (14 May 2013).

⁶² H. Sidgwick, *The Elements of Politics*, 2nd ed. (London: Macmillan, 1897), 248, cited in David Miller, “Immigrants, Nations and Citizenship,” *Journal of Political Philosophy* 16:4 (2008): 373-374.

⁶³ Thomas Gameltoft-Hansen, *Access to Asylum: International Refugee Law and the Globalisation of Migration Control* (Cambridge: Cambridge University Press, 2011), 244.

⁶⁴ The debate has various facets to it. However, this major divide enables us to grasp the major issues of the debate.

by a state to its citizens over that potentially owed to non-citizens and believe that states are justified in restricting access to their borders. On the other hand there are cosmopolitans who place emphasis upon the world's growing global identity and the universality of human rights and, therefore, believe that states should not restrict access at their borders, but should have open borders (or in some extreme views, no states or borders at all), treating those seeking to enter with the same duty of care which they show to their citizens.

Much of the scholarship in this area relates to the issue of whether or not a state *should* exclude immigrants. However, this discussion of “should” or “should not” pre-supposes the legitimacy of states and their *right* to impose upon their borders any restrictions they like and, as Legal philosopher Philip Cole puts it, fails to address the “regime” of migration.⁶⁵ Christopher Wellman and Phillip Cole assert that their work fills the gap in this debate, as they address the primary deontological issue of whether a state has the moral right to exclude.⁶⁶ If it is found that states have a right to exclude then no-one should interfere with the exercise of that right. However, if they do not have a right to do so then their exercise of power can be questioned and potentially another body could legitimately intervene. Interestingly, Wellman and Cole both start from the same position of the valuing of human rights as the ‘common good,’ although they come to very different conclusions. Throughout their book they set a partialist position and a cosmopolitan position in dialogue with one another, helpfully enabling a better understanding of this major divide in the debate.

⁶⁵ Wellman and Cole, *Debating the Ethics of Immigration*, 164.

⁶⁶ However, David Miller has a notable contribution to the debate, and provides good challenges to the thinking of both scholars, some of which I will refer to in due course.

A View in Favour of State Sovereignty – Wellman’s Defence of the Right to Exclude

Wellman critiques and modifies the Westphalian understanding of the sovereignty of states. He advocates that legitimate political states are “morally entitled to unilaterally design and enforce their own immigration policies, even if these policies exclude potential immigrants who desperately want to enter.”⁶⁷ He argues that this conclusion is based on three principles. First, that legitimate states are entitled to political self determination; second, freedom of association is an integral component of self-determination; and third, freedom of association entitles one to not associate with others.⁶⁸

Wellman makes his first point by using the illustration of the issue of jurisdiction which was debated at the time of the Nuremburg Trials. He recounts that some felt that whatever happened on German soil should have been dealt with by the Germans themselves. They believed that in order to respect the sovereignty of the German state, the Allied forces should not have prosecuted the German war criminals as this was a violation of Germany’s right to exclusive jurisdiction over its criminal justice system.⁶⁹ Wellman asserts that this belief stemmed from a greater principle that as long as a state’s actions when governing its internal affairs do not interfere with another country, then that state is entitled to exercise its autonomy how it sees fit. We have seen this principle enshrined in the 1648 Peace of Westphalia. However, importantly, Wellman does not entirely agree with this concept of uninhibited state sovereignty. Wellman, like others before him, believes that only legitimate states have the right to exclusive jurisdiction, and his qualification for legitimacy is that they adequately protect the human rights of their

⁶⁷ Wellman and Cole, *Debating the Ethics of Immigration*, 13.

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*, 14.

citizenry, and respect the rights of others.⁷⁰ This assertion is based on the premise that the rights of citizens are paramount and that states, although coercive in nature, are justified insofar as they perform the functions needed to protect these fundamental rights of citizens. Wellman extrapolates that if the moral rights of citizens are not protected, then the state ceases to fulfil its function and is therefore illegitimate.⁷¹ This condition of legitimacy importantly sets him apart from those adhering to the Westphalian view. Wellman asserts that once it is determined that a state is legitimate, the right to freedom of association (which he states includes the right to not associate with whomever the state decides), is a natural part of an exclusive jurisdiction and state sovereignty.

Does the Duty of Care to Refugees Provide an Exception to State Sovereignty?

Wellman asserts that any theorist who advocates human rights (as he does) recognises the duty of a state to provide relief to refugees.⁷² However, Wellman adheres to the “choice view” held by others, including Walzer and Miller, and argues that “whatever duties of distributive justice wealthy states have to those abroad need not be paid in the currency of open borders.”⁷³

Wellman lists several other possibilities to discharge this moral obligation, or duty of care, to refugees including helping the refugees to find protection in their own country - after all, he states that the right held by the refugee is not a right to refuge

⁷⁰ Ibid., 16. For a list of those who have also held this belief see the discussion in Kapitan’s article. See Tomis Kapitan, “Self-Determination and International Order,” *The Monist* 89: 2, (2006): 359.

⁷¹ Wellman and Cole, *Debating the Ethics of Immigration*, 16. Wellman bases his assertion of legitimate sovereignty not only on the basis of the collective human rights of the individual constituents of that state, but also on the condition that the state respect the rights of constituents of other states.

⁷² Ibid., 120.

⁷³ Ibid., 65-66.

in another specific country, but a right against persecution by their own country.⁷⁴ He argues that it follows that if the country which the refugee is seeking to enter provides an alternative by assuring the refugee safety in their own land, the person in question ceases to be a refugee and no duty would remain on that country to give them open admission. Wellman is able to justify the required intervention into the other state's affairs and territory to accomplish this, as he believes that logically the other state ceases to be legitimate if it is violating the human rights of its citizens and so, therefore, cannot exercise the sovereignty that a legitimate state is entitled to.⁷⁵ He also provides the option of accepting the refugee temporarily without granting them citizenship until they can safely return to their country of origin. Wellman concludes that in order to maintain the legitimacy of the 'right to exclude', states might need to subscribe to some pan-state organisation, which would be charged with the responsibility of ensuring the fulfilment of the duty of care owed to refugees by its member nation-states.⁷⁶ Even if this were the case, Wellman argues, states could still refuse entry and pay some other state to fulfil their duty towards refugees.⁷⁷ However, this option then raises even more ethical questions of "trading" refugees.⁷⁸ In this way Wellman concludes that even in the case of refugees, states can still legitimately exercise their "right to exclude."

Critique of Wellman

The Inconsistency of the Underlying Premise of Wellman's Justification of the Existence of a State

A major issue with Wellman's argument, as highlighted by Cole, is that citizenship - membership in the state group itself - is not questioned.⁷⁹ Cole's rebuttal to

⁷⁴ Ibid., 120-121.

⁷⁵ Ibid., 121.

⁷⁶ Ibid., 125-132.

⁷⁷ Ibid., 130.

⁷⁸ Ibid., 253-254.

⁷⁹ Ibid., 178-180.

Wellman on this point highlights an inconsistency in Wellman's argument and, Cole claims, the argument of any who seek to uphold states' rights to impose border restrictions. As we have seen, Wellman argued that it was the existence of universal human rights and their protection which provided the basic moral justification of the existence of a state. However, Cole argues that the very same principle condemns a system where a select group of people's rights are given priority over others, based on an arbitrary grouping.⁸⁰ Thus Cole challenges an essential underlying assumption of Wellman's theory.

The work of Luke Bretherton and Michael Walzer in relation to refugees supports Cole's rebuttal. Luke Bretherton stresses that the political cause for displacement is the defining feature of a refugee and, therefore, the primary need of a refugee is the security of membership in a new polity.⁸¹ Walzer agrees with this sentiment stating that what refugees seek is not just the resources and protection afforded by states to their citizens, but access to that membership itself.⁸² Cole argues that if one believes that the justification for the existence of a state is based upon liberal sentiments of universal equality of human rights (which is the case for Wellman), and then an equitable upholding of human rights and distribution of resources within a state cannot provide such justification, because access to that membership is not universally available. As Luke Bretherton puts it "the very thing that justifies and legitimates a liberal democratic nation-state – the upholding and protection of human rights – it proves incapable of upholding and protecting at the greatest point of need."⁸³ Cole asserts that if the very notion of a state is

⁸⁰ Ibid.

⁸¹ Luke Bretherton, *Christianity and Contemporary Politics: The Conditions and Possibilities of Faithful Witness* (Chichester: Wiley-Blackwell, 2010), 129.

⁸² Michael Walzer, *Spheres of Justice: A Defence of Pluralism and Equality*. New York: Basic Books, 1983, 64.

⁸³ Bretherton, *Christianity and Contemporary Politics*, 139-140.

potentially ethically incoherent in its conception, it then follows that open borders are the only way to counter this contradiction as they do not restrict membership.⁸⁴

On the other side of the debate, David Miller goes further than Wellman and argues that it is not just the purpose of upholding basic human rights that is the legitimisation of a state's 'right to exclude' as Wellman asserts, but their commitment to uphold the values and prosperity of their citizenry, which adds another important consideration to this question.⁸⁵ However, this goes beyond Wellman's assertion and is therefore less justifiable in light of Cole's and Bretherton's critique.

Wellman's Qualification of Legitimacy

To the practical issue of Wellman's qualification of legitimacy in order for states to exercise sovereign power, Cole responds by posing the question of what system Wellman envisages regulating the legitimacy of states, therefore deciding when the 'right to exclude' is available and when it is not.⁸⁶ Cole argues that in Wellman's theory the power to exclude demands the need for regulation by global governance or international law and, therefore, any power to exclude is delegated from that governing body, and so does not originate from sovereign power.⁸⁷ Furthermore, if Wellman is proposing a system similar to the status quo, international law is an inadequate regulator of national affairs due to its largely unenforceable nature.

⁸⁴ Wellman and Cole, *Debating the Ethics of Immigration*, 159.

⁸⁵ David Miller, *National Responsibility and Global Justice* (Oxford: Oxford University Press, 2007), 213-214.

⁸⁶ Wellman and Cole, *Debating the Ethics of Immigration*, 164.

⁸⁷ *Ibid.*, 161, 164-5. Emphasising universal ethics, Cole argues that membership of a state is itself taken for granted in Wellman's theory of legitimate state sovereignty as there is no moral justification for membership of a state as it is not a choice. Membership is due to geographical arbitrariness, and therefore, membership of a state is itself discriminatory in nature. See *Ibid.*, 183-187. Cole argues that if you start with the notion that the membership distribution itself is innately discriminatory, and rights are afforded to citizens on this basis, the idea of a 'state' has no moral legitimacy.

This leaves it up to individual states to step in when other states lose their legitimacy, with or without the blessing of the United Nations. Cole highlights how this assertion of exclusive sovereign power has been used historically to oppress the poor and needy.⁸⁸ Therefore the practical outcome of Wellman's theory is that states are left largely to their own devices and refugees are left in danger.

The Freedom of Association as a Part of Self-Determination

Wellman's assertion that the freedom of association of states is a natural part of their right to self-determination is also debateable. Both Cole and Miller reject this notion. Cole asserts that the 'right to exclude' is less morally justifiable for a state than for a smaller grouping. For example, groups like religious groups or family have a larger ability to override the presumptive right of inclusion and justify exclusion because the level of intimacy which they invoke is higher and therefore exclusion is more justifiable.⁸⁹ Miller supports this view and argues that the right is strongest when the inclusion of others impinges on one's everyday personal life. He uses the example of an individual's or a family's prerogative not to accept certain people living in their home.⁹⁰ Miller and Cole argue that this personal right does not naturally extend to states.⁹¹ Both argue that admission into a state does not contain this sense of intimacy because citizens are not forced to interact with the refugees or migrants.⁹² The only exception, which Miller notes that he could conceive of, would be a confessional state where the presence of unbelievers would be disruptive of the community.⁹³ Therefore a valid critique of Wellman's

⁸⁸ Ibid., 298.

⁸⁹ Ibid., 34-35, 244.

⁹⁰ Miller, *National Responsibility and Global Justice*, 212.

⁹¹ Ibid; Wellman and Cole, *Debating the Ethics of Immigration*, 238-239.

⁹² Miller, *National Responsibility and Global Justice*, 211. Cole also rejects Wellman's notions of the right to self-determination and the right to freedom of association because Wellman rests them upon the consequentialist concerns of hypothetical citizens and their interests in the composition of their states. See Wellman and Cole, *Debating the Ethics of Immigration*, 241-242.

⁹³ Miller, *National Responsibility and Global Justice*, 212.

argument is that this freedom of association is not enough to allow the legitimate exclusion of migrants or refugees by states.

The Fulfilment of the Duty of Care to Refugees

With regard to the duty of care owed to refugees, the option of refusing membership to a refugee by fulfilling this duty in an alternative manner such as offered by Wellman may not be legitimate or possible in all situations. As noted earlier, providing resources to refugees in the country from which they are fleeing does not fulfil the duty of care owed by the country in which asylum is sought, because it is the stable membership which carries the rights and protection which the refugees need and cannot get from their own country.⁹⁴ Interestingly, a challenge to both Wellman and Cole's views on this matter comes in the increasing support for the argument advanced by Kieran Oberman that the right to freedom of movement (including the right to stay in one's own country) *demands* that where a state can provide safety for a refugee in the refugee's own country, and it does not pose a severe cost to that state, the state *must* provide this care rather than accepting the refugee across the border for asylum.⁹⁵ However, I find this argument problematic in theory because, as discussed before, it disregards the placeless and politically insecure nature of a refugee and denies their right, and perhaps desire, to enter a new and stable polity. Furthermore, in application this would involve, in most cases, the unilateral intrusion of one state into another, potentially causing international conflict and causing further danger and uncertainty

⁹⁴ Cole also speaks to this point saying that the day to day protection, afforded by a state's interference into another state, is not the same as providing them long term protection in a safe country. See Wellman and Cole, *Debating the Ethics of Immigration*, 250.

⁹⁵ Kieran Oberman, "Immigration, Global Poverty and the Right to Stay," *Political Studies* 59 (2011): 257-265.

for the refugee.⁹⁶ Therefore, as Cole states, the moral duty of ‘adoption’ of these refugees clashes with the notion of state sovereignty.

Wellman argues that temporary acceptance of a refugee could be an option if others were unavailable. However, with no hope of future stability and security in their home country I believe that it would be hard to argue that indefinitely offering asylum without allowing citizenship, and all of the benefits and security which it brings, is a just discharge of a state’s duty toward that refugee. David Miller considers and dismisses the granting of an alternative status to refugees within a country for an indeterminate period of time as he believes that it cannot be reconciled with the underlying principles of democratic states.⁹⁷ It is worthwhile noting that detention without promise of entry including citizenship is what is proposed in the New Zealand context with the six month mandatory detention clauses in the Immigration Amendment Bill.

⁹⁶ Ibid. Oberman’s argument presupposes that refugees want to stay in their home country, when for many this may not be the case. Bretherton asserts that the defining feature of a refugee is the political basis for their placelessness (see Bretherton, *Christianity and Contemporary Politics*, 129). Therefore, what a refugee is truly seeking is membership in a new polity. Oberman also claims that theorists who support the ‘right to exclude’ should support this view, as it is consistent with the principles of cultural membership and territorial attachment. However, the application of Oberman’s theory would likely involve the violation of the self-determination of the country from which the refugee is claiming asylum, which those theorists uphold (for Wellman this depends on their legitimacy at the time), so on a practical level his argument fails to take this adequately into consideration.

⁹⁷ Miller, “Immigrants, Nations and Citizenship,” 377. Miller lists the following examples as reasons for this conflict: it is socially unjust to have a welfare system which provides equal access to its services for those within a geographical area and then exclude some from the services due to their holding a different legal status; it is unjust to have equal opportunity programs which attempt to end discrimination on the grounds of age, gender, race etc but not to extend these reasons to cases of discrimination on the grounds of nationality; it is unfair that someone who is directly affected by a government’s decisions cannot have a say in determining those decisions.

A Cosmopolitan View – Cole’s Argument Against the Right to Exclude: an Equal Duty of Care Owed to Members and Non-members

Cole argues a cosmopolitan alternative to Wellman’s position. Cole asserts that one cannot argue based on the libertarian ideal of individual rights over collective rights, nor that human rights trump all else when discussing the legitimacy of states and their right to exclude.⁹⁸ Rather, Cole attempts to argue within a framework of global ethics. Cole comes at the issue of immigration by recognising the importance of ethical symmetry and the underlying notion of universal ethics. This leads him to prioritise what he deems “the universal human right to freedom of movement” over the right of a state to exclude.⁹⁹

Cole begins his argument by outlining the importance of ethical symmetry in immigration policy. He states that if there is a freedom of exit from states there needs to be a parallel freedom of entry to states. In his opinion this freedom outweighs the justifications for the ‘right to exclude.’¹⁰⁰ He believes that it is not satisfactory to assert that as long as some state will allow a refugee or asylum seeker entry then there is no injustice done to them.¹⁰¹ Miller supports this concern by pointing out that in some cases perhaps no state will be willing to take refugees.¹⁰² But what if no state is willing to take them? Cole argues that an international system of regulation of states must be established to ensure that this does not happen, but in *National Responsibility and Global Justice* Miller discusses

⁹⁸ Wellman and Cole, *Debating the Ethics of Immigration*, 160-161.

⁹⁹ *Ibid.*, 160.

¹⁰⁰ *Ibid.*, 192-225.

¹⁰¹ Cole argues that the analogy to marriage used by Miller and others on this point is unhelpful as once one leaves the marital relationship one can exist in a state of singleness satisfactorily and there is no need to re-marry. However, the case is different regarding the relationship between states and people, as people need to belong to a state, and so must be allowed entry into one after they exit one in order to enable workability of their rights. See *Ibid.*, 209-211.

¹⁰² Miller, *National Responsibility and Global Justice*, 227.

the problems inherent in the establishment of such a system.¹⁰³ Such problems arise with the proposition of a general right which is not essentially enforceable against any specific country. Miller points out that in the case of asylum seekers it is convention that the duty falls to the state to which the asylum seeker makes their claim. However, the state in question may practically exercise its right to exclude (if one accepts that it has such a right), or its power to exclude, if it has sufficient reasons to refuse the claim.¹⁰⁴ Cole argues that this lack of ethical symmetry seen in the freedoms of entry and exit, (and I would add the problems pointed out by Miller) point towards the need for the establishment, or recognition of, a human right of freedom of international movement.¹⁰⁵

Cole concludes that the freedom of movement which he advocates - namely the right to immigrate to a country and gain citizenship in that country - would have limitations, as does emigration – that in times of risks to national security, for example, it can be restricted.¹⁰⁶ So he does not argue for the deconstruction of the nation-state into some anarchic chaos, but emphasises the need to question the ethical underpinnings of the current system of state sovereignty and imagine a new global political community.¹⁰⁷ As Chandran Kukathas notes, the belief in the infeasibility of open borders has its roots “not in the nature of things but in the way in which we think about them.” Critiquing assumptions forces us to confront the inconsistency between moral ideals and our existing social and political arrangements.¹⁰⁸

¹⁰³ See Miller’s discussion in *ibid.*, 226.

¹⁰⁴ *Ibid.*, 227.

¹⁰⁵ Wellman and Cole, *Debating the Ethics of Immigration*, 293.

¹⁰⁶ *Ibid.*, 304.

¹⁰⁷ *Ibid.*, 312.

¹⁰⁸ Chandran Kukathas, “The case for open immigration” in *Contemporary Debates in Applied Ethics*, ed. Andrew I Cohen and Christopher Wellman (Oxford: Blackwell Publishing, 2005), 219.

Critique of Cole

David Miller disagrees with Cole's stance regarding the freedom of movement. He asserts that the freedom of movement should be regarded as a basic human right *within one's own country*, and a right which should be extended to enable *adequate* fulfilment of other basic human rights such as a reasonable choice of occupation, religion, cultural activities etc.¹⁰⁹ Cole responds by describing Miller's approach as being "sufficientarian" and argues that it does not embrace the fullness of the ideals of human rights.¹¹⁰ However, the problem exists that human rights are only an expression of deeper values, and if these are not articulated then it inhibits discussions of what human rights require. A deeper assessment of the principles and values underlying these rights is needed to support Cole's response. I also do not see Cole's rebuttal as necessarily fair, as although sufficiency is not a great ideal to strive for, total equality is somewhat ideological and realistically unobtainable. Taking a stance favouring human rights does not require utopian ideals. Therefore, I do not think that Cole argues clearly that this right of freedom of international movement should outweigh rights to enforce border restrictions for those who see border control as legitimate.

The international recognition of human rights which has developed over the past century is, by nature, theoretically in direct conflict with the concept of the sovereign state, as Cole has argued above. However, the trouble that Cole and Wellman both highlight is that human rights, and therefore, refugee rights, have a duality and tension about them. Thomas Gameltoft-Hansen refers to it as the "*sollen*" and the "*sein*" of human rights.¹¹¹ The former is the idea that human rights

¹⁰⁹ Miller, *National Responsibility and Global Justice*, 207.

¹¹⁰ Wellman and Cole, *Debating the Ethics of Immigration*, 294. However, it might be more helpful to respond to Miller by questioning what is deemed a sufficient range of options, or a minimum standard of life.

¹¹¹ Thomas Gameltoft-Hansen, *Access to Asylum: International Refugee Law and the Globalisation of Migration Control* (Cambridge: Cambridge University Press, 2011), 244.

are universal in nature and have a normativity about them, that they ought to be respected regardless of who is exercising power. The latter is the reality that human rights have been created, in actuality, in the realm of positive law and are enshrined in international treaties. In their present form, they are dependent upon the current system of assumed state sovereignty. As positive international law, the rights are limited, and are only as pure as states are willing to let them be, as their existence relies upon the assent of states to the documents which express them.¹¹² Therefore, theorists who advocate a broader reach for human rights than currently exists, as does Cole, appeal to the *sollen*, theoretical notion of human rights, whereas states when engaged in issues regarding the acceptance or rejection of refugees will invoke the *sein*, or positivist human rights.¹¹³ Cole's argument does not take into account the conflicting nature of human rights; rather it prefers the theoretical over the practical, inhibiting its realisation.

Asylum seekers and refugees highlight the need for this deontological debate to continue but also the urgency for it to be worked out in a practical way. However well reasoned and correct I find Cole's argument to be, I agree with Paul Scheffer in his review of Wellman and Cole's book, that both Wellman and Cole "come up against practical consequences, which need to be part of an ethics of migration."¹¹⁴ Cole's argument, in particular, is enormously radical and risks being divorced from the current context which we are dealing with. This divorce between deontological and practical concerns is hard to control and adds great tension to the debate. Cole points out in his essay that Wellman cannot even adhere to the purely deontological nature of the debate as he relies upon consequentialist concerns.¹¹⁵ However, the two are inherently intertwined in the development of an ethics of migration and steps towards political change which will ensure justice for refugees

¹¹² Ibid.

¹¹³ Wellman and Cole, *Debating the Ethics of Immigration*, 245.

¹¹⁴ Paul Scheffer, "Closed Borders, Closed Minds," *The Times Higher Education Supplement: THE 2034* (Jan 2012): 54.

¹¹⁵ Wellman and Cole, *Debating the Ethics of Immigration*, 242.

and asylum seekers. In order to realise some of the ideals in the theoretical debate, practical concerns including human nature, power and wealth, and current entrenched inequality, need to be addressed. However, if the concerns and inconsistencies noted by Cole are not dealt with then true justice cannot be seen for those who are in desperate need.

Conclusion

Wellman and Cole present two arguments which both hold human rights to be the 'common good' of humanity, but both reach completely different conclusions regarding a state's 'right to exclude' and the refugee problem. Wellman works with the political structures which are already in existence and attempts to justify them, including the right to self determination and sovereignty, in which he includes the 'right to exclude.' By contrast, Cole starts from theory, puts aside the reality of the present international political system, and so reaches more idealistic conclusions. Cole's propositions and rebuttal bring an excellent moral critique to Wellman's argument and should not be dismissed as idealistic or irrelevant. There exists a clear tension between these positions and, as I mentioned earlier, the theoretical and practical, all of which need to be considered when seeking to ensure that the rights of refugees are upheld.

Wellman and Cole both believe that states are coercive in nature and, therefore, must be morally justified. As stated above, they both base their assessment of justification on the upholding (or not) of human rights. Wellman sees that the state is morally justified as he believes that it is the most effective way of ensuring the upholding of the rights of its citizens. However, Cole sees the state as unjustifiable as it is inherently discriminatory in its membership and, therefore, does not uphold human rights. Wellman adds a further requirement of legitimacy before he

believes a state has the sovereign right to exclude people from its territory. This is fulfilled if the state uses its power in accordance with its purpose; if it does not uphold the human rights of its citizens then it is illegitimate and does not have the 'right to exclude.' Cole believes that as a state is morally unjustifiable no legitimacy can be afforded to it in any case and, therefore, it does not have the sovereign 'right to exclude.' I intend to build on this debate, and as scripture lends itself to the same methodical reasoning, in Chapter Four I will employ it when examining scripture, in order to determine a theological perspective on the justification and legitimacy of states.

These theorists have been dealing with moral concerns, and it is issues of justice and morality which both provide their starting points and inform their progressive arguments. However, there is no clear articulation of anything of greater importance than human rights, or of the principles or values behind these rights which can be used to balance one right against another. One could disagree with both arguments by challenging their basic presupposition that human rights are the best way of ensuring the good of humanity. This is where I believe that arguments from deeper principles can be made which can either support or suggest alternatives to the case that each theorist makes. As well as using this debate as a tool for scriptural interpretation, thus enabling the development of a coherent theological perspective which can be used to assess the current context, a theological perspective can be beneficial for this debate by bringing to it a spiritual and doctrinal aspect which will provide new insight into what constitutes the ultimate good for humanity. By posing a different worldview, it may be possible to arrive at viable conclusions which are different from those given in this debate. We will now turn to review some Christian scholarship which informs this aspect of the debate.

Chapter Three:

Theological Literature Review

Whilst many theological scholars write about the duty of care owed by states or individuals to refugees, particularly framed in the language of hospitality, very few seem to delve into the political and secular aspect of the issue and make interdisciplinary connections.¹¹⁶ Despite this lack of engagement, there are four notable contributions which theologially critique the nature of the power of states and/or the limitations which a duty of care owed to refugees places upon their power. These are useful to draw upon when theologially engaging with the deontological debate as they inform a coherent theological approach. These scholars make obvious several points useful for an informed theological engagement with the secular debate. First, this scholarship reveals that thorough theological engagement requires a narrative understanding of scripture, particularly holding to the *telos* of creation as its fulfilment in the Kingdom of God. Second, their work reveals that arguments from deeper principles, which a theological engagement brings, are desirable for the secular debate which, as I have mentioned, has apparent difficulty balancing priorities and values as it lacks foundational ordering principles.¹¹⁷ Third, their work shows the need for a deeper

¹¹⁶ For example, Daniel Groody in his article “Crossing the Divide: Foundations of a Theology of Migration and Refugees” comes close to this. The main thrust of his article was posing a new way to see issues regarding refugees by using the metaphor of crossing divides. However, rather than a political study he seems to merely build a case, and note areas, for further theological investigation. See Daniel Groody, “Crossing the Divide: Foundations of a Theology of Migration and Refugees,” *Theological Studies* 70: (2009), 638-667.

¹¹⁷ I have outlined in the previous chapter how human rights formed the basis of Wellman and Cole’s justification of a state, but there appeared to be no underlying principle or reason for valuing human rights given to support this, making human rights an end in itself which poses potential problems when prioritising competing rights.

biblical engagement with such issues and shows avenues for more work to be undertaken. We will discuss these issues as I review the work of each scholar and critique their contribution to this debate.

Wolfhart Pannenberg

Wolfhart Pannenberg does not address the refugee issue, but he does address issues of state power. Pannenberg sets out a form of Christian cosmopolitanism which recognises the nation-state as a necessary intermediary step to achieving lasting international unity, justice and peace, but asserts that its power is not unlimited. With regard to state sovereignty and a Christian view of political systems consistent with the bible, Pannenberg argues for a form of Christian cosmopolitanism which is not in conflict with the idea of the nation-state. He believes that a “democratic community of all peoples” is the closest that humanity can get to God’s ideals, however, this is not immediately available to us, so we presently need to utilise specific state groupings.¹¹⁸ Pannenberg bases his ideas upon the biblical foundations of creation and the Kingdom of God. He asserts that people were born equal and free, and that these two aspects of humanity will be restored in the Kingdom of God.¹¹⁹ The valuing of people as free and equal, direct his allegiance to the ideal of a form of cosmopolitanism under a united world democracy. He believes that the ordinances of creation were “people” and “family” and that “the joint participation of all humans in a Kingdom of peace and righteousness cannot be directly attained through a collection of individuals.”¹²⁰ Thus nation-states serve a vital role of working towards the ideals of the Kingdom of God. Their purpose, in Pannenberg’s view, is to represent the interests of the smaller groups within them.

¹¹⁸ Wolfhart Pannenberg, *Ethics* (Philadelphia: Westminster Press, 1981), 141.

¹¹⁹ *Ibid.*, 138.

¹²⁰ *Ibid.*, 146.

Pannenberg, therefore, believes in the sovereignty of states out of necessity. However, like Wellman, this sovereignty depends upon their legitimacy. Pannenberg believes that the aim of states should be to form greater international collective groups in order to get closer to attaining a worldwide political system which values human beings equally.¹²¹ These international unions must be formed, like states, with an orientation beyond themselves, and work towards attaining justice and peace for all of humanity:

“Thus this sequence of specific unions, which must have their beginning in the internal political life of each people that are involved, and in which the national community then finds its proper place, points towards the universal goal of a peaceful world which encompasses mankind.”¹²²

Pannenberg holds that states are legitimate only when they seek to fulfil this greater purpose. He believes, therefore, that “a collection of states, or a state itself exhibits or has ethical authority when it is not closed off to the rest of the world, or when it knows how to “portray the humanity in its own culture and democratic order in such a way that it will have the power to attract the rest of mankind.”¹²³ We can see that Pannenberg’s cosmopolitanism is a goal to be obtained, and that a vital step towards that goal is to accept a state’s authority when it is used in the way intended: to bring justice, order and peace to all of humanity. When a state acts outside of those purposes, and is nationalistic to the detriment of the international community, it violates its mandate and ceases to act with legitimate authority.

Pannenberg does not directly state his position on refugees and asylum seekers. However, I believe that a logical extension of his argument (particularly given his belief in the equality of all humanity and his disapproval of national particularism) would support the idea of open borders to (at least) refugees, as I believe he would

¹²¹ Ibid., 148.

¹²² Ibid.

¹²³ Ibid.

consider that their protection would come before national interests in most circumstances. Luke Bretherton suggests that for Pannenberg there would be no conflict between the duty of care to refugees and the duty of care to existing state members.¹²⁴ The acceptance of refugees would be in line with Pannenberg's greater understanding of the correct use of power of the state as set out above and, therefore, would be seen as a natural duty of a state's legitimate power.

Pannenberg's position on Christian politics is helpful in that it echoes the denial of particularism and nationalism that pervades the New Testament and, particularly, the eschatological passages within it. His belief that a theological view of international politics suggests that practical steps be taken toward a global unity reflects the *telos* of the nations (which I will discuss in Chapter Four) being a united people worshipping Christ. What Pannenberg lacks in his work *Ethics* is an in depth discussion of the biblical foundation of his ideas, although one can identify them through his conclusions. I also believe that Pannenberg's discussion of the legitimacy of nation-states lacks a deeper understanding of their purpose as suggested in scripture. His focus is almost entirely present and eschatological, without a thorough examination of the past purpose of the state or the development of this purpose.

Luke Bretherton

Bretherton sets out his political theology in a clear and practical way in his book *Christianity and Contemporary Politics*. For the purposes of this thesis, however, we will be addressing his contribution in Chapter Three "National: Christian Cosmopolitanism, Refugees and the Politics of Proximity" which is specifically directed at the issue of state sovereignty and the duty of care owed to refugees.

¹²⁴ Bretherton, *Christianity and Contemporary Politics*, 133.

Bretherton reflects upon secular and theological discourse in this area and promotes a form of Christian cosmopolitanism, concluding that the duty of care to refugees is not necessarily in conflict with a state's duty to its existing members, but that just judgements are needed in order to prioritise these different duties.¹²⁵

Bretherton believes there are three key areas which emerge when liberal democracies are thinking through appropriate responses to refugees.¹²⁶ These are: the definition of "refugees," (whether or not this includes economic migrants), the prioritising of refugees over economic migrants, and whether governments owe a greater duty of care to existing members of their state over non-members. It is his discussion on the last issue that is most useful for this thesis. However, in addressing the first issue Bretherton looks at various definitions of refugees and concludes that the defining feature of a refugee is the political basis for their placelessness, and therefore the primary need of a refugee is acceptance into a new state.¹²⁷ Thus he enables a better understanding of what is required by the duty of care and highlights an important difficulty in the debate: that refugees seek recognition of a right that states are morally but not necessarily practically obliged to recognise.

Regarding the last issue listed above, Bretherton sets out the arguments of secular liberal utilitarians, stating in essence that they argue that an equal duty of care is owed by a state to its members and its non-members. These arguments, like those of Wellman and Cole, are rights-based arguments. He notes that these arguments involve a conflict of rights and interests, and require a balancing and weighing of priorities. His discussion of their work shows that a basic working formula might be that states have an obligation to assist refugees when the costs

¹²⁵ Ibid., 159.

¹²⁶ Ibid., 127.

¹²⁷ Ibid., 129.

of doing so are low.¹²⁸ He also touches upon how the theorists have attempted to order priorities of states to calculate these “costs.” He notes, as did I, that in this debate some theorists have attempted to explain the order of priorities in relation to refugees and existing state members by a reference to the ‘common good’ but they fail to point beyond the common good to any higher principle.

This lack of clarity regarding an ultimate values system to be used in the balancing of priorities led Bretherton to look to the Christian tradition to provide a framework for this task. He claims that it is the Thomistic and Augustinian theology which promotes the teleology of Christian thought as the communion of humanity with God, which provides this necessary framework.¹²⁹ Given this end point he argues for a Christian cosmopolitanism. He questions the integrity of liberal democracies with reference to their departure from their theological underpinnings, and proposes that because of this their tendency to favour the interests of existing citizens enables them to adopt an attitude of hostility towards strangers in need. He concludes his discussion with the adoption of the theory from Lockwood O’Donovan which I discuss in Chapter Four: that the purpose of the state is to deliver stability in law and order, in order to spread the gospel effectively and he asserts that this is congruent with the Christian tradition of what a polity is.¹³⁰ Thus he leaves this discussion with the conundrum that a refugee’s need for a new polity can only be met by accepting them into a country if their acceptance does not jeopardise the very thing which is the basis for the refugee wanting access in the first place. This then necessarily leaves a state valuing the rights of existing members over non-members, which is the same issue which Wellman and Cole noted in the preceding chapter. Bretherton gives examples of how this low prioritising of the needs of refugees has led to their oppression in the form of exclusion. This historical tendency toward exclusion and political non-identity

¹²⁸ Ibid., 130-131.

¹²⁹ Ibid., 131.

¹³⁰ Ibid., 135.

directs him to agree with Agamben's notion of refugees as bare life. He acknowledges that their position is one in which they are unable to access the rights and freedoms that membership in a state provides and so are not treated as humans who are worthy of care, but are stripped of their humanity and dignity.¹³¹

Bretherton's response is to offer an account of how the Church may address the plight of refugees. He discusses how the Lord's Prayer reveals a duty to hallow God's name and also to stand against that which desecrates his name.¹³² This involves restoring a human identity and dignity to those who are weak and have been rendered "bare life." He then explains that the Church's method to accomplish this should be to view bare life as gift, judgement and promise and he encourages the church to value and embrace those who society has disempowered.¹³³

Bretherton's book sets out a political theology which engages deeply with complex theoretical issues which have very practical challenges associated with them. Bretherton's summation of the current issues surrounding refugees is helpful and covers a wide range of concerns. His perception of the problem of theorists who have no greater moral code to which to appeal in the ordering of priorities is important as it highlights the potential benefit of a theological approach to such matters. He also moves smoothly from the secular to the theological, building distinct links and responsibilities for all parties involved with the treatment of refugees.

¹³¹ Ibid., 137-139.

¹³² Ibid., 145.

¹³³ For more discussion see *ibid.*, 145-158.

However, I felt that a scriptural basis for his arguments was notably lacking in Bretherton's article, which may have been due to constraints of space. A clearer scriptural foundation may have strengthened his conclusions. Perhaps due to this exclusion, Bretherton's conclusion - the linking of the concept of bare life into the request of "hallowed be thy name" in the Lord's Prayer - was quite tenuous. The argument would have benefited from a more direct scriptural imperative for the way in which the Church is to care for refugees.

Esther Reed

Esther Reed essentially argues that a biblical-theology leads her to acknowledge the necessity of states and borders but she intimates that she cannot conform to any political stance on the matter as the issues are too complex.¹³⁴ In her recent article "Refugee Rights and State Sovereignty: Theological Perspectives on the Ethics of Territorial Borders" Reed employs a dialogical approach which she refers to as the "unity of answerability." Reed utilises this approach by reading Matthew 25:31-35 in conjunction with Jesus' reconceptualisation of the national restoration of Israel portrayed in Ezekiel 47. After her very brief discussion of scripture, she argues that the biblical texts show that borders are at the least required by God for his coming judgement of the nations, and at most are a desirable feature of humanity's political condition until the coming of the Kingdom.¹³⁵ She bases this upon her interpretation of the portrayal of divine judgement in Matt 25:31-35. She argues that this judgement presupposes the delineation of peoples and thus necessitates physical borders, but that "the answerability of the nations to the Son of Man does not translate into any secular theory" and so cannot be used to affirm the current Westphalian system or existing territorial borders.¹³⁶ Notably she

¹³⁴ Reed, "Refugee Rights and State Sovereignty," 67-75.

¹³⁵ *Ibid.*, 66.

¹³⁶ *Ibid.*, 66-67.

concludes that borders have “some kind of theological and moral standing” and she attempts to bring that into a discussion of the contemporary political debate.¹³⁷

Reed then continues to establish a cosmopolitan approach to politics based primarily upon an eschatological focus. She asserts, however, that her idea of the nations’ answerability before God cannot lead one to adopt a fully cosmopolitan political stance regarding the legitimacy of state sovereignty, and that more critical engagement with this area is needed. She states that the cosmopolitan eschatological hope should inspire Christians to be angered by the injustices caused by territorial borders and to hope for change. However, she also notes the reality that cosmopolitanism depends upon a unity and “fraternity” of humanity which, in the past, has proved infeasible and suppressive of difference.¹³⁸ Reed’s realist approach appears to lead her to support the legitimacy of a state’s sovereign power, but she does not clearly state her position on the challenge to this power that the duty of care to refugees poses. She notes that not all manifestations of nationalism are bad, but that when nationalistic politics deny outsiders the human rights which a state grants to its members, they become undesirable.¹³⁹ She concludes that in order to enact a higher standard of answerability before God for the governance of territorial borders, Christians must join with those of Abrahamic religions to bear witness in the clarification of matters of asylum international law and urge the need for authoritative interpretations of matters regarding refugees in the International Court of Justice.¹⁴⁰

Reed’s approach is refreshing, as it contributes a more scripturally grounded view of the topic (or, at least, clearly shows her scriptural foundations). However, her

¹³⁷ Ibid., 67.

¹³⁸ Ibid., 71.

¹³⁹ Ibid.

¹⁴⁰ Ibid., 75.

treatment of scripture is brief, and reasonably superficial, making it hard to follow her line of thinking at times. Reed focuses entirely upon borders, and does not adequately address the political entity which creates those borders - the nation. This narrow focus deprives her work of a fuller picture of the nature of the relationship between a nation and its power to control its own borders and isolates the borders as a seemingly independent construct. By excluding an adequate consideration of nations one finds an incomplete theology of the duty of care, and the rights of nations to enforce their border policies. Reed runs into this problem in her analysis of Matt 25:31-35, where her focus is necessarily taken off borders, as they are absent from this scripture, and put upon the literal word “nations.” Without a biblical understanding of the concept of the nation it is hard to understand verses such as this within their wider context.

Reed’s reliance on the “unity of answerability” in her interpretation of Matthew 25:31-35, is both a help and a hindrance to her argument.¹⁴¹ It is helpful in the sense that it encourages a dialogical approach to the interpretation of scripture which can be enlightening, but it does not seem to allow for solid conclusions to be formed. Furthermore, her over-reliance on Matthew 25:31-35, leads her to place more importance on national borders and nations than is warranted by an overall view of the scriptures. Furthermore, unlike Bretherton, Reed does not find any ordering principle in the Kingdom of God which she could use for guidance on these matters.

Joan Lockwood O’Donovan and Oliver O’Donovan

Lastly, Lockwood O’Donovan and O’Donovan have not engaged directly with the issue of refugees but their vast political-theological writings set out a theological

¹⁴¹ The “unity of answerability” is, unfortunately, not adequately explained by Reed in her work.

understanding of the purpose of the nations in scripture and the modern nation-state. As mentioned in my introduction, I will critically engage with relevant aspects of their work in detail in Chapter Four as they have been foundational for my scriptural understanding.

Conclusion

The views of these scholars on international politics and the nation-state system are directed by the theological principles which they derived from their interpretations of scripture. Notably, they all adopt to some extent a narrative approach to their scriptural interpretation, which is particularly noticeable in their comparison between present and eschatological concerns. This enables them to appreciate the present necessity of the nation-state system whilst also favouring a cosmopolitan approach to politics which places less importance upon boundaries and state divisions. It also enables them to assess the state's value and future against an eschatological framework.

This eschatological framework enabled each scholar, to varying degrees, to understand the *telos* of humanity as communion with God. As I will discuss in more depth later, it is from this *telos* that Catholic Social Teaching has derived its pro-human rights stance.¹⁴² As Bretherton noted, if one holds the deeper theological principle of communion with God to be the ultimate good of humanity, as opposed to merely human rights, then this enables one to be able to balance competing priorities with more clarity and insight, particularly in cases where two human rights are in competition.¹⁴³

¹⁴² Donald Kerwin, "Rights, the Common Good, and Sovereignty." In *And You Welcomed Me: Migration and Catholic Social Teaching*, ed. Donald Kerwin and Jill Gerschutz (Lanham: Lexington Books, 2009), 101.

¹⁴³ Bretherton, *Christianity and Contemporary Politics*, 131, 134.

Finally, it is clear, particularly from the work of the first three scholars, that more biblical study is needed regarding these issues. As the work of the O'Donovan's highlights, a coherent understanding of the nation in scripture including the nature of its establishment, the changing purpose which it serves, and the way in which it uses its power, is needed in order to understand and assess the justifiability and legitimacy of the modern state from a theological perspective and to determine whether or not this extends to the right to determine unilaterally its refugee policies as it sees fit. Building upon the work of these scholars, I will now undertake a biblical discussion in order to provide such a theological engagement with these issues.

Chapter Four:

Determining a States' Theological Justification

In Chapter Two we discussed Wellman and Cole's debate regarding the moral justification and legitimacy of states, their right to self determination of their border policies, and whether or not their duty of care to refugees would provide an exception to this sovereignty. I now endeavour to engage in the same reasoning but will draw from scripture to set out a theological response to that same issue. I will argue that the depiction of the nations by the various authors of scripture provides a basis upon which one can construct a theological framework that enables a theological assessment of the nation-state.

I will begin by giving a brief explanation of why an examination of the nations in scripture is relevant for a discussion of the justification and legitimacy of the nation-state in its current form. Second, I will propose that the biblical principle of reconciliation and unity with God constitutes a fundamental principle against which to assess the justification of nations. I will focus in particular on the creation and new creation narratives. Third, I will examine the nature of the establishment of the nations and survey the changing purpose of the nation over the course of the narrative of scripture which, I will argue, supports the theory of O'Donovan and Lockwood O'Donovan that a biblical theology enables one to see the transformation of the nation from a vehicle for salvation, to a regulated space within

which the gospel is to spread.¹⁴⁴ On the basis of this survey, I will then argue that the nation is justified theologically in virtue of its role as the upholder of the goal of reconciliation and unity between humanity and God.

The Historical and Theological Continuity between the Biblical Nations and the Nation-State

While the Bible does not directly address the issues of the sovereignty of nation-states and the duty of care owed to refugees by such states, it does speak of nations, of land and borders, of political interactions, of duties of care and the correct use of power. The nation-state did not emerge out of an historical vacuum and I will argue that it stands in continuity both historically and theologically, with the nations as established and developed throughout the biblical narrative. Therefore a theological study of the biblical nations is pertinent to inform this discussion of the justifiability and legitimacy of nation-states and their duty of care to refugees.

Historically, the nations in scripture underwent various changes and developments. The nation was never a static construct but one that adapted to changing political circumstances. This can be seen clearly in the changing structure of the nation of Israel itself. From the bounded and exclusive model of the nation of Israel in the land of Canaan, to the exilic model which lacked distinct political territoriality, to the post-exilic model where the nation of Israel functioned within the political dominion of the Roman Empire, Israel underwent significant political change but retained its identity as a nation. There were similar changes taking place within Israel's

¹⁴⁴ I believe that it is essential in this step that one takes a survey of the whole of the history contained in the scriptures to avoid adopting an incomplete view.

historical contemporaries. Thus the nation as depicted throughout the span of the biblical narrative covers a wide range of political expressions which claim this title.

Biblical concepts of the nation influenced the development of nations following the close of the timeframe within which the authors of scripture were writing. After the adoption of Christianity throughout the Roman Empire by Constantine, the exclusive, independent and bounded model of the nation of Israel played a major part in forming the Ostrogoth and Burgundian Kingdoms, Visigoth Spain and Lombard Italy, and the Frankish realms.¹⁴⁵ Biblical influence also continued to shape the emergence of the nation-state and its Westphalian underpinnings in the fourteenth to seventeenth centuries.¹⁴⁶ Political historians have found little formal writing to document the development of the Westphalian system, which has led many to declare vaguely that sovereign states “emerged” after the end of the Eighty Years War.¹⁴⁷ However, Christopher Harding surveyed various media in order to seek the social public discourse which gave rise to the nation-state. From his investigation he concluded that sovereigns often referred to a God-given authority for their apparently unlimited powers and quoted Machiavelli in this respect “There was never any remarkable law giver amongst any people who did not resort to divine authority, as otherwise his laws would not have been accepted by the people.”¹⁴⁸ So whether the Westphalian narrative was founded upon social

¹⁴⁵ Joan Lockwood O’Donovan, “Nation, State and Civil Society in the Western Biblical Tradition,” in Oliver O’Donovan and Joan Lockwood O’Donovan, *Bonds of Imperfection: Christian Politics Past and Present* (Grand Rapids: Eerdmans, 2004), 284.

¹⁴⁶ Ibid.

¹⁴⁷ Christopher Harding and Nicola Harding, “Who Designed the Westphalian System? Probing the Epistemology of the Westphalian Debates: “Moses was but a Juggler and King James the New Solomon,”” *Law, Culture and the Humanities* 2 (2006): 399-419, 401. Interestingly, International Relations Theorist Turan Kayaoglu’s research may support this conclusion as he argues that the Westphalian narrative, which has been used to justify the notion of the sovereign state, was actually a construct of German historians, who were attempting to justify the traditional liberties of German states secured by the Hapsburg Dynasty which were threatened by the Napoleonic wars. For more discussion see Turan Kayaoglu, “Westphalian Eurocentrism in International Relations Theory,” *International Studies Review* 12 (2010):196-197.

¹⁴⁸ Niccolo Machiavelli, *Discourses upon the First decade of T Livius* (c1520) 147, cited in Harding, “Who Designed the Westphalian System?” 414.

discourse claiming God-given authority, or upon the actual treaties of Westphalia which were framed with Christian pretext (or a combination of both), one can conclude that biblical sentiments were essential in creating this ideology. Thus, one can tentatively conclude that the model, which underpins the nation-state in its present form today, can claim historical and ideological continuity with the notions of nationhood in scripture.

More important than this historical continuity between the biblical nations and the nation-state, is their continuity in theological purpose. I believe that the nation-state in its current form should continue to be understood within the same theological framework as the nations in scripture which I will present later in this chapter. I will argue in support of the proposition of Lockwood O'Donovan and O'Donovan, that scripture shows that the role of the nation changed due to the Christ-event from initially being the vehicle of salvation, a necessarily territorial and bounded political structure, to an entity charged with the judicial function of maintaining conditions favourable to facilitating the missional purposes of the church. It may be argued, on this basis, that there is continuity in theological purpose between the nation in scripture and the nation-state in its present form which allows the same requirements of theological justification and legitimacy to be applied to both.

Determining a Nations' Theological Justification

The Ultimate Good of Humanity as Communion with God

In Chapter Two we discussed how Wellman and Cole appear to elevate universal human rights as the ultimate good (or at least "common good") for humanity and how they used this as their foundational principle to judge the justifiability of states.

However, theological scholarship and tradition provide an alternative ordering principle for critiquing the actions of states. In Chapter Three we discussed Luke Bretherton's claim that the teleology of Christian thought is the communion of humanity with God and that this is a useful foundational principle for assessing state action.¹⁴⁹ Catholic Social Teaching also holds this view of the ultimate good of humanity but suggests that this finds concrete expression through human rights.¹⁵⁰ Reed too, in her work sees the goal of humanity as unity with, and before, God.¹⁵¹ In agreement with this view, I suggest that unity, or communion, with God is seen across the biblical narrative not just as the common good, but as the ultimate good for humanity. The narratives of creation and new creation, along with further biblical passages to be considered in this chapter, will support the assertion that communion with God is the ultimate good for humanity, the object of God's plans and the principle which states must uphold in order to be considered justified.

Creation and New Creation

The scriptures begin with the creation narratives in which man and God are seen to be in communion with one another. We are told in Gen 2:26 that God created man and woman in his image, thus entailing that humankind exists in a special relationship with him (Gen 2:27). Adam and Eve were placed in the Garden of Eden which we see described in other parts of scripture as the Garden of God (Ezek 51:3; Isa 28:13). Gordon Wenham describes the Garden as the "archetypal sanctuary; that is a place where God dwells and where man should worship

¹⁴⁹ Bretherton, *Christianity and Contemporary Politics*, 131.

¹⁵⁰ Catholic teaching understands the ultimate good of humanity as communion with God. However, they believe that this is too impractical for political concerns and express this instead as the "sum total of social conditions which allow people, either as groups or individuals, to reach their fulfilment." See James Fox, "Natural Law," *The Catholic Encyclopaedia*, vol. 9 (New York: Robert Appleton Company, 1910), <<http://www.newadvent.org/cathen/09076a.htm>> (18 July 2013).

¹⁵¹ Reed, "Refugee Rights and State Sovereignty," 66.

him.”¹⁵² We can infer from Gen 3:8-9 that Adam and Eve often walked with God in the Garden, as the Hebrew indicates that this divine movement is iterative and habitual.¹⁵³ Adam and Eve were in communion with God and lived in his divine presence. When the actions of the couple in Gen 3 necessitated the creation of borders both physical (their banishment from the Garden), and spiritual (as sin now prevented them from living directly in communion with God), “intimacy with God is replaced with alienation from God.”¹⁵⁴

From this we can see that God’s original intention was to live in unity with his creation, to dwell with them. This created order was declared by God to be “good,” and even “very good” (Gen 1:25, 31). It is this “good” of humanity that God works towards restoring throughout scripture and will finally restore in its fullest sense in the new creation. As biblical scholar John Walton puts it “hope for the future does not depend on the attempt to achieve something that has never been, but to restore what has been lost.”¹⁵⁵

The eschatological image we get of the new creation in Rev 21:2 is one of Heaven coming to Earth. As Christ did in the incarnation, again Heaven comes to Earth, but this time it is to dwell with humanity forever.¹⁵⁶ As we see in Rev 21:3, the focus of this new creation is God’s presence with his people. After the sin causing separation has been dealt with by God, this promise is fulfilled and God comes to

¹⁵² Gordon Wenham, “Sanctuary Symbolism in the Garden of Eden Story,” *Proceedings of the Ninth World Congress of Jewish Studies* (Jerusalem: World Union of Jewish Studies, 1986), 19.

¹⁵³ Victor Hamilton, *The Book of Genesis: Chapters 1-17*, The New International Commentary on the Old Testament (Grand Rapids: Eerdmans, 1990), 192.

¹⁵⁴ *Ibid.*, 210.

¹⁵⁵ John Walton, *Genesis*, The NIV Application Commentary (Grand Rapids: Zondervan, 2001), 66.

¹⁵⁶ Craig Keener, *Revelation*, The NIV Application Commentary, (Grand Rapids: Zondervan, 2000), 487; Grant Osborne, *Revelation*, Baker Exegetical Commentary on the New Testament, (Grand Rapids: Baker Academic, 2002), 734.

dwell with his people forever.¹⁵⁷ The nature of God's presence is one of intimacy and restoration as we see in Rev 21:4 that he will wipe every tear from their eyes. From his reading of Rev 21:9-27 and Rev 22:1-5, biblical scholar Grant Osborne asserts that the new Jerusalem in this passage is described as the new 'Holy of Holies' and the new 'Garden of Eden.' Both of these places are symbolic of God's presence. That people of all ethnicities will come into this city highlights how, in the new creation, "we are one with one another and with God."¹⁵⁸

This co-existence between man and God, this communion with him, is the ultimate goal, but also the ultimate good, of humanity. Bartholomew and Goheen in their work on the meta-narrative of scripture state that 'covenant' and 'kingdom' are the main principles through which one can best understand the biblical story.¹⁵⁹ Bartholomew and Goheen state that these principles point towards the "special relationship between God and his people" and God's reign over, and his presence with, his creation."¹⁶⁰ Thus Bartholomew's and Goheen's account of the overarching theme of the bible supports my belief that the ultimate good of humanity is reconciliation and unity with God. Therefore, the 'common good' which scholars seek to serve with their theories can be seen in scripture to be this unity with God, living in reconciled relationship with him. I will proceed with this as my foundational value by which I shall assess whether or not the 'nation' is justified. By following the moral reasoning laid out by Wellman and Cole I will now survey the presentation of the function or 'role' of the nation in scripture in order to determine whether this is consistent with the ultimate good of humanity as defined above.

¹⁵⁷ This promise of 'presence' can be seen throughout scripture (for example, see Lev 26:11-12; Ex 25:8, 29:45; Jer 31:33; Ezek 37:27, 43:7-9; Zech 2:11, 8:8).

¹⁵⁸ Osborne, *Revelation*, 727.

¹⁵⁹ Craig Bartholomew and Michael Goheen, *The Drama of Scripture: Finding Our Place in the Biblical Story* (Grand Rapids: Baker Academic, 2004), 24-25.

¹⁶⁰ Ibid.

The Establishment of the Nations

I begin by looking at the ontological nature of nations presented by various authors of scripture as this will give insight as to the nature and purpose of their creation, which in turn will enable an assessment of whether or not they were established in order to uphold the foundational principle discussed above and are therefore, according to Wellman and Cole's reasoning, theologically justifiable. There are several verses in scripture which discuss the establishment of the nations. In this discussion I will focus on Deuteronomy 32:8, and Acts 17:26, as these are the two which have been the most commonly discussed in scholarship regarding this topic, are the most explicit on the subject, and also exhibit a continuity between the Old and New Testament understanding.¹⁶¹ However, I will include a discussion of Genesis 10-11, as I believe that they are important for interpreting these two verses. I will argue that the scriptures present the redemption of humanity to communion with God as the purpose of the establishment of the nations.

Deuteronomy 32:8

*"When the Most High gave to the nations their inheritance,
when he divided mankind,
he fixed the borders of the peoples
according to the number of the sons of God."*

The book of Deuteronomy is a poetic composition originally designated for liturgical use and was intended to transmit a canonical body of tradition.¹⁶² It has been considered to be the theological basis of the whole of scripture as it presents a

¹⁶¹ I do not discuss Ps 74:17 or Job 12:23 as these are similar to Deut 32:8 and most scholarship concentrates on the Deuteronomic verse.

¹⁶² Duane Christensen, *Deuteronomy 21:10-34:12*, Word Biblical Commentary (Nashville: Thomas Nelson, 2002), lxxx-lxxxiv.

theology which thoroughly articulates Israel's social identity as the people of God, highlighting God's sovereignty against the claims of the deities of the surrounding religions.¹⁶³ Within this context, Deut 32 is considered the oldest and most poetic part.¹⁶⁴ Given the genre and purpose of this section of scripture, I believe it is appropriate to ascertain from it the theological points which the author conveys regarding the establishment of the nations which are helpful for our enquiry, rather than use it to assert historical facts regarding the nation.

Scholars have identified in Deut 32:8-9 three intertwined theological concepts which can be associated with this statement of the establishment of the nations. First, God's sovereignty in the creation of the nations; Second, God's intimate relationship with Israel; and Third, Israel's relationship with other nations. Biblical scholar J. McConville believes that this first concept - that of God's sovereignty - is primary in this scripture, as it is in the surrounding scriptural context.¹⁶⁵ The theological message is plain in this verse: that God made the nations. No purpose is stated for the creation of the nations, this verse merely declares their divine creation. One needs to take a deeper look into their theological significance or purpose.

A deeper significance may be found, in part, by looking at the second concept. Walter Brueggemann explains that given that the whole poem in which this verse sits has the purpose of outlining the history of God's relationship with Israel, the author appears to be romantically reminding the hearers of the history of the nation

¹⁶³ Daniel Block, *Deuteronomy*. The NIV Application Commentary (Grand Rapids: Zondervan, 2012), 36, 38, 749.

¹⁶⁴ Christenson. *Deuteronomy*, lxxx-lxxxi.

¹⁶⁵ J. G. McConville, *Deuteronomy*, Apollos Old Testament Commentary (Leicester: Apollos, 2002), 461.

of Israel, and the special relationship which it has had with God up to that point.¹⁶⁶ It is this context which influences his interpretation of a textual variant in verse 8 which has resulted in different translations in the Septuagint and the Masoretic text. Brueggemann, (unlike the English Standard Version quoted above) follows the Masoretic text which refers to the “sons of Israel” rather than the “sons of God” as this highlights the nature of the relationship which God had with Israel, and Israel to the rest of the nations, and is less polytheistic. However, others including Jewish Scholar Jeffrey Tigay, prefer to adopt a reading from the Qumran scrolls and the Septuagint which Tigay translates as “equal to the number of divine beings,” as this averts the various problems which he sees arising from the other translation.¹⁶⁷ Regardless of this textual variant, we can see that verses 8-9, read in the surrounding context, express another theological idea: that from the creation of the nations God had a special relationship with Israel. However, this concept also does not enable conclusions to be made regarding the purpose of the establishment of the nations.

If we follow Brueggemann’s rather convincing contextual argument and accept the translation as the “sons of Israel,” not only does this interpretation of the scripture highlight the notion of God’s unique relationship with Israel, but it also weaves together the establishment of Israel with the establishment of the other nations, the third concept at work in this verse. That the boundaries were divided according to the number of the sons of Israel heightens the sense of divine intention behind world history, and Israel’s interactions with other nations.¹⁶⁸ We must be careful not to read too much into the text, but the author may have been directing the

¹⁶⁶ Walter Brueggemann, *Deuteronomy*, Abingdon Old Testament Commentaries, (Nashville: Abingdon Press, 2001), 279.

¹⁶⁷ For more discussion see Jeffrey Tigay, *Deuteronomy*, JPS Torah Commentary (Philadelphia: The Jewish Publication Society, 1996), 302-303.

¹⁶⁸ The number of descendents of Noah’s sons listed in Genesis 10 was 70, which also was the number of Jacob’s sons who went down into Egypt, again this can be believed to link God’s creative plans for the whole world with Israel. Duane Christensen notes that the Targum adds “70” after “the number” linking this text with Genesis 10. See Christensen, *Deuteronomy*, 796.

hearers to anticipate some greater theological purpose to God's creative act which relates Israel to the nations.

Despite the theological inferences which hearers or readers may take from the text, this text in itself does not appear to provide us with the reason why the nations were created, which is needed in order to judge the justification of the nation. Christopher Wright relies upon a theology of creation in order to interpret this verse and comes to the conclusion that the division of people into groupings (as nations) was part of God's original intention for humanity and, therefore, such division was a positive and desirable action.¹⁶⁹ Wright argues that the Trinitarian nature of God dictated the way in which the members of his creation, made in his image, relate to one another. Humans were to live in equal social relationship with one another, but this social organisation requires functional structures and patterns of relationship, which are inherently political.¹⁷⁰ However, as there is no mention of borders in the Genesis accounts, and there are no direct references to these accounts in Deut 32:8, I do not believe that this verse is alluding to the creation narratives which Wright refers to in support of his point.¹⁷¹ Therefore, I believe that to argue that ethnic and political differences can be derived as ordinances of creation is not a reasonable deduction from this passage.¹⁷² The division of the nations cannot be divorced from its post-fall chronological position in the canon. Perhaps a better mode of interpretation is the common understanding that Deut

¹⁶⁹ Christopher Wright, *Old Testament Ethics for the People of God*, 214.

¹⁷⁰ *Ibid.*, 215.

¹⁷¹ In Gen 1-2, we only see this unity in diversity of the trinity reflected in the creation of man and woman and there are no territorial boundaries mentioned. Arguably the first primitive border was created when Adam and Eve were expelled from the Garden.

¹⁷² One could perhaps, at a stretch, extrapolate from the male – female relationship that different political groupings were always going to be a natural outworking of God's creation of humanity as the population grew. However, the pre-fall notion of humanity appears to be one which is more ethnically and politically unified than the eschatological vision in Revelation. In fact there is no mention of difference or division before the fall, except for sex. In fact, there is no definite mention of different cultures or political groupings in scripture until after the flood, where the Table of Nations is listed (Gen 10), However, Gen 4:14 poses a potential threat to that conclusion, for discussion see Gordon Wenham, *Genesis 1-15*, Word Biblical Commentary, (Waco: Word Books, 1987), 109 and Claus Westermann, *Genesis 1-11 A Commentary* (London SSPCK 1984), 311.

32:8 refers to the events in Gen 10-11.¹⁷³ Furthermore, if one accepts the interpretation of the “sons of Israel” then this may be referring directly to Gen 10 where 70 of Noah’s descendants are named.¹⁷⁴ In this way Gen 10-11 enables us to understand the theological nature and purpose of the portrayal of God’s establishment of the nations.¹⁷⁵

Genesis 10-11: The Table of the Nations and the Tower of Babel

Again, when we approach Gen 10-11 we must be aware of its context and purpose. The story of Babel contains a strong polemic against the mythology of the surrounding cultures.¹⁷⁶ Gen 10 serves to remind humanity of God’s sovereignty in dividing the nations and Gen 11 continues this theme, providing theological reasoning for such an action by way of an explanatory narrative.¹⁷⁷ Therefore, as in Deut 32:8, we must look to this story for theological propositions, not necessarily historical facts. The theological propositions relevant for this discussion stem from the response of God to the sinful human actions at Babel.¹⁷⁸ Regardless of what the exact sins committed were, the important point clearly communicated in the passage which enables an understanding of the purpose of the division of the people into various nations, is that God intervened in the lives of

¹⁷³ See Tigay, *Deuteronomy*, 302; Christensen, *Deuteronomy*, 796.

¹⁷⁴ Interestingly, John Walton stresses that the number 70 is a complete number, showing God’s planning on both of these people groups and a sense of completion, see Walton, *Genesis*, 367.

¹⁷⁵ The relationship between Gen 10 and 11 is a bit unclear. However, I believe that we must see Gen 10 as chronologically following chapter 11, as it includes the fact that the clans all spoke different languages which was clearly a result of the story in Gen 11 (see Walton, *Genesis*, 371). Although Wenham attempts to resolve the ambiguity by saying that the two chapters shed light upon one another. See Wenham, *Genesis 1-15*, 242.

¹⁷⁶ *Ibid.*, 244.

¹⁷⁷ *Ibid.*

¹⁷⁸ Walton believes that the traditional view - that the sins committed at Babel were disobedience and pride - is incorrect and that the sin was actually the degradation of the nature of God by anthropomorphising him as the Mesopotamians did with their Gods. See Walton, *Genesis*, 377. Whereas Westermann framed it as the people seeking to be like God, a reference back to the Garden of Eden. See Westermann, *Genesis 1-11*, 551.

the people in order to *prevent further sin* (Gen 11:6-7). It is how the author intended this action to be interpreted that is important for our discussion.

When one reads about comparative texts in the ancient near east, both the negative and positive aspects of God's actions in Gen 10-11 are illuminated. Wenham notes the interesting findings of Samuel Kramer and Bendt Alster when surveying near eastern stories to find some comparisons which might shed light on the purpose of this story in scripture. The extant Sumerian text "Emmerkar and the Lord of Aratta," proposed that the division of languages was due to a divine rivalry between two gods – one created multiple languages so that the people could not speak to the other god in one tongue.¹⁷⁹ Kramer proposes that Gen 11 offers an alternative interpretation of the origin of language by stating that it was the divine judgement of one God on human sin, not the outcome of the competitiveness of multiple gods.¹⁸⁰ However, Alster sees Gen 11 as making a different point. The Sumerians saw the multiplicity of language as a negative event, prohibiting the communication of people with their god, but Gen 11 shows that the confusion of languages was God's solution to human sinfulness and arrogance which separated them from him, and so could be seen as a positive redemptive act.¹⁸¹

I believe that this act is portrayed not just as a positive response to human action, but as a premeditated act, executed as part of a greater plan with an enduring intention behind it. This interpretation is to be found in the relationship of this text to its wider context. First, when read in dialogue with Deut 32:8, one can see by the use of the term "inheritance" that the allotment of the land to the nations was

¹⁷⁹ O. R. Gurnery and S. N. Kramer, *Sumerian Literary Texts in the Ashmolean Museum* (Oxford: Clarendon Press, 1976), cited in Wenham, *Genesis 1-15*, 237.

¹⁸⁰ Ibid.

¹⁸¹ Ibid.

predetermined.¹⁸² Second, Westermann notes that an example of the redemptive and purposeful nature of God's action at Babel is that the diversity in language is not something which will be changed in the eschaton but "...the variety of languages [has] also a positive aspect which serves humanity."¹⁸³ Westermann believes it is a precursor to the coming of the Holy Spirit at Pentecost where different languages are overcome by an understanding which surpasses language, and directs people back to God.¹⁸⁴ Thus, the author of Deuteronomy depicts the confusion of languages and the establishment of different nations as part of God's greater redemptive plan and, also, a foreshadowing of God's final removal of sin enabling his eternal presence and unity with his people. Third, when viewed in the context of the overarching narrative of Genesis, one can see that God's intervention at Babel was necessary to establish the vehicle which God would use for his redemptive purposes.

In summary, on face value, Deut 32:8 portrays no clear purpose for the creation of nations or their borders. However, when viewed in light of its allusion to the story in Gen 10-11, we can conclude that the author is expressing the theological concept that the nations and their territorial borders were created as a post-fall necessity in order to keep humanity from even greater sin and separation from God. Furthermore, one can understand that this divine action is part of God's instigation of his greater plans for the reconciliation of humanity to himself.

¹⁸² Deuteronomy 32:8 describes what was given to the nations as their "inheritance." This would lead one to conclude that because an inheritance is something which is reserved for a specific person or group, who will receive it at a later date, the division of the lands given to the nations was already decided before this event.

¹⁸³ Westermann, *Genesis 1-11*, 556.

¹⁸⁴ I believe that the same can be extrapolated about culture also as it is so bound up with language.

Acts 17:26

“And he made from one man every nation of mankind to live on all the face of the earth, having determined allotted periods and the boundaries of their dwelling place.”

Another text regarding God’s creation of the nations and their boundaries is Acts 17:26, which alludes to both Gen 11:8 and Deut 32:8. In Acts 17:26 Paul is addressing the Areopagus. James Dunn notes that Luke takes time in Acts 17 to carefully describe the Athenian context, as Paul’s speech directly relates to it, and that this unit of scripture cannot be understood outside this context.¹⁸⁵ Paul had entered the city, had been distressed at the many idols he had seen, and had been preaching the gospel as a response. Dunn sees that the heart of this speech is a twofold protest: First, against “the multiplication of deities as the proper expression of religiosity” and, Second, against the assumption that God can be contained within human shrines or temples.¹⁸⁶ The start of the apologetics in Paul’s speech is in 17:24-25 where Paul establishes the theological foundations of his argument. There is one God who created everything including humanity. The argument continues in verse 26 which is of particular interest to us. Dunn convincingly advances that in 17:26 Paul is stressing the monotheistic nature of the Jewish (and Christian religion), in order to combat the multiplicity of deities which the Greeks worshipped.¹⁸⁷ Paul starts with the belief that all nations came from one man, drawing on the theology in Gen 1:27-28 and Gen 10.¹⁸⁸ Paul then states that God “... made allotted periods, and the boundaries of their dwelling place.” This scripture is not specific as to exactly what it means by ‘periods’ and ‘boundaries’, and its interpretation may have implications for the way in which we understand what theological point Paul is making.

¹⁸⁵ James Dunn, *The Acts of the Apostles*, Epworth Commentaries (Peterborough: Epworth Press, 1996), 230.

¹⁸⁶ Ibid.

¹⁸⁷ Ibid., 235.

¹⁸⁸ This is a reference to Adam (Gen 1:27) and/or Noah (Gen 10:32).

Darrell Bock lists several options which 17:26b might refer to: the seasons of various nations' dominance; seasons of divine provision of food; national borders; boundaries between land and sea or some combination thereof.¹⁸⁹ F. F. Bruce states that these are intended to be taken as general comments: that God gave the whole human race the whole earth to live upon, rather than taking it to mean that God gave specific nations specific land, as there are many aspects which enter into the delimitation of national frontiers.¹⁹⁰ He supports Dibelius' translation of 26:1a, the phrase "from one man he made every nation" to mean "from one man he made the whole human race" rather than "every nation of men" in a distributive sense.¹⁹¹ Bruce states that if one regards the preceding verse as referring to specific nations, then this section *may* be interpreted as referring to the timing of the rise and fall of nations. However he considers this interpretation less persuasive.¹⁹² Howard Marshall agrees with Bruce, further stating that G. Stahlin's argument also supports this view. Importantly, Stahlin notes that the universal view is more biblical in that the New Testament is more concerned with the fate of humanity as a whole, rather than the fate of individual nations and so better suits the context.¹⁹³

David Williams takes the alternative interpretation arguing that this verse is specific to different nations as this is a better rendering of the Greek *pan ethnos*.¹⁹⁴ This interpretation, Williams states, makes God not only the creator, but the Lord of

¹⁸⁹ Darrell Bock, *Acts*, Baker Exegetical Commentary on the New Testament (Grand Rapids: Baker Academic, 2008), 566.

¹⁹⁰ F. F. Bruce, *The Book of Acts*, The New International Commentary on the New Testament (Grand Rapids: Eerdmans, 1975), 358.

¹⁹¹ M. Dibelius, *Aufsätze zur Apostelgeschichte* (Göttingen, 1951), 32, cited in *Ibid*.

¹⁹² Bruce, *The Book of Acts*, 358.

¹⁹³ G Stahlin, *Die Apostelgeschichte*, Das Neue Testament Deutsch (Göttingen: 1970), 234, cited in Howard Marshall, *Acts*, Tyndale New Testament Commentaries (Leicester: Intervarsity Press, 1980), 287.

¹⁹⁴ David Williams, *Acts*, New International Biblical Commentary (Peabody: Hendrickson, 1993), 306.

history. Williams suggests that perhaps here we see a glimpse of Paul's belief in divine providence which was contrary to the fatalism of the Greek stoics.¹⁹⁵ Theologians who prefer this translation have appealed to Luke 21:24 and Dan 2:27-45, however, I do not find these appeals convincing.¹⁹⁶

Acts 17:27 makes the purpose of Paul's statements thus far clear: "that they should seek God and perhaps feel their way toward him and find him." His purpose is so that people will be able to recognise their status and function as individuals and people groups only in relation to, and in dependence upon, this overseeing creator God.¹⁹⁷ Therefore, I believe that the context within which verse 27 is located lends itself to the more universal interpretation above.

Conclusion

I have argued that we can establish from these verses that the relevant theological point that they are presenting is that God, in his sovereign power, created the nations and allocated their territories as a redemptive act in response to human sin for the purpose of their restoration to relationship with him. If viewed in this theological framework, because God created the nations as part of his redemptive plan to restore humanity to communion with himself one can assume that, these creations are *prima facie* theologically justifiable. Whilst all of the above verses clearly articulate the theological principle that God established the nations, one is unable to assert from these verses that God made territorial borders as we understand them today. Acts 17:26 has inspired debate over its interpretation

¹⁹⁵ Ibid., 306-307.

¹⁹⁶ I believe that the Luke verse refers only to the "nations" in the general sense meaning gentiles, not individual nations per se. I also understand the Daniel verses to show that God can foresee the rise and fall of the nations, however, I believe that this only applies to nations in the general sense and, due to the limited number of kingdoms mentioned, should not be applied to mean all nations and national boundaries at all times.

¹⁹⁷ Dunn, *The Acts of the Apostles*, 235.

regarding “boundaries” but I have come to understand it as referring to natural boundaries, rather than territorial borders as such. The scriptures I have looked at say nothing about the present time, nor do they imply that God has established every nation’s border for all of history. They merely present a theology of God’s sovereign control over history and his use of political entities for his ultimate purposes of redemption. I must now look to the continued presentation of the theological function and purpose of the nations as the biblical narrative continues in order to establish a fuller picture from which to judge whether or not the nation is theologically justifiable.

The Changing Notions of the Role of the Nation in Scripture

I have argued that the authors of scripture present the establishment of the nations as giving effect to God’s redemptive purposes, which justifies their existence as it upholds the principle of the ultimate good of humanity as defined earlier. However, what their continued role is throughout scripture will influence the maintenance of this presumption of justification. If nations were of no real lasting consequence then the justification of states in our present context is questionable. Importantly, the nation is not a static and set structure, rather its meaning, significance, and its function in practice, adapts to new contexts as history progresses and as societies are shaped by different influences and ideas. As I have already stressed, in order to understand the purpose of the nation in God’s plan we must look at the changing role of the nation across the whole narrative of scripture and determine whether the nation consistently functions to uphold the good of humanity as defined above.

In order to encapsulate the changing role of the nations I will frame this discussion roughly into three eras: the Old Testament era, the New Testament era, and the

eschatological era of the new creation. From the scriptural portrayal of the nation I will argue that God had a primary purpose for it throughout the Old Testament which, as Deut 32:8 hinted at, was centred on the nation of Israel. Old Testament theology reveals that the nation was the vehicle through which God was planning to draw his creation back into a right relationship and communion with himself; he was using a political structure for the redemption of the world. I will then turn to the New Testament and address Col 2:15, Matt 22:15-22, 1 Tim 2:15, and Rom 13:1-7, using them to critique Lockwood O'Donovan's belief: that as Christ was the fulfilment of the purpose of the nation of Israel, Israel and its land was reduced to the significance and status of the other nations.¹⁹⁸ According to both Lockwood O'Donovan and O'Donovan, the purpose of the nations then evolved into providing the space within which the gospel was to spread, with the maintenance of law and order being integral to upholding the best conditions for this transmission of the gospel.¹⁹⁹ On completion of this discussion of the changing purpose of the 'nation' *within* the timeframe of the writing of the scriptures, we will then turn to the issue of eschatological visions of the future of the 'nation,' which I mentioned in Chapter Three. As we have seen, eschatology forms the basis for much of the theological thought and scholarship surrounding the justifiability and desirability of the nation in current theological discussions. We will focus on Rev 21:1-26, and I will argue that these scriptures point to the *telos* of the nation as a united community of believers before God with the ethno-historical implications of 'nations' still existing in the new creation, but with a removal of secular authority and an emphasis placed on unbounded unity. Once we have concluded the discussion of the changing purpose of the nation across these three eras we will have a fuller picture of the purpose of the nation throughout scripture and be able to evaluate the justifiability of the nation.

¹⁹⁸ Lockwood O'Donovan, "Nation, State and Civil Society," 284-286.

¹⁹⁹ *Ibid.*, 285-286.

The Purpose of the Nation in the Old Testament

We can see the theological role of the 'nation' which was perhaps hinted at in Deut 32:8, clearly expressed in the establishment of the nation of Israel: that through the nation of Israel God would bring redemption to the rest of the world - the other nations with whom Israel would interact. Genesis tells the story of Abraham; that out of the nations God called Abram to leave his people, to follow him and to start the nation of Israel (Gen 12:1-3). This relationship was consummated in the covenant which God made with him (documented in Gen 12: 2-3, 13:14-18; 15:1-21). Israel's theological purpose was expressed by the author of Genesis through the divine statement in Gen 12:2: Israel was to be a great nation in order to be a blessing to others in the world. Israel, since its inception, was understood by its members to be the way in which God intended to redeem all of his creation; God was using a nation in order to redeem all of the other nations from out of which Israel was called.²⁰⁰

Israel's purpose was worked out initially through a sense of exclusivity, in order to be an example to the surrounding nations. As Christopher Wright highlights, Israel was created and established with customs which kept them as independent as possible.²⁰¹ Its ethical and territorial distinctiveness were essential to achieving its redemptive mission.²⁰² In Gen 18:19 we are told that God directed the nation to keep the way of the Lord, exercising "righteousness and justice." This is most obviously illustrated in Gen 18:19, which occurs just before Abraham intercedes on behalf of Sodom and Gomorrah.²⁰³ Abraham's holiness and compassion is in direct contrast to the sin of those cities. We see this clarified again in the law in Exod 19:6, where God proclaimed to Israel: that they were to be a "kingdom of

²⁰⁰ Wright, *Old Testament Ethics for the People of God*, 222.

²⁰¹ *Ibid.*, 220.

²⁰² *Ibid.*, 50.

²⁰³ *Ibid.*

priests and a holy nation.” As Wright asserts “keeping the law was not an end in itself for Israel, but related to their very existence - God’s concern for the nations.”²⁰⁴ This is why sojourners were permitted to become part of the Israelite community permanently, with equal protection under the law, if they decided to follow the ways of Yahweh.²⁰⁵ The law solidified Israel’s exclusivity, but also their universal purpose. In this way Israel was to reject the morals of the nations around it in order to influence those nations to follow God, thus creating a sense of boundedness and exclusivity, but always in order to help those outside Israel to eventually be included into the community of God’s people.²⁰⁶

This role of the nation of Israel in the Old Testament was also evident in the way in which the Israelites were to view and use their land: the prophets and the law articulated that it was God’s land to be used in accordance with his will and purposes. At the embryonic stage of the nation of Israel, when God called Abraham, the land was introduced as a crucial factor, a blessing from God which was included as part of the covenant (Gen 13:14-18).²⁰⁷ Israel was given *that* land specifically and was to respect the borders of the other nations. This reinforced Israel’s significance as a set-apart and pre-ordained nation with land which served its theological purposes.²⁰⁸ Menachem Lorberbaum claims that the land was characterised by its holiness, and divine ownership.²⁰⁹ This is classically illustrated in Leviticus 25 where we see how the law codified this vision of divine

²⁰⁴ Ibid., 64.

²⁰⁵ For example, see Exod 12:48-49 and Num 9:14. For further discussion see Chapter Six.

²⁰⁶ Wright, *Old Testament Ethics for the People of God*, 51.

²⁰⁷ Wright notes that out of 46 references to the promise given to Israel only 7 do not mention the land, and 29 refer solely to it. See Ibid., 78.

²⁰⁸ Menachem Lorberbaum, “Boundaries of the Holy Land,” in *States, Nations and Borders: The Ethics of Making Boundaries*, ed. Allen Buchanan and Margaret Moore (Cambridge: Cambridge University Press, 2003), 25.

²⁰⁹ Ibid., 21.

ownership.²¹⁰ As Wright agrees, the Israelites were not able to be seen as autochthonous, but were only given the land due to their election.²¹¹ The land was also shown to be imbued with spiritual significance, drawing the attention of the Israelites to their relationship with God and his faithfulness.²¹² Thus the management of the land and its borders was required to be in accordance with God's purposes and nature. Although Israel appeared bounded and insular, its goal was always one which encompassed God's plan to bring all of humanity into his eternal presence.

The theological concept woven through Old Testament scripture is that the nation, as an historical political construct, was integral to God's redemptive plans. God was using the nation as the vehicle through which he was redeeming creation, bringing it back into communion with himself. This gives theological justification to its existence. Bearing in mind this significance, it is important not to jump ahead of ourselves and attempt to use this as a justification for the modern nation-state. We must first understand how the coming of Christ fits into this theological picture and altered the purpose of the nation in its continuation of God's redemptive mission.

²¹⁰ Leviticus 25:23 states that the land belongs to the Lord, and this law regarding property redemption reinforces the idea from the patriarchal period - that Israelites are still sojourners on God's land.

²¹¹ Wright, *Old Testament Ethics for the People of God*, 85.

²¹² The spiritual significance can be seen to be predominantly four fold. First, God's presence was to be with his people in the Promised Land (Ps 9:11; 74:2; 132:13-14; 134:3). Second, it was a gift, a symbol of God's provision and grace: it was a land flowing with milk and honey, (Exod 3:8) full of "great and goodly cities which [they] did not build" (Deut 6:10-11). Third, it was to be a place of rest from enemies, desired greatly by the Israelites who surely tired of fighting and yearned for security and an end to their nomadic desert life (Deut 12:10; 25:19; Exod 33:14; Josh 1:13). Fourthly, it consolidated the relationship between God and his people; God was fulfilling his promise to Israel proving himself faithful (Deut 6:10). The land pointed beyond itself to God's relationship with Israel and his saving purposes for the world. See Walter Brueggemann, *The Land: Place as Gift, Promise and Challenge in Biblical Faith* (Minneapolis: Fortress Press, 1989), 45-47.

The Changing Role of the ‘Nation’ After the Christ Event

Lockwood O’Donovan and O’Donovan present a convincing argument regarding the purpose of the nation after the Christ event. Joan Lockwood O’Donovan states that Christian understandings of the nation must be shaped by the divine revelation of political authority and political community in the nation of Israel.²¹³ Against these Old Testament understandings of the role of those in authority, she asserts that in the scriptures which we will soon discuss, Paul contends that the function of secular authority is restricted to a judicial role. The nation practically remains what it was revealed through Israel to be: a fully functional government providing civil and criminal order; people who are linked by ethnicity, territoriality, and history, and who are bound by laws, customs and judgements. However, its theological significance has changed. As Christ fulfilled the true calling of Israel, the unique theological significance of the nation of Israel has been confined to the realm of salvation history. In light of this transformation O’Donovan proposes that in the new political order the nation and the church have interdependent roles, with the nation holding order and providing space for God’s proclamatory mission, and the church highlighting the deficiencies and limitations of the nation. Therefore, Lockwood O’Donovan convincingly argues that in light of Christ inaugurating his heavenly Kingdom on earth, the role of the nation has become clearer: its primary function is the ongoing practice of judgement conducted through the medium of law. Therefore, O’Donovan defines the ‘nation’ after the Christ event as “a concrete territorial order of political power, judgement, and tradition that sustains a space within the sinful human condition for the gathering of Christ’s faithful people through the work of the Holy Spirit.”²¹⁴ The nation is no longer seen as the vehicle of salvation but merely a “guaranteed social space within which God’s saving work proceeds.”²¹⁵ Thus is it this legal function of judgement that gives true political identity to a nation rather than its territorial boundaries, ethnic/linguistic

²¹³ Lockwood O’Donovan, “Nation, State and Civil Society in the Western Biblical Tradition,” 284.

²¹⁴ *Ibid.*, 285

²¹⁵ *Ibid.*, 286.

homogeneity, or economic power. Exactly what this judicial function involves will be considered in greater depth in Chapter Five.

Supporting Lockwood O'Donovan, O'Donovan similarly places the role of the nations within a framework of the authority of Christ in the Church's mission.²¹⁶ He states that he understands this role of the nation after the Christ event by holding central two propositions. First, from Col 2:15, that God has disarmed the principalities and powers and has made a public spectacle of them by the cross, and Second, that the world awaits the universal presence of Christ for this truth to be fully apparent.²¹⁷ In *The Desire of the Nations*, O'Donovan states that we are to understand that the purpose of secular authority is to be "reconceived to serve the needs of international mobility and contact which the advancement of the gospel requires."²¹⁸ He continues to explain that in accordance with the ideas expressed in Revelation, although Christ's victory has subjected the nations to God's rule, the secular authorities are given freedom to execute their judicial task until the Kingdom is established in its fullest sense. The misuse of this freedom, however, has produced numerous examples of oppression and abuse by those in positions of power.²¹⁹ O'Donovan continues throughout the *Desire of the Nations* to show how this theological understanding of political power and authority formed the foundations for the various approaches to power and the reforms which took place throughout Christendom.²²⁰

I find the Christocentric view which Lockwood O'Donovan and O'Donovan hold to be entirely appropriate. I believe that a biblical theology necessarily places the Christ event as the climax of scripture, and that Paul's theology particularly

²¹⁶ O'Donovan, *The Desire of the Nations*, 146.

²¹⁷ Ibid.

²¹⁸ Ibid., 147.

²¹⁹ Ibid., 152-157.

²²⁰ Ibid., 193-242.

illuminates this. I will now discuss O'Donovan's interpretations of Col 2:15, Matt 22:15-22, 1 Tim 2:15, and Rom 13:1-7 (which I see to be the most significant verses which speak about secular authority after the Christ event), and compare them with those of other biblical scholars in order to critique, and ultimately support, the political theology presented by Lockwood O'Donovan and O'Donovan.²²¹

Colossians 2:15

"He disarmed the rulers and authorities and put them to open shame, by triumphing over them in him."

The foundation of Lockwood O'Donovan's and O'Donovan's thought is drawn from the theology explicitly presented by Paul in Col 2:15. Paul announces that Christ has triumphed over the rulers and authorities of the world. O'Donovan, along with many other scholars, interprets this to mean all powers political and demonic whereas, other scholars have interpreted it as either one or the other.²²² I believe that the context of this section of Paul's letter (Col 2:8-15) alludes to both the spiritual and political as O'Donovan has asserted. This is due to the description in the passage of both the spiritual elements which are at work behind the spreading of false doctrine (described as philosophy and deceit), and the physical death of Christ at the hands of the Romans. However, whichever interpretation one chooses, both include political secular authority, and so for the purposes of this study the interpretation is essentially inconsequential. Paul's theological framework for understanding political authority in light of the Christ event is made

²²¹ With the exclusion of 1 Pet 2:13-17 as I believe that this supports the much same points as Rom 13:1-7.

²²² See O'Donovan, *The Desire of the Nations*, 146. An example of a purely spiritual interpretation of 'the powers' see Peter O'Brien, *Colossians, Philemon*, Word Biblical Commentary (Waco: Word Books, 1982), 133. For an example of an approach which sees 'the powers' to be secular authority see David Garland, *Colossians/Philemon*, NIV Application Commentary (Grand Rapids: Zondervan, 1998), 152-154.

very clear in this passage and is also expressed in Eph 1:15-23. Therefore I support O'Donovan's method of using this as a basis of interpretation for the other verses regarding secular authority in the New Testament, to which I will now turn.

Matthew 22:15-22

“Then the Pharisees went and plotted how to entangle him in his words. And they sent their disciples to him, along with the Herodians, saying, “Teacher, we know that you are true and teach the way of God truthfully, and you do not care about anyone's opinion, for you are not swayed by appearances. Tell us, then, what you think. Is it lawful to pay taxes to Caesar, or not?” But Jesus, aware of their malice, said, “Why put me to the test, you hypocrites? Show me the coin for the tax.” And they brought him a denarius. And Jesus said to them, “Whose likeness and inscription is this?” They said, “Caesar's.” Then he said to them, “Therefore render to Caesar the things that are Caesar's, and to God the things that are God's.” When they heard it, they marvelled. And they left him and went away.”

Of the two main interpretations of this scripture, O'Donovan adopts the ironic interpretation, understanding it as communicating the view that Jesus did not assign the government an uncontested sphere of secular right.²²³ He believes that the most appropriate interpretation out of several possible options is that Jesus treated this question as an irrelevant distraction from the real business of receiving God's Kingdom. He asserts that Jesus is claiming that things such as taxation are irrelevant and not the “stuff” of true government and that the real issue is that God's rule demands your whole allegiance.²²⁴ He interprets this scripture in light of the other taxation story in Matt 17:24-27 in which Jesus explains that sons of a Kingdom are exempt from such things as paying taxes, but in order not to cause scandal, a coin is miraculously (and ridiculously) produced from a fish. O'Donovan

²²³ O'Donovan, *The Desire of the Nations*, 92.

²²⁴ *Ibid.*

argues that these passages portray Jesus as refusing to realise a permanently two-fold locus of authority and as viewing the Empire as a passing order.²²⁵

Frederick Bruner and others offer the other main interpretation, which is commonly called the “two Kingdoms” approach. Bruner reads this story in light of Romans 13:1-7 and explains that Jesus is requiring a respect for the Empire and that this respect for the Empire is also a form of respect for God.²²⁶ He also believes that Jesus’ actions intimate that what is owed to God is infinitely more than to the Empire.²²⁷ As Bruner says “Jesus’ command frees the secular-political realm from ultimacy and makes it penultimate.”²²⁸ According to Bruner, Jesus recognises secular authority but places it rightfully in the context of God’s sovereign rule. The two are not independent of one another, but God’s authority overarches secular authority. Secular authority is to fall into line with God’s purposes.

I believe that O’Donovan’s interpretation of Matt 17:24-27 is the most compelling, particularly in its focus upon God’s rule. However, in light of Rom 13:1-7 and the other verses we will discuss that portray God as delegating authority to secular rulers to carry out their judicial function, I do not believe that the ‘two kingdoms’ approach of the ordering of civil authority under God’s sovereignty is necessarily an incompatible interpretation, if one could argue that taxation was a necessary element in the execution of that judicial function. In fact, in O’Donovan’s discussion of Rom 13:1-7 he states that when Paul encourages the Roman Christians to pay taxes, they do so in recognition of the government’s judicial

²²⁵ *Ibid.*, 92-93.

²²⁶ Frederick Bruner, *The Churchbook: Matthew 13-28* (Grand Rapids: Eerdmans, 2004), 399. However, it is impossible to conclude this from this text itself.

²²⁷ Many commentators agree that the implication is that as man is made in the image of God then he owes his whole being to God. See for example John Nolland, *The Gospel of Matthew*, *The New International Greek Testament Commentary* (Grand Rapids: Eerdmans, 2005), 899; Bruner, *The Churchbook*, 400-402.

²²⁸ Bruner, *The Churchbook*, 401.

function.²²⁹ Therefore, I believe that either interpretation could support O'Donovan's understanding of Paul's theology of secular authority.

1 Tim 2:1-5

“First of all, then, I urge that supplications, prayers, intercessions, and thanksgivings be made for all people, for kings and all who are in high positions, that we may lead a peaceful and quiet life, godly and dignified in every way. This is good, and it is pleasing in the sight of God our Saviour, who desires all people to be saved and to come to the knowledge of the truth. For there is one God, and there is one mediator between God and men, the man Christ Jesus”

O'Donovan believes that 1 Tim 2:1-5 communicates the idea that the goals and conduct of secular authority have been reconceived in light of the Christ event to now serve the needs of the communication of the gospel.²³⁰ He understands that the directive in 1 Tim 2:1-2, for Christians to pray for kings and all in authority, is not because kings have any eschatological role in the consummation of the Kingdom of God, but because they serve the purpose of facilitating the conditions through which God will work to bring about that consummation.²³¹ Philip Towner supports this conclusion by stating that this verse needs to be interpreted in light of Rom 13:1-7 and 1 Pet 2:13-17. In light of these verses Towner believes that 1 Tim 2:1-5 conveys that the Church/Empire relationship involves accommodation by the Empire of the Church's missiological service to society.²³² Walter Liefeld also concurs, asserting that this scripture reveals the purpose of the nations to be the free penetration of society with the gospel.²³³

²²⁹ O'Donovan, *The Desire of the Nations*, 149.

²³⁰ *Ibid.*, 146-147.

²³¹ *Ibid.*

²³² Philip Towner, *The Letters to Timothy and Titus*, *The New International Commentary on the New Testament* (Grand Rapids: Eerdmans, 2006), 163.

²³³ Walter Liefeld, *1 and 2 Timothy/Titus*, *The NIV Application Commentary* (Grand Rapids: Zondervan, 1999), 85-86.

However, other scholars hold an alternative view. Several scholars believe that the point of 1 Tim 2:1-5 was to correct the false teaching and practice of the recipient church, which only prayed for an exclusive group forgetting that salvation is for all. Others believe that Paul's primary concern was to communicate to the Christians in Ephesus that they must live lives that will gain respect from society and not lead to discord with it.²³⁴ These alternative interpretations tend to de-emphasise the wider theological message which Paul is attempting to convey throughout this letter. From my analysis of the passage I understand the reason why Paul is explicitly telling Timothy in this letter to stand strong against false teaching and the conflict that it brings, to be the furtherance of the gospel, as this teaching inhibits its spread. I also see this as the main motivation underlying most of Paul's letters as he expresses many times that this is his mission and purpose.²³⁵ Without giving appropriate emphasis to this motivation these interpretations do not acknowledge the furtherance of the gospel as the central focus of this passage and, therefore, I believe their interpretation is less fitting. On this issue I agree with O'Donovan and others who assert that this passage is conveying the theological understanding of the authority and purpose of secular rulers. I agree that one can deduce from this passage that their purpose is to secure the appropriate conditions in which to spread the gospel, which is why Paul directs the Colossian Christians to pray for them.

Romans 13:1-7

“Let every person be subject to the governing authorities. For there is no authority except from God, and those that exist have been instituted by God. Therefore

²³⁴ Gordon Fee, *1 and 2 Timothy, Titus*, New International Commentary (Peabody: Hendrickson, 1988), 61-70; William Mounce, *Pastoral Epistles*, Word Biblical Commentary (Nashville: Thomas Nelson, 2000), 93.

²³⁵ For example see Eph 1:3-14; Rom 1:1, 1:15; 1 Cor 1:17.

whoever resists the authorities resists what God has appointed, and those who resist will incur judgment. For rulers are not a terror to good conduct, but to bad. Would you have no fear of the one who is in authority? Then do what is good, and you will receive his approval, for he is God's servant for your good. But if you do wrong, be afraid, for he does not bear the sword in vain. For he is the servant of God, an avenger who carries out God's wrath on the wrongdoer. Therefore one must be in subjection, not only to avoid God's wrath but also for the sake of conscience. For because of this you also pay taxes, for the authorities are ministers of God, attending to this very thing. Pay to all what is owed to them: taxes to whom taxes are owed, revenue to whom revenue is owed, respect to whom respect is owed, honour to whom honour is owed."

Romans 13:1-7 is perhaps the most informative scripture on the nature of secular authority after the Christ event. O'Donovan explains that this scripture must be understood within Paul's theological framework, evident throughout the letter, regarding the significance of Israel in God's final redemptive plans.²³⁶ He believes that this passage explains the impact of Christ's victory, as he asserts that Christ's victory is the fulfilment of God's promise to Israel: that God will subject the God-denying empires to a God-filled social order.

In verse 1 O'Donovan interprets the phrase "governing authorities" to allude to the angelic character assigned to national governments in Hebrew culture. He contends that this phrase differs from Paul's usual language of "kings", "princes," "magistrates," or "rulers" when describing secular authority.²³⁷ From this alternative use of language, O'Donovan concludes that Paul is carefully placing his words in the context of Christ's victory. He states that Paul is articulating the reality that Christ has defeated all authority on earth and it is only by God's design that these power structures remain in place; they (and their angelic leaders) exist in

²³⁶ O'Donovan, *The Desire of the Nations*, 147.

²³⁷ *Ibid.*

forced subjection and are used for God's purposes in serving the mission of the church.²³⁸ According to O'Donovan, verse four shows that the nations now serve the Godly purpose of carrying out judgement in order to maintain peaceful conditions for the spread of the gospel. Similarly to the ancient concept of *Mishpat* (which described the role of the judges of ancient Israel as praising good behaviour and condemning bad behaviour), the government's sole purpose for existence is now seen to be judicial. Their identity cannot be formed as it used to be – from their main function of possession (the protection of the land and the law) as Christ has fulfilled that role.²³⁹

Whilst largely agreeing with O'Donovan, the scholarship of Ernst Kasemann raises a couple of questions about this passage which must be noted. First, Kasemann believes that the interpretation of verse one as referring to angelic beings contradicts Paul's wider theology. Kasemann states that the idea that angelic beings are presently in authority through particular secular governments goes against Paul's previous talk of the removal of national boundaries.²⁴⁰ He also believes that Christ is only expected to triumph finally over all of his enemies at the parousia, and so the idea of a present forced subjection does not fit with this expectation.²⁴¹ Kasemann's objection to the understanding of governing authorities as angelic beings does have merit as that interpretation appears to reinforce national distinctions that Paul has been at pains to show have been removed. O'Donovan himself has noted that the only identifier of the nations which remains is their judicial function. It would therefore seem odd to retain an understanding of distinct angelic personalities associated with each nation. However, as I have stated, if one interprets Col 2:15 as only referring to secular powers and authorities then one should still place this verse in the context of Christ's victory, as Paul is

²³⁸ Ibid.

²³⁹ Ibid., 148

²⁴⁰ For example, See Rom 1-4 and Gal 3:28.

²⁴¹ Ernst Kasemann, *Commentary on Romans*, trans. by Geoffrey Bromiley (London: SCM Press Limited, 1980), 353. Paul outlines this in 1 Cor 15:24.

arguing from a complete theological framework which cannot be undervalued. This is why I am unconvinced by Kasemann's second concern. Therefore, I do not believe that either interpretation of verse one essentially affects O'Donovan's conclusions regarding this passage.

Another issue that scholars raise in opposition to O'Donovan's interpretation is the question of why God would allow injustice to continue to be perpetrated by these authorities if the nations are subject to God and now serve the purposes of the church. Regarding this apparent tension, Emanuel Singgih has concluded in his own study of the scholarship on this text that the scripture itself is ambiguous. He notes that it is hard to find a reading that is not considered "colonial." By this he means a reading which does not legitimate the status quo of contemporary political situations by declaring them to be divinely ordained.²⁴² Kasemann attempts to overcome this problem by suggesting that Paul means that God's order and justice can be seen in the good that is done under the rule of those in authority, but this seems to deny the God-ordained overtones of the text which are similar in 1 Pet 2:13-14.

However, O'Donovan simply avoids this issue stating that the scripture says nothing of the way authority was used by governments, as its concern is ecclesiological and Christological.²⁴³ He contends that the text merely lays out a theological understanding of a ruler's right, not an understanding of contemporary politics.²⁴⁴ Douglas Moo supports this idea in his assertion that Paul does not ignorantly describe the government as good, but rather describes the way that the government *should be*, and so if it deviates from that prescription then it no longer

²⁴² Emmanuel Singgih, "Towards a Post Colonial Interpretation of Romans 13:1-7: Karl Barth, Robert Jewett and the Context of Reformation in Present-day Indonesia," *Asia Journal of Theology* 23, 1 (April 2009): 121.

²⁴³ O'Donovan, *The Desire of the Nations*, 152.

²⁴⁴ O'Donovan lists 2 Thes 2:3-9 as an example. See *Ibid.*

acts under divine authority.²⁴⁵ Importantly, as I have already discussed, O'Donovan believes that Revelation shows that a measure of freedom has been given to those in authority which enables rebellion against God's authority.²⁴⁶ There are several other interpretations which attempt to ease this tension but none seem to fit as well as O'Donovan's.

Several scholars have held very different positions on this scripture due to contextual considerations and it is worth mentioning a few which challenge O'Donovan's argument.²⁴⁷ First, some argue that this teaching is not universal in application as it is only directed to the Roman Christians and therefore does not speak directly to the general purpose of the nations.²⁴⁸ However, as Moo states, the universal language chosen by Paul makes this argument weak, as his reference to "all souls" and the fact that all authority is ordained by God, makes this a clearly universal passage regarding all authority. Second, Moo proposes that perhaps this section acts as a disclaimer to Rom 8, in order to prevent Christians from disregarding the responsibilities which they still carry as part of a citizenry in light of Paul's enthusiastic teaching that they now live under Christ's authority.²⁴⁹ This theory may have some merit but I suggest that this verse lends itself to a more universal application.

²⁴⁵ Douglas Moo, *The Epistle to the Romans*. The New International Commentary on the New Testament (Grand Rapids: Eerdmans, 1996), 809.

²⁴⁶ O'Donovan interprets Revelation as conveying that in the present era there is one structured human community which has the church at its centre witnessing to God's wresting away of power from the nations. See O'Donovan, *The Desire of the Nations*, 155-157.

²⁴⁷ Moo lists seven different arguments in his commentary; see Moo, *The Epistle to the Romans*, 807-809.

²⁴⁸ See particularly Jewett who claims that Paul wrote this scripture in order to enable a smoother context for gaining support for his mission to Spain. See Robert Jewett, *Romans: A Commentary*, Hermeneia Series (Minneapolis: Fortress Press, 2007), 786.

²⁴⁹ Moo, *The Epistle to the Romans*, 791-792.

In summation, I believe that the overall conclusions of Lockwood O'Donovan and O'Donovan which have been drawn from the above scriptures, present a coherent theological-political framework which make sense of these scriptures in light of Paul's overarching theological message in his New Testament writings. Paul's theology, as exhibited through the above scriptures, suggests that after the victory of the Christ event, the rulers of nations are set in positions of authority under God's sovereign power, and their function is now primarily judicial. Thus scripture portrays the role of the nations to now be one that serves the mission of the church. They provide a space ideal for the transmission of the gospel throughout the world in order to further God's redemptive plans to restore humanity to a unity with himself. Considering this new role one can conclude that there continues to be a justification of the nation and secular authority throughout the New Testament era. Although the role of the nation has changed, it continues to serve the purpose of facilitating God's communion with humanity. I will now turn to look at the *telos* of the nations in order to provide a complete biblical theological view of the role of the nations throughout all of scripture before any final conclusion as to their justification may be made.

The *Telos* of the Nation

Eschatological visions of God's Kingdom are inherently linked with land or place. Therefore a brief understanding of the theology of the land is important with regard to our discussion, as it enables a better interpretation of these visions and also is relevant due to the territorial nature of nations and states. Earlier we saw the purpose of the nation of Israel reflected in its relationship with the land before and during its possession of it. However, from that time, through the experience of the exile, Israel's understanding of its relationship to the land transformed as it came to understand that its nationhood depended upon its relationship with God, not the land. By the time of the New Testament, the focus for Israel's identity and the

spiritual significance of the land had been transferred to the metropolis – the city of Jerusalem, and particularly the temple within it.²⁵⁰

All that was promised in the spiritual significance of the land was fulfilled in Christ. This is most apparent in Heb 3:7-4:11 where the author interprets Ps 95 as expressing the concept that the land was always to be seen as a foreshadowing of God's rest and not an end in itself. This rest remained a promise open to those at the time of David, and to the hearers of the letter to the Hebrews.²⁵¹ Both spiritually and physically Israel was essentially rendered borderless as Christ took upon himself the significance of the land. Esther Reed acknowledges this in her biblical work, asserting that Israel's hopes for restoration were reconceived by Christ to exclude physical borders and, therefore, national separation.²⁵² She argues that the constitutional shape of Israel is already restored in part by Christ's inauguration of the Kingdom, and that physical restoration is not anticipated in the new creation. Thus divisions amongst the peoples, including nations and their borders, will also not be part of this vision.²⁵³ This appears to be in contrast to eschatological visions which have a strong focus on the land and boundedness. However, Iain Duguid suggests that Rev 21:1-26, which I consider to be the most

²⁵⁰ This is clear in the pilgrimages made to Jerusalem by the people of God during the exile which continued into the New Testament period, and is also evident in the biblical imagery used in these periods. An example of this is evident in Rev 21 (which I will address below) where the focus is upon the new Jerusalem which invokes all of the symbolism and significance attributed to the city in the new testament. See Oliver O'Donovan, "Christianity and Territorial Right," in *States, Nations and Borders: The Ethics of Making Boundaries*, ed. Allen Buchanan and Margaret Moore (Cambridge: Cambridge University Press, 2003), 169.

²⁵¹ The author of Hebrews alludes to Ps 95, reinterpreting the land as symbolic for God's promise of eternal rest to his people. This psalm reveals that entry into Canaan was only entry into part of the promise; the rest in Canaan was not God's fully promised rest. Rather it prefigured God's rest, as a partial fulfilment of this promise. As the opportunity to enter this rest remained for David in his time, the promise of rest was not fulfilled in the settling in land. As Heb 4:8 says: "if Joshua had given them rest God would not have spoken later about another day." Thus God's promise of "rest" found its fulfilment in Christ, who took on the significance of the land. See John 2:19; Matt 11:28.

²⁵² Reed, "Refugee Rights and State Sovereignty," 65-66. This is also supported by John 4:19-24 where Jesus teaches that in the Kingdom of God specific places of worship, whether in Jerusalem or in Samaria, will be rendered irrelevant with worshippers worshipping "in spirit and in truth."

²⁵³ *Ibid*, 66.

explicit scripture on the *telos* of creation (and also the nations), and to which I will now turn, must be understood in light of the fulfilment of the theological meaning of the land in Christ and that such an interpretation reveals no necessary inconsistency.²⁵⁴

Revelation 21

There are a few points for us to note regarding the *telos* of the nations in the Kingdom of Heaven from Revelation 21. Before asserting my main argument that the emphasis of this passage is the unity of all people, I will begin by briefly dealing with two issues which relate specifically to the land, and which could both be seen to support or challenge the argument of Lockwood O'Donovan and O'Donovan.

First, Rev 21:1 tells us that there is no sea in the new heavens and new earth. Iain Boxall notes that some scholars believe that the sea could be understood as having created natural borders which could have been used to delineate the boundaries used to separate nations (as noted in our discussion of Acts 17:26). The removal of the sea would then indicate the removal of borders in the new creation and an emphasis upon the eschatological unity of all people.²⁵⁵ However, it is more likely that this image should be understood metaphorically as Boxall does, in terms of the ancient conception of the sea as a representation of danger.²⁵⁶ The removal of the sea thus represents not a geographical transformation, but rather the removal of all threat to humanity. Second, the

²⁵⁴ Iain Duguid, *Ezekiel*, The NIV Application Commentary (Grand Rapids: Zondervan, 1999), 548.

²⁵⁵ Ian Boxall, *The Revelation of Saint John*, Blacks New Testament Commentary (Peabody: Hendrickson, 2006), 293.

²⁵⁶ *Ibid.* The sea was threatening and often associated with the wild and demonic. Mounce also points out that in Isaiah the wicked are compared to the tossing sea that cannot rest. Mounce believes that the reason for the disappearance of the sea is that what it stood for was in variance with the character of the new creation. See Robert Mounce, *The Book of Revelation*, The New International Commentary on the New Testament, rev. ed. (Grand Rapids: Eerdmans, 1998), 381.

description of the boundaries of the new Jerusalem may indicate that God will build an actual physical city that is isolated from the rest of creation. However, it is worth noting that the dimensions of this new city differ from those in Ezekiel. To explain this Robert Mounce asserts that the measurements are symbolic.²⁵⁷ Mounce suggests that the measures of the city show the vastness, perfect symmetry and splendour of the new creation.²⁵⁸ Separation is just not a focus in the Kingdom of God. The focus instead lies upon the unity of creation in communion with God.

Accordingly, there is a notable absence in the kingdom of God of competing political authority. The existence of nations in the new creation is recognised in Rev 21:24-26, but this usage should be understood as utilising only the ethnic implications of the term. Rather than portraying a continuance of people divided under political authorities, “nations” may be seen as a generic term. In this context scholars have suggested that it could describe ‘all enemies of God’ ‘all people,’ or ‘all of the redeemed.’ “The nations” and “the Kings” are terms used throughout Revelation to mean “those opposed to God,” therefore, Craig Keener believes that the subservience of these groups in verse 24 highlights Christ’s victory.²⁵⁹ Thus the reference to nations and kings could be seen as signifying a unity in opposition to God, rather than a political differential between people. Similarly, some scholars assert that these phrases are intended to refer generically to the redeemed.²⁶⁰ Boxall believes that these verses echo the Song of Moses in Rev 15:4, which predicts that “all nations” will come to worship God.²⁶¹ In agreement with this, Mounce states that these verses refer back to Isa 60:4-5 and that they intend to encapsulate the sovereignty of God in that “all shall come before him in

²⁵⁷ Ibid., 392. Also see Keener, *Revelation*, 505.

²⁵⁸ Mounce *The Book of Revelation*, 392.

²⁵⁹ Keener, *Revelation*, 498. In Revelation the Kings of the nations also served the antichrist (See Rev 11:2, 16:14, 17:2 18:3, 19:15).

²⁶⁰ Stephen Smalley, *The Revelation to John: A Commentary on the Greek Text of the Apocalypse* (Downers Grove: Intervarsity Press: 2005), 558-559; Osborne, *Revelation*, 763.

²⁶¹ Boxall, *The Revelation of Saint John*, 308-309.

worship.”²⁶² From these interpretations, perhaps we can understand this reference to kings and nations as highlighting, not the difference between peoples, but rather that all people will be united in worshipping God. O’Donovan and Osborne both compare this passage with the procession in Isa 60:1-3 and assert that the march of kings into the new city is merely processional. The passage employs the imagery of a military parade, and is to be understood as a demonstration of the earthly kings’ subjection to Christ. Accordingly, one cannot interpret their appearance in this passage to support their continued existence as rulers of nations.²⁶³

This idea of unity before God as the *telos* of the nations is encapsulated in Rev 21:3, and is particularly evident when compared to the vision in Ezek 47. Whereas Ezekiel’s vision concerned the restoration of the nation of Israel, Rev 21:3 states that God will “pitch his tent with human beings,” and that “they will be his people.” Rev 21:3 widens the scope of Ezekiel’s prophecy. In light of the Christ event, restoration is now clearly portrayed by John as including all of humanity – national identity is absent in this verse, and therefore this scripture can be seen to be supporting a unity of people before God.²⁶⁴

From this discussion of the *telos* of the nations we can draw several conclusions. First, the idea of the continuance of bounded nations is absent in these scriptures. Instead of seeing a continuity of physical separation, we see a unity with all believers given access to the spiritual city. The only exception to this is the description of the borders of the holy city, which we have seen are to be read as symbolic, showing theological truths about the Kingdom of God, rather than actual

²⁶² Mounce sees verses 25-26 as a possible issue regarding his interpretation as the nations are not dwelling within the city. He claims that John has retained certain elements of the prophets’ visions which aren’t appropriate in the new context. See Mounce, *The Book of Revelation*, 397.

²⁶³ O’Donovan, *The Desire of the Nations*, 243; Osborne, *Revelation*, 762.

²⁶⁴ Boxall, *The Revelation of Saint John*, 295.

segregating borders as this would go against the theme of the vision. Second, Rev 21:24-26 points towards a unity of the nations; I have shown that the references to the “nations” have meant “all who previously opposed God” or “all people.” This interpretation allows an understanding of nations in the sense of their ethnic differences to continue to exist, but denies the existence of the nation as a locus of ruling authority.²⁶⁵ This unity is seen finally in a worshipping community bringing glory to God. As I noted earlier, Lockwood O’Donovan describes the *telos* of the nations as the “spirit-filled body of the exalted Christ.”²⁶⁶

Conclusion

From the above discussion we can see that scripture portrays a change in the role of the nation throughout scripture. We have seen that the verses surveyed from Genesis, Deuteronomy and Acts convey the theological concept that the nation was created by God in the execution of his redemptive plans to restore humanity to communion with himself. As the biblical narrative progresses, Genesis then shows that the nation, once established, became the initial means through which God chose to initiate his redemptive plan. Genesis conveys that the nation of Israel was established as a unique and holy nation which was to be spiritually and physically set apart from the other nations. However, importantly, the scriptures emphasise that this exclusivity was to bring God’s blessing to all the other nations, to include all people in God’s plans for reconciliation. It was due to this theological purpose that, although the borders of Israel were maintained to protect the distinctiveness of the Israelites, strangers and aliens were allowed to come into Israel and to reside permanently with the Israelites if they chose to follow Yahweh.

²⁶⁵ O’Donovan, *The Desire of the Nations*, 243.

²⁶⁶ Lockwood O’Donovan, “Nation, State and Civil Society in the Western Biblical Tradition,” 286.

As Lockwood O'Donovan and O'Donovan assert, with Christ's intervention into human history, scripture reveals a change in the role of the nations. By the time of the New Testament, the promise of Israel being a blessing to the nations is fulfilled in Christ's life, death and resurrection. Paul's theology communicates that Christ subordinated the nations to God's rule, and all secular authority is to serve God's wider purpose which he is working out through the Church. The gospel is to be spread throughout the nations. The nations and their authorities are to function in such a way as to facilitate this goal. In Paul's view, what constitutes the true nature and function of the nation now is the way in which it provides law and order, ensuring a peaceful environment through which to enable the church's mission of advancing the gospel.

In order to complete our understanding of the role of the nations we looked at their *telos*. From our discussion we concluded that John describes their *telos* to be their transformation into a united, worshipping community that has no borders and no separating political structures, but rather a unity of place and purpose under God. As Keener describes it "the nations will become God's people and he will live among them."²⁶⁷

From the above biblical study I may now finally conclude that despite their changing role or function, scripture shows that throughout the biblical narrative the purpose of the nations has consistently been the upholding the ultimate good of humanity – its restoration to reconciled united relationship with God. They are, therefore, justified in their existence and function. Their bordered territories, which were once seen as essential are, in the present era, an almost unwelcome restriction of the access to the ends of the earth for the gospel. However,

²⁶⁷ Keener, *Revelation*, 487.

territoriality is necessary in order to carry out a nations' judicial function until the time comes when God will dispense with them in the new creation.

As I am engaging theologically with the secular deontological debate, I must integrate my findings with it thus far. Following the moral reasoning of Wellman and Cole, I have concluded that the nations in scripture are theologically justified as their role upholds the ordering principle (or the ultimate good of humanity) which I found scripture conveys to be humanity's communion with God. This justifies their coercive nature. I also began this chapter with a brief discussion of how the nation-state has historical and theological continuity with the nations which we have just been discussing. Therefore, I believe that it is a reasonable logical extension to assert that this justification also applies to the nation-state. However, if we continue to employ Wellman's reasoning, there remains the issue of a state's legitimacy which we must address before turning to apply our findings to the context of the New Zealand refugee policy debate.

Chapter 5:

Limitations on Sovereign Power

In order to draw some firm conclusions regarding whether a state is justified in refusing citizenship to refugees or if there exists limitations on a state's power that would prohibit this justification, I must turn to consider issues related to the legitimate use of power. First, I will begin this chapter by exploring, in greater depth, O'Donovan's understanding of the limits of judicial authority in order to complete the application of Wellman's reasoning regarding the legitimacy of a state. I believe that this application has value as scripture also requires that a state acts in accordance with its purpose, within the limitations of its judicial function. However, I will also argue that scripture sets out its own theological understanding of power which differs from that of Wellman, as it holds that all power is delegated in nature. In light of this, I will propose that a theological view of power imposes further limitations upon political bodies than just the one asserted by Wellman. This discussion will draw from scriptural examples and directions to argue that throughout scripture there is a mandate that requires power to be exercised in accordance with the principle of justice. This leads to the proposition that even though a state may meet the sole limitation placed upon sovereignty by Wellman, namely, that it be deemed 'legitimate,' from a theological perspective, this will never grant a state unlimited power. This is because a scriptural understanding of power qualifies sovereignty with the requirement to act justly. Finally, in order to apply this to a particular context, as I seek to do with regard to New Zealand refugee policy making in Chapter Seven, a brief theological engagement with the current state system is required. Therefore, I will conclude this chapter with a

practical discussion of how the concept of state sovereignty which underpins the current international state structure may be considered to be compatible with the theological understanding of power that I have presented. I will then offer some firm conclusions about how a theological perspective can be relevant and informative in this context.

The Nature of Judicial Authority

In Chapter Two we saw that Wellman asserts that a state is entitled to unlimited sovereign power if it meets the sole requirement of being considered legitimate. When a state breached its purpose by not upholding the human rights of its citizens and respecting those of others, it would be deemed illegitimate and would void its claim to sovereign power.²⁶⁸ In my biblical study thus far I have developed the view that the nation, with its changing expressions and understandings of power, was justified in virtue of its being established to uphold the ultimate good of humanity - to enable humanity's communion with God, and continued to do so in accordance with God's redemptive plans. I have proposed that this justification may be applied to the contemporary nation-state due to its historical and theological continuity with its predecessors. As I have argued in the previous chapter, in the era after the Christ event, which continues to the present day, the specific function of secular authority is the maintenance of law and order through the exercise of judicial authority. If we continue to apply Wellman's reasoning to assess whether a state is legitimate, we must explore in greater depth exactly what this judicial role entails, including its limitations.

O'Donovan contends that "the reign of Christ in Heaven has left judgement as the single remaining political need" of society, as articulated in Rom 13:1-7, thus

²⁶⁸ Wellman and Cole, *Debating the Ethics of Immigration*, 16.

stripping government of various functions which ancient audiences would have understood as its proper role.²⁶⁹ Importantly, O'Donovan logically extends Paul's basic premise of the judicial role of the nation and asserts that Paul intends to convey that "the court is the central paradigm for government *in all its branches.*" This then limits the power of secular authority requiring all of its actions to be consistent with its judicial function.²⁷⁰ O'Donovan argues that in light of scripture, the three branches of government which we recognise in our legal system today (in modern terms the executive, legislative and judicial) are integral for maintaining the purpose of the nation if viewed in this way. Lack of attention to this function leads to an abuse of power.²⁷¹

O'Donovan explains that the first function of government is the one most plainly obvious from Rom 13: the judgement of individual cases. This is the most direct application of justice. The second is that of the head of government (or the 'executive'). O'Donovan states that his understanding of the Old Testament is that the role of judging, as it was delegated to earthly rulers, involved establishing and maintaining a *system* of judgment. In support of this he cites the example of Moses' establishment of local courts. Therefore, the act of founding the judicial system, although administrative, is also an act of judgement as he asserts that it requires a judgement to provide redress for the oppressed, and is a valid and necessary function of the head of government.²⁷² In this action, the head of government's role was then reduced to that of the final court of appeal (so to speak) which ensured that the subordinate courts maintained a standard of justice required by God's law. Therefore, the function of the head of government does not always involve the direct application of judgement to a specific case, but its wider role (including forms of administration and anything else required to maintain the

²⁶⁹ O'Donovan, "Government as Judgment," 209.

²⁷⁰ *Ibid.*, 214.

²⁷¹ Lockwood O'Donovan, "Nation, State and Civil Society in the Western Biblical Tradition," 286.

²⁷² O'Donovan, "Government as Judgment," 214-215.

judicial system) can be interpreted as, and must be limited to, the provision of justice. The third function of government is necessitated by the fact that an act of judgement upon an issue involves a direct judgement (a judgement of a particular person in a particular case – directly exercising the judicial function), but also a general judgement on the issue in its wider sense. An example is the management of the issue's impact on society perhaps by way of instigating preventative measures. This dual demand legitimises a legislative function, but this legislative power is again limited to the judicial provision of justice.²⁷³ O'Donovan believes that this interpretation of Paul's theological understanding of power was the basis for the Latin-speaking Western Christendom system of government which modelled the understanding that it was God who created law and earthly rulers who enforced the keeping of that law in their tripartite functions.²⁷⁴

O'Donovan's casting of the distinctive functions of government in light of Paul's assertion that secular authority is restricted to the task of judgement and the maintenance of law and order is helpful for framing the following discussion regarding the legitimate use of power. Particularly useful is his prioritisation of the functions of government and his demonstration that the various functions are derivative of the main mandate of judgement and are limited by this mandate. Although not fully documented with examples from scripture, one can see that his assertions are faithful to it. For example, O'Donovan does not provide scriptural evidence for the third (legislative) function, but this can be seen in the various laws regarding structured societal interaction in the Old Testament that served to prevent societal harms such as idolatry.

²⁷³ Ibid., 215-216.

²⁷⁴ Ibid., 220.

O'Donovan's extension of the judicial function from instances of direct judgement to include the wider aspects of the role of government is consistent with scriptural descriptions of power. An example is the role of the king. Jeremiah stated that God required that kings do what is just and right; that they rescue the one who has been robbed from the hand of their oppressor; that they do not do wrong to the alien, the fatherless, or the widow; and that they do not shed innocent blood (Jer 22:2-5). This expectation went even further in Prov 31:8-9 where the king was given the charge of speaking for those who could not speak for themselves, and defending the rights of the poor and needy. The role of the King went beyond mere direct judgment.

Therefore, I believe that O'Donovan's outlining of the judicial function of government in this broad sense helps us to recognise the extent of the powers that the judicial mandate afforded the nations in scripture, but also the limitations they faced in the execution of their duties in order for them to be considered legitimate. His explanation also helpfully anticipates the problems inherent in our modern state system to which I will later turn.

If one accepts Wellman's reasoning regarding the legitimacy of a state, and applies it to this theological understanding of the nature of the judicial function or purpose of the state, one can conclude that if a state acts outside of its judicial role then it may be considered illegitimate. On the question of what power this status of legitimacy entitles the state to, however, a theological understanding of the use of power requires an alternative conclusion to be drawn from that which Wellman asserts. Wellman's conclusion that a legitimate use of power ascribes to a state the right to unlimited sovereign power fundamentally conflicts with a theological understanding of power. We have already discussed the limitation of acting in

accordance with the judicial purpose of the state and I have used this to establish its legitimacy, but a theological understanding of the nature of power, which I will now present, dictates further limitations on state power. Therefore I will now argue that the very concept of sovereignty as unlimited power is incompatible with theological notions of power.

The Nature of Delegated Power and its Limitations

Any discussion of a theologically legitimate use of power must be drawn from a sound understanding of the way in which the nature of power is presented by the various biblical authors across the biblical narrative. Christopher Wright asserts that the foundation of a theological understanding of power in the Old Testament is that all power belongs to God and any power held by others is delegated from God. Biblical ethicist Stephen Mott grounds his understanding of delegated power in the creation narratives in Genesis and in his work he utilises the well known theory of vice regency. This is derived from the concept that it was in God's image that Adam and Eve – exhibiting his will and nature in their attitudes and actions – were to subdue the earth.²⁷⁵ This notion of vicarious use of power is seen throughout scripture; for example the judges in Deut 1:17 were told that in the exercise of their duties they need fear no man because judgment is from God. Conversely, the prophets warned that unbridled power “exalts itself and is incapable of yielding to any transcendent judgment.”²⁷⁶

²⁷⁵ Stephen Mott, *A Christian Perspective on Political Thought* (Oxford: Oxford University Press, 1993), 22.

²⁷⁶ James Muilenburg, *The Way of Israel: Biblical Faith and Ethics* (London: Routledge and Kegan Paul Ltd, 1962), 89.

The book of Daniel provides an example of the expectation that power was to be exercised vicariously by the rulers of the gentile nations also. In Dan 4, Daniel advised king Nebuchadnezzar to show mercy to the oppressed and practice righteousness, as his evil ways would lead him to lose his kingdom and his sanity until such time as he acknowledged that “Heaven rules” (Dan 4:26). This warning was not heeded by Nebuchadnezzar, and the author explains that God punished him, as was prophesied, until he “blessed the Most High, and praised and honored him who lives forever, for his dominion is an everlasting dominion, and his kingdom endures from generation to generation” (Dan 4:34).

Of particular importance for this discussion is the clear articulation of this principle of delegated and vicarious power in the New Testament writings which I have discussed in Chapter Four. That study revealed that scripture not only portrays the power of secular rulers as delegated from God, but it also describes secular rulers as agents of God’s purposes.²⁷⁷ As reflected upon in Phil 2:6-15, this lesson is also importantly portrayed through the actions of Christ in his life of obedience to God. The theology expressed in this passage conveys that Jesus’ obedience to God exhibited his recognition that his kingly authority came from God and was to be used in accordance with God’s will. By making himself subordinate to God, carrying out his will perfectly, and ultimately shouldering the cross in order to embody God’s justice, Jesus denied his own will, and abided by the limitations upon his power (Luke 22:42). Fee argues that in Christ’s actions he “not only reveals the character of God but also reveals what it means for us to be created in God’s image, to bear his likeness and have his “mindset.””²⁷⁸ This passage shows that Christ typified what it means to exercise power vicariously, acknowledging its delegated nature. Mott articulates this principle when he says that the proper way

²⁷⁷ For example see Rom 13.

²⁷⁸ Gordon Fee, *Philippians*, The IVP New Testament Commentary Series (Downers Grove: Intervarsity Press, 1999), 95.

in which power is exercised “is when the government and other human institutions are faithful channels of God’s intervening power” in the world.²⁷⁹

Thus far I have supported O’Donovan’s reading of Rom 13:1-7, that one such limitation in the post Christ event era is that secular authority is limited to the execution of its judicial task. I have also established that the theological understanding of power portrayed in the scriptures stipulates that power is delegated, is to be used vicariously, and therefore comes with further limitations. I will now argue that governments are not free to govern as they see fit within their judicial role, but that principles inherent in the nature of vicarious rule further constrain their use of power. In doing so I will support the assertions of Stephen Mott that scripture directs that those exercising delegated authority must do so in accordance with the principle of justice.²⁸⁰

The Limitation to Act in Accordance With Justice

There are divine stipulations for the legitimate use of power throughout scripture. From these, one can form clear expectations of what is required by leaders in order to use this delegated power correctly. Christopher Wright believes that the benchmark for the Old Testament was to rule with justice and righteousness. Wright states that the Old Testament “would fully endorse the view that all human authorities exist *within the framework of God’s will*. It would wholly reject the view that that position gives them a legitimacy *regardless of their conformity to God’s justice*, as revealed in the covenant law.”²⁸¹ He explains how the Psalms, amongst other scriptures, express both the conviction that justice and righteousness form

²⁷⁹ Mott, *A Christian Perspective on Political Thought*, 22.

²⁸⁰ *Ibid.*, 23.

²⁸¹ Wright, *Old Testament Ethics for the People of God*, 238.

the basis of God's rule, and God's expectation of the subordinate rule of others.²⁸² Similarly, Mott sees human justice as a manifestation of divine grace.²⁸³ His reading of scripture, perhaps differing slightly from Wright's due to his inclusion of the New Testament in his political survey of scripture, leads him to focus upon justice and love as the two central characteristics of biblical ethics.²⁸⁴ James Muilenburg also lists justice as the primary requirement of the appropriate use of power, quoting the words of Deuteronomy 16:20 "Justice, only justice you must pursue..."²⁸⁵ Scriptural and scholarly agreement that justice is a primary feature of a legitimate use of power supports the notion that the requirement to act in accordance with justice forms a limitation upon any act of power.

The requirement to act justly places limitations on uses of power that are both positive and negative. As apparent in the directions for kings noted above, kings were directed to make fair judgments, thus negating the ability for kings or judges to create or perpetuate injustice against an individual which may be desirable for various other political reasons. However, the directions for kings also stipulated positive obligations for kings to advocate for, and favour, the needs of the poor and oppressed. This limited governmental ability to overlook their plight and to favour the interests of the wealthy or the state instead.

The requirement for *all* rulers to act justly is evidenced negatively in the examples provided throughout scripture that interpret historical tragedies in light of God's condemnation of abuses of power. Regarding the command to do justice, "the prophets warned that national calamity was the consequence of disobedience to

²⁸² See *Ibid.*, 254. For examples of such Psalms see Psalms 33, 89, 97.

²⁸³ Mott, *A Christian Perspective on Political Thought*, 60.

²⁸⁴ *Ibid.*, 59. Mott puts righteousness and judgment under the heading of justice.

²⁸⁵ Muilenburg, *The Way of Israel*, 89.

this command, and they promised life as the consequence of obedience.”²⁸⁶ Israel’s exile is the prime example of a nation suffering the consequences of exercising power without justice. However, God’s standards were shown to apply also to the gentile nations. Through the story of Sodom and Gomorrah, the author of Genesis conveyed the point that the cities’ toleration of inhospitable and sexually immoral behaviour was abhorrent to the ways of God. For that reason, the author says, God razed them to the ground in judgement (Gen 19). Similarly, land was taken from the Canaanites due to their idolatrous and sinful behaviour (Lev 18:24-30).²⁸⁷ Likewise, Egypt was cursed for its unjust oppression of the Jews. Wright claims that a major underlying point of the Egyptian narrative was to show that Egypt and its gods were subject to God’s rule, and this was made explicitly clear in Moses’ song.²⁸⁸ Both Egypt and Canaan are depicted in the biblical text as idolatrous, and a threat to God’s people and his purposes for the world. Israel’s exit from Egypt and entry into Canaan showed God’s judgement upon both nations for their ungodly behaviour in governing their people. Another example is the lengthy condemnation of Babylon by Jeremiah and Isaiah followed by the fall of Babylon at the hands of the Persians (Isa 13). The nations of Egypt, Sodom and Gomorrah, Canaan, Babylon and Israel itself, were testimony to the divine judgement of the just use of power of political bodies. Their demise shows that they were subject to judgement if they did not maintain certain levels of justice.

There is a continuity of this theme of justice across the biblical narrative. Of importance to our discussion is the way in which justice is portrayed in the New Testament era, in the light of Christ’s ministry. However, for our purposes, one must tread with caution when interpreting Christ’s actions. Importantly, I will approach them as helpful for supporting the Old Testament notions of justice and for gaining an understanding of what the *ideal* use of power and portrayal of justice

²⁸⁶ Ibid., 74.

²⁸⁷ For a full list of Canaanite sins see Lev 18-20.

²⁸⁸ Wright, *Old Testament Ethics for the People of God*, 224.

in action looked like. In doing so I am careful not to assert that Christ's actions exhibit the standard required for a legitimate use of power for secular authority.

By taking upon himself the form of a slave and advocating on behalf of fallen humanity, Jesus showed that justice requires those in authority to make judgements that favour the needy. Again, if one takes Paul's reflection in Phil 2:6-15 as the basis for understanding Christ's actions, Christ defied the expectation of lordly power and acted in a way that Fee characterises as "divine selflessness."²⁸⁹ This selflessness, Fee argues, involved his adoption of the form of a *doulos*, or slave – a servant to everyone, whereas he was expected to, and could have, taken up the form of *kyrios*, or king.²⁹⁰ I believe therefore, that it is reasonable to conclude that Jesus' actions reinforce the Old Testament teaching that justice requires those with power to execute that power in a way that serves the interests of those who are subject to that power, and particularly favouring those who are in need.

Due to the consistency of this concept of justice across the span of the biblical narrative and given the theological continuity of the present time with that of the post Christ event period, I believe that one can reasonably deduce that the requirement to use power in accordance with justice, accompanied by the positive and negative limitations which it brings, continues to be applicable today. This limitation provides significant requirements and guidelines for the use of state power.

²⁸⁹ Fee, *Philippians*, 95.

²⁹⁰ *Ibid.*

The Nation-State's Potential Inconsistency with a Theological Understanding of Power

As we have discussed, I support the view of Lockwood O'Donovan and O'Donovan that scripture presents a theological framework in which Christ has defeated the powers of this world and in which the main political identifier of nations since the Christ event, is their maintenance of law and order, their role being limited to a judicial one. I have argued that application of Wellman's reasoning to a scriptural articulation of a state's power dictates that if a state acts outside of this judicial capacity then it should be deemed illegitimate. Stephen Mott agrees with this sentiment, stating that if a nation is disobedient in its exercise of its God-delegated judicial power "it voids its God given responsibility and threatens the welfare of its citizens."²⁹¹ However, I have also argued that if a state is deemed legitimate, as it faithfully functions within its capacity, it does not have the right to determine unilaterally its border policies as it sees fit. Due to the delegated nature of its power, it is required to act in accordance with justice, which, we have seen, involves, amongst other things, advocating for the poor and needy. This conclusion raises questions about the incompatibility of the existing international nation-state system with a theological understanding of power. If the state system is premised upon the assumption that states have unlimited sovereign power, then one must declare it to be inconsistent with a theological understanding of power. However, I believe that an argument can be offered that does not require such a drastic and condemnatory conclusion. I propose that the current international-state system may be understood in a way that is compatible with a theological perspective on power if one can understand sovereignty as extensive self-governing power that is subject to limitations.

²⁹¹ Mott, *Biblical Ethics and Social Change*, 193.

Various challenges have been made to the existence of unlimited state sovereignty. Arash Abizadeh, in his work “Closed Borders, Human Rights, and Democratic Legitimation,” neatly summarises the historical development of challenges to the ideology of sovereign power up to the twentieth century.²⁹² He explains that in response to claims of the oppression of individuals in favour of state’s interests, the modern nation-state fused the identity of political membership with equal rights through the category of national citizenship. Whilst this created equality internally, it created inequality externally, as the citizen was contrasted to the foreigner “whose non-membership ostensibly justified unequal treatment by the state.”²⁹³ In light of this, as we saw in Cole’s work, some liberal egalitarians (including Cole) argue that whereas some equality of rights has been gained, universal equality has been compromised. Others, however, (including Wellman) believe that state sovereignty works towards universal equality, as each territory, in theory, ensures internal equality and other egalitarian values worth protecting.²⁹⁴ This tension has provoked various questions and responses concerning whether state sovereignty bestows upon a state the right to exclude, or whether sovereign power is necessarily limited in some way in order to achieve its goals.

During the second half of the twentieth century this debate has continued with a plethora of political theories regarding the authority of states at the international and supranational level being proposed. These theories show varying understandings of the nature and sources and of the power which a state holds. Harding has noted that in political scholarship there is a move away from the concept of the sovereign state to a “less hierarchical, more fragmented and horizontal, rather than vertical, ordering involving a more complex configuration of

²⁹² Arash Abizadeh, “Closed Borders, Human Rights, and Democratic Legitimation,” in *Driven From Home: Protecting the Rights of Forced Migrants*, ed. David Hollenbach (Washington: Georgetown University Press, 2010), 147-166.

²⁹³ *Ibid.*, 149.

²⁹⁴ Wellman’s theory of the right to sovereign power of legitimate states appears to straddle these two positions.

actors and personality.”²⁹⁵ Changing notions of power may offer insight into how states should view their own power in light of a more internationally interdependent world context.

An Alternative View of State Sovereignty Which Places Limits on States’ Powers

Catholic Social Teaching provides some insight into this issue and offers an alternative view of sovereignty which enables the international state system, which New Zealand depends upon for its claim to sovereignty, to be considered to have the potential to function congruently with the theological principles of power discussed above. Catholic teaching states, like Wellman, that when a state violates human rights it ceases to have legitimacy: “since the state’s purpose is to provide for the common welfare or ‘good’, it would ‘transgress the limits set to its power’ for a state to violate human rights.”²⁹⁶ However, Catholic teaching declares that the state must also uphold the rights of all people, not just its citizens (an issue that I will discuss in greater depth in Chapter Six). Clearly, this obligation further limits or qualifies the state’s sovereign power:

“This qualified view of sovereignty does not require a state to open its borders or cede responsibility for who should belong...But sovereignty does not immunise states from responsibility for receiving persons who are forced to cross borders to realise their rights.”²⁹⁷

The Conference of United States and Mexican Catholic Bishops offer the following statement as a summary of this position: “While the sovereign state may impose

²⁹⁵ Harding, “Who Designed the Westphalian System?,” 400.

²⁹⁶ Kerwin, “Rights, the Common Good and Sovereignty,” 107.

²⁹⁷ *Ibid.*, 108.

reasonable limits on immigration, the common good is not served when the basic human rights of the individual are violated.”²⁹⁸

Thus the Catholic Church upholds the present sovereign state system as theologically acceptable because it holds that sovereign power is limited by the requirement to uphold the human rights of its citizens as well as the rights of those who seek entry in order to attain their basic human rights – which is what they deem to be the practical outworking of the ‘common good’ of humanity’s communion with God (as discussed in Chapter Four).²⁹⁹ This interpretation of state sovereignty as qualified sovereignty is useful as it articulates the sense of limitation which scripture necessarily places upon power, whilst continuing to maintain the relevance of the present state system. It also has its roots in the original purpose of sovereign power which O’Donovan articulates in *The Desire of the Nations* as ensuring the rule of divine law over the state. In virtue of this responsibility to divine law, the lawfulness of all functions of government is maintained.³⁰⁰

Conclusion

This chapter has enabled me to conclude my theological engagement with the deontological debate and to come to some conclusions regarding the main questions of this thesis. I have argued that scripture conveys the theological understanding that all power belongs to God and all power given to those in authority is delegated by God. It is this fact of delegation that requires the users of such power to exercise it in accordance with God’s will, to serve his purposes.

²⁹⁸ U.S Conference of Catholic Bishops and Conferencia Del Episcopado Mexicano, *Strangers no Longer: Together on the Journey of Hope* (Washington D.C. United States Conference of Catholic Bishops, 2003), 29.

²⁹⁹ Kerwin, “Rights, the Common Good and Sovereignty,” 101.

³⁰⁰ O’Donovan, *The Desire of the Nations*, 237.

Romans 13:1-7 stipulates that the political authority of secular rulers be limited to a judicial function. I am convinced by O'Donovan's assertion that this judicial function entails more than merely making direct judgements in specific cases, but extends to the administrative and legislative functions of government, as long as they are considered and performed with respect for this limitation. I have also argued that in the execution of this judicial function, the nature of vicarious rule requires that a legitimate exercise of this power must be in accordance with the principle of justice.

Therefore, I conclude that states cannot be considered to have unlimited power in the exercise of their functions and, particularly for our discussion, they do not possess the right to determine unilaterally their border policies in relation to refugees and asylum seekers as they see fit. They are restricted in their use of power by the limitations of acting in accordance with their purpose and with the principle of justice.

In light of my engagement with the deontological debate, and the discussion of the nature of power in this chapter, I believe that one may understand a state to possess a qualified sovereignty. If sovereignty is viewed in this way, a theological perspective on power is not necessarily inconsistent with the current state system. For example, if one understands the New Zealand state to possess qualified sovereignty, then it still has the ability to function in a way that is congruent with the biblical principles and limitations set out above. For this reason, it is important to explore further what the principle of justice may require of the New Zealand Government in the formation of its refugee policies. We may then provide a theological critique of the process and/or the policies themselves, both to inform Christians and to form a framework that may be used as a basis for considering future social action.

Chapter Six:

Establishing a Duty of Care

A territorialised state which is established to keep peace and order must retain control over its borders to ensure that it has the practical ability to serve its purpose. However, as discussed in the previous chapter, this power is limited and may not be used in ways contrary to God's reconciliatory purposes for humanity or that are unjust or oppressive. As our question relates specifically to refugee policy, this chapter seeks to flesh out these limitations in order to understand the specific implications that scripture might suggest for the treatment of refugees and asylum seekers and the policies that surround this treatment.

I will begin by summarising the position held on this matter by Wellman and by critiquing his partialist view against the positions taken by Bretherton and Pannenberg in articulating a Christian cosmopolitanism. Through this discussion I will argue that scripture does not acknowledge a conflict of interests between citizens of states and non-citizens (namely refugees) and does not support a partialist view. Second, I will argue that a theological understanding of the issue, which can be deduced from the conclusions reached in Chapters Four and Five, requires a balancing of priorities with respect to the acceptance of refugees and asylum seekers. This balancing recognises a potential conflict between the purpose of a state and the needs, or interests, of a refugee or asylum seeker. Third, I will discuss the duty of care owed by a state to refugees which is apparent in scripture, in order to see what it requires. This necessarily involves a careful

consideration of whether or not the principles apparent behind scriptural imperatives can be understood as applicable to states, or whether they are bound by their context and better understood purely as directives for the people of God.

A Christian Cosmopolitan View of States' Obligations Toward Refugees

In Chapter Two I summarised Wellman's treatment of the refugee issue with regard to state sovereignty. Wellman believes that the duty of care that a state owes to a refugee or asylum seeker does not pose a limitation on a legitimate state's sovereign right to determine unilaterally its own immigration policies as it sees fit.³⁰¹ He states that if another way of meeting the duty of care is available, then a legitimate state can take it and maintain the right to refuse entry to the refugee across its border. Wellman's refusal to accept that the duty of care requires a state to grant membership to refugees is due to his partialist view that each state has primary responsibility to its members, and that when the need of a refugee to enter into a state conflicts with the interests of the state and its members, then states are valid in serving the interests of the state at the expense of refugees.³⁰²

In opposition to this view, I have discussed in Chapter Three how Pannenberg and Bretherton both promote a Christian cosmopolitanism that reconciles the duties owed to members and to non-members of states. Their approach does not acknowledge a conflict of duties between citizens and non-citizens as, like Cole, it values the rights of all people equally and acknowledges the problems inherent in the exclusivity of the state system.³⁰³ Pannenberg, due to his theological understanding of the *telos* of political bodies, and the increasingly globalised nature

³⁰¹ Wellman and Cole, *Debating the Ethics of Immigration*, 120.

³⁰² *Ibid.*, 13-20.

³⁰³ Pannenberg, *Ethics*, 148; Bretherton, *Christianity and Contemporary Politics*, 137.

of the world, disapproves of national particularism and believes that states must hold to higher values that include valuing all people equally and, therefore, remaining open to the rest of the world.³⁰⁴ Bretherton, when directly addressing the refugee issue, supports this view, and asserts that what is required is a balancing of the needs of a refugee against the stability of the state. I will elaborate on this below. He states that a theological perspective on the good of humanity provides a framework through which one can make just judgements when balancing these priorities.³⁰⁵ It is also worth noting that, due its global outlook, a Christian cosmopolitanism would encourage co-operation between states in addressing issues of global concern such as the refugee crisis.

A Potential Conflict of Interests Requires a Balancing of Priorities

These cosmopolitan views are consistent with the framework for understanding the purpose of a state and the nature of power that I have proposed in the previous chapters. I have argued that a state is obliged to act within its judicial function and in accordance with the biblical principle of justice which favours advocacy for the poor and needy. A state's interests are not able to take priority as of right. O'Donovan, in light of his understanding of the New Testament framework for political authority, contends that "the accumulation of power and the maintenance of community identity cease to be self-evident goods; they have to be justified at every point by their contribution to the judicial function."³⁰⁶ If we follow the line of argument that O'Donovan proposes (and I supported) in Chapter Four - that the purpose of the state after the Christ event is to provide a regulated space within which the gospel can be transmitted through the maintenance of justice - there exists a potential conflict of priorities. However, this conflict is not between the interests of the citizens of a state and those of refugees seeking to enter it, but

³⁰⁴ Pannenberg, *Ethics*, 148.

³⁰⁵ Bretherton, *Christianity and Contemporary Politics*, 159.

³⁰⁶ O'Donovan, "Government as Judgment," 233.

between the duty of care owed to refugees and the purpose of the state in the first place.

Applying the theological framework I have developed thus far, if the acceptance of refugees at any time endangers the purpose of the state by destabilising it and jeopardising its judicial function, then the state must prioritise appropriately and will have the power to exclude them. A state is legitimate in doing so because, if it is unable to handle further immigration, it will cease to be able to provide the refugee, or its existing citizens, the political stability and rights that the refugee is seeking, and that are necessary for its justification in the first place.³⁰⁷ I will not postulate as to when this situation might arise, but it must be noted that this limitation to the acceptance of refugees exists. Regarding limitations to hospitality such as this, Christine Pohl makes an important summation: “Faced with such pressures, host communities either work out guidelines or give up hospitality, or the community itself disintegrates.”³⁰⁸ But she also warns that assessments of limitations and the balancing of priorities must be made honestly and not as an excuse for a general reluctance to accept refugees.³⁰⁹

Therefore, a balancing of priorities is required. The requirement to act justly, detailed in the previous chapter, suggests a general preference toward favouring the needs of refugees but must be weighed against the possibility of destabilisation of law and order of the receiving state. I believe, that in the New Zealand context, when a destabilisation of order is such a remote possibility, given the geographical and historical context outlined in Chapter One in which the country locates itself, the preference to favour the interests of refugees and asylum seekers will prevail in most circumstances.

³⁰⁷ Bretherton, *Christianity and Contemporary Politics*, 136.

³⁰⁸ Christine Pohl, “Responding to Strangers: Insights from the Christian Tradition.” *Studies in Christian Ethics* 19:1 (2006): 95-96.

³⁰⁹ *Ibid.*

The Fulfilment of the Duty of Care Owed to Foreigners Forms Part of the Requirements for a State's Legitimate Use of Power

The duty of care to refugees is an example of the requirement of using delegated power justly, as we discussed in Chapter Five when discussing the use of power. As Stephen Mott notes, “the most striking characteristic of biblical justice is bias toward the weak.”³¹⁰ This is apparent in Matt 25:31-45 where, in conformity with Old Testament law, care for the stranger is listed among the Christian’s obligations. The instruction in Deut 10:19, to love the stranger, is preceded by the reminder: “For the Lord your God is God of Gods...he defends the cause of the fatherless and the widow, and loves the alien, giving him food and clothing” (Deut 10:17-18). The reason to treat the foreigner hospitably is because God has done so. Consistent with his own nature, God seeks to redress the injustice that stems from inequality.³¹¹ I have already agreed with Mott’s statement that “There is continuity between divine and human justice. Human beings receive justice from God for their decisions and responsibilities, and they learn justice from God.”³¹² Thus, the just and compassionate treatment of refugees, who typify the poor and needy, is inherently required of those who are in positions of delegated authority, such as those leading states and those who develop immigration policies.³¹³ They must execute their judicial responsibilities in accordance with the principle of justice if their use of power is to be considered theologically legitimate. This gives rise, by implication, to a duty of care to refugees and asylum seekers.

³¹⁰ Mott, *A Christian Perspective on Political Thought*, 79.

³¹¹ *Ibid.*

³¹² *Ibid.*, 80.

³¹³ Although the concept of a refugee as we understand it now was not in existence in biblical times, in scripture we see that a special duty of care is required to be offered to resident aliens and sojourners, the poor and to those in need. The modern definition of a refugee typifies all of these categories.

A Theological Approach to the Duty of Care

I will present the duty of care owed to refugees and asylum seekers as it is articulated in the laws of Israel and re-presented in the ethics of the New Testament. However, it is important to note (and I will explore further below), that the way in which the duty of care is presented in scripture is steeped in a tradition that is profoundly personal to the people of God. The duty of care is portrayed through stipulations of what is required either of the nation of Israel, or of Christians in their individual behaviour toward refugees. In the previous chapter I have argued that states must function in accordance with the requirements of justice. Although the scriptural passages which I will now address provide particular instruction to the people of God, I believe that the underlying principles are useful to determine the legitimacy of state actions, as they articulate the specific principles of justice to be applied regarding the care owed to refugees and asylum seekers.

Understanding the Theological Context for the Duty of Care

Daniel Groody, among many others, has identified that the scriptural duty of care for the foreigner or sojourner originated from the migratory heritage of Israel itself. From Adam and Eve's journey out of the Garden of Eden into unknown lands, to Abraham's leaving his people to go to a land which he did not know, to the enslavement and liberation of the Israelites in and from Egypt, to the Exile and Diaspora, the Old Testament narratives are steeped in stories of the Israelite's journeying and of their experience of being homeless foreigners yearning for their promised home. As salvation history continued, Groody contends, the incarnation became the most fundamental basis for a theology of migration.³¹⁴ He even argues that migration shapes Jesus' own self understanding. John 13:1-3, for

³¹⁴ For a discussion of how Jesus' life is full of stories of migration see Groody, "Crossing the Divide," 649.

instance, describes Jesus' journey as coming from God and going back to God.³¹⁵ After Christ's ascension, the early church took upon itself this identity of the foreigner or alien.³¹⁶ This was true particularly of Christians in the first three centuries due to the alienation they felt between themselves under God's rule and "the pagan powers that ruled their earthly abodes."³¹⁷ For example, Christians under arrest often identified themselves by reference to Jerusalem or God, not to their geographical location or family of origin.³¹⁸ Due to their political circumstances, Christians were often seeking refuge and were harboured by other Christians to escape persecution. When one has been a stranger and refugee it then becomes easier to identify with, and care for, another.³¹⁹ Arthur Sutherland reminds us that the heart of the gospel is the news that Christians were once aliens and strangers to God and are reconciled only by God's radical act of hospitality.³²⁰

The sense of identification of the people of God with refugees was considered the basis for appropriate ethical responses to them at the national level. This connection is the clearest in Lev 19:33-34, where the reason for loving one's foreign neighbour as oneself was that "you were strangers in the land of Egypt." As James Muilenburg has phrased it in his discussion of the motivation behind such laws "ethics is grounded historically."³²¹ However, regardless of the historical context of personal identification, I maintain that these scriptures reveal basic principles of justice in practice, and are therefore informative for understanding the

³¹⁵ Ibid., 649.

³¹⁶ We see this in scripture in Phil 3:20 and 1 Pet 2:11.

³¹⁷ Amy Oden, ed. *And You Welcomed Me: A Sourcebook on Hospitality in Early Christianity*, (Nashville: Abingdon Press, 2001), 38.

³¹⁸ Ibid., 36-37. For example, the martyr Pamphilus, who when asked the name of his country, answered "Jerusalem." See Eusebius, *The Martyrs of Palestine* 11, NPNF, 2:1, cited in *ibid.*, 37.

³¹⁹ For a fuller discussion of various examples of this identification from the fourth and fifth centuries see *ibid.*, 40-47.

³²⁰ Arthur Sutherland, *I Was a Stranger: A Christian Theology of Hospitality* (Nashville: Abingdon Press, 2006), 26.

³²¹ Muilenburg, *The Way of Israel*, 66-67.

principles that states are obliged to uphold when exercising their delegated authority in determining refugee policies.

Principles of Equal Treatment Before the Law and Positive Obligations to Ensure the Welfare of the Foreigner in the Old Testament

Richard Hiers in his book *Justice and Compassion in Biblical Law* highlights two major characteristics of the law regarding the sojourner or resident alien. First, he discusses the requirement of equal protection under the law; and Second, the requirement of social welfare provisions.³²² The various laws pertaining to sojourners that we find in the Pentateuch fit agreeably within these two categories. First, the duty of care toward the foreigner requires that equality for all under the law is ensured.³²³ The sojourner appears to be part of a protected class alongside widows, orphans, and the poor all of whom often suffered injustice due to their weak status.³²⁴ In order to protect this class the same rights held by Israelites were afforded to sojourners dwelling among the Israelites (Exod 12:48-49; Num 9:14). This included participation in the Passover and in the Day of Atonement, and the observance of sacrifices and various rules of law (Exod 12:48-49; Lev 16:29, 17:7-12, 18:26; and Num 15:14-16). It also entailed equal liability under the law, with the same punishments applying to all (Lev 20:2, 24:16). These provisions show that sojourners were to be treated respectfully and as equals under the law.

The second purpose of the law regarding sojourners was to ensure their welfare and to grant them special protection. The Israelites were to “love the sojourner”

³²² Richard Hiers, *Justice and Compassion in Biblical Law* (London: Continuum International Publishing Group inc, 2009), 75, 175.

³²³ Muilenburg believes that this need for equality under the law is an effect of the freedom from bondage in Egypt which the Israelites experienced. However, although this might be a lesson which they learned, I believe that the notion of equality for all is inherent in the nature of who God is, and would have become part of the law regardless. See Muilenburg, *The Way of Israel*, 68.

³²⁴ Hiers, *Justice and Compassion in Biblical Law*, 75-79.

(Deut 10:18). They were to do “no wrong” to them or deprive them of justice (Lev 19:3, Deut 24:17). In addition to these commands on how to respect a sojourner, there were also positive social welfare provisions made for them, including their right to glean from crops (Lev 19:10, 23:22), and their right to receive a portion of the three year tithe (Deut 14:28-29). Not only was the duty of care one that required equal treatment for foreigners under the law, but it also entailed positive obligations to ensure their welfare.

The Extension and Personalisation of the Duty of Care in the New Testament

This duty of care is also developed in the New Testament. In particular, scholars have focussed on the story of the Good Samaritan as the quintessential explanation of who a duty of care is owed to and what standard of care is required to fulfil this duty. Matt 25:31-45 also stands out as a direct indication of the hospitality owed to the stranger which should not be overlooked. Whilst these passages are not directive of how states should address such issues as they are both stories of the personal responses of individuals to foreigners in need, they do deepen and reinforce aspects of the Old Testament understanding of the duty of care. The New Testament texts also extend the Old Testament injunctions, particularly by critically assessing the motivations behind the duty of care. Therefore, these passages of scripture may be instructive for (although not prescriptive of) determining the duty of care which is applicable to states.

Apart from the clear Christological dimensions to the duty of care that Matthew 25:31-45 exhibits, many have suggested that the reason why scripture advocates

caring for the stranger or sojourner is that he or she is created in the image of God.³²⁵ Therefore they deserve dignity and respect. As Calvin describes it:³²⁶

“Therefore, whatever man you meet who needs your aid, you have no reason to refuse to help him. Say, ‘He is a stranger’; but the Lord has given him a mark that ought to be familiar to you, by virtue of the fact that he forbids you to despise your own flesh (Isa. 58:7, Vg.). Say, ‘He is contemptible and worthless’; but the Lord shows him to be one to whom he has deigned to give the beauty of his image.”

The guidance from Jesus to care for the stranger in Matt 25:31-45 involves an openness to recognise God’s image in those in need. This passage expresses the conviction that God’s justice requires respect for the individual.

Matthew 25:31-45 also addresses the issue of to whom this duty of care is owed. Donald Senior argues that Matt 25 deepens the theological vision of the New Testament. He says that “the stranger who migrates across one’s borders is also a sign of the full scope of the human family, a scope that, within the New Testament vision, transcends bloodlines and national boundaries.”³²⁷ However, some have argued that this direction to care for the stranger was given only in relation to other Christians and not to strangers in general. It is interesting to note that verse 40 describes the group to whom the acts of mercy are to be done as: “the least of these brothers of mine.” Then verse 45 modifies this to: “the least of these.” These have been interpreted as referring to: all needy people in humanity; all

³²⁵ For more discussion see Christine Pohl, “Responding to Strangers,” 86-87 and Groody, *Crossing the Divide*, 642-648. The Christological aspects are discussed by Arthur Sutherland who believes that Matt 25:31-45 shows an understanding that because Jesus experienced all of these things during his life and ministry the readers are drawn to see that hospitality is an aspect of Christology. See Sutherland, “I was a Stranger,” 4.

³²⁶ John Calvin, *Institutes of the Christian Religion*, ed. John T. McNeill, (Philadelphia: Westminster Press, 1960), III:vii:s6, cited in Pohl, “Responding to Strangers”, 86.

³²⁷ Donald Senior, “Beloved Aliens and Exiles,” in *A Promised Land A Perilous Journey: Theological Perspectives on Migration*, ed. Daniel Groody and Gioacchino Campese (Indiana: University of Notre Dame Press), 30.

Christians; Christian Missionaries; Jewish Christians; and Tribulation Martyrs.³²⁸ Nolland believes that verse 40 refers to the second option; the fictive family that Jesus creates for himself in 12:48-50 of those who do the will of the father, but he also suggests that the abridged restatement of this in verse 45 expands the meaning to include all people in need.³²⁹ Hagner and Morris agree with Nolland's interpretation of verse 40 but believe that verse 45 also applies only to Christians.³³⁰ However, Morris warns that this does not mean that Christians should show mercy only to other Christians.³³¹ He contends that all people will be judged by their treatment of those who seem "lesser" and who are needy in society. While this should start with Christians, it should extend indiscriminately to all in need.³³²

Where Matt 25 may lack clarity regarding to whom this duty of care is owed, the story of the Good Samaritan is more explicit. John Nolland states that the verses leading up to the parable of the Good Samaritan (Luke 10:25-28), emphasise the fact that the Christian faith builds itself upon the ethics of the Judaism from which it emerged.³³³ Jesus is calling upon his hearers to follow the commands in Lev 19:18 mentioned above regarding the duty to love one's neighbour. Nolland asserts that the "neighbour" in the Levitical context would have been in reference to other Israelites but also to resident aliens. However, in this Lukan context of first

³²⁸ Michael Wilkins, *Matthew*, NIV Application Commentary (Grand Rapids: Zondervan, 2004), 811.

³²⁹ John Nolland, *The Gospel of Matthew*, The New International Greek Testament Commentary (Grand Rapids: Eerdmans, 2005), 1032-1033.

³³⁰ Donald Hagner, *Matthew 14-28*, Word Biblical Commentary (Dallas: Word Books, 1995), 746; Ulrich Luz, *Matthew 21-28*, Hermeneia – a Critical and Historical Commentary on the Bible (Minneapolis: Augsburg Fortress, 2005), 282; Wilkins, *Matthew*, 812; Leon Morris, *The Gospel According to Matthew* (Grand Rapids: Eerdmans Publishing Company, 1992), 639. This interpretation is in line with the majority writings of the patristic period, (although a minority stream of universalistic interpretation could also be seen in this period) and also to a lesser extent, is the predominant view throughout church history. For more discussion see Sherman Gray *The Least of my Brothers Matthew 25:31-46: A History of Interpretation*, SBL Dissertation Series 114 (Atlanta, Scholars Press: 1989), 333-350.

³³¹ Morris, *The Gospel According to Matthew*, 639.

³³² *Ibid.*, 641; Hagner, *Matthew 14-28*, 746.

³³³ John Nolland, *Luke 9:21-18:34*, Word Biblical Commentary (Dallas: Word Books, 1993), 585.

century Palestine, the living arrangements differed so greatly that Jesus cleverly places a Samaritan as the hero of the story. He uses the cultural animosity between the Jews and the Samaritans to point to the abolition of *any* limitation upon who one may consider to be one's neighbour and to whom one's love and hospitality must extend.³³⁴ Importantly, the emphasis is re-placed upon one's neighbourly conduct, rather than on who should be the recipient of it.³³⁵ As Bock eloquently puts it, this story shows that "rather than worrying if someone else is a neighbour, Jesus' call is to be a neighbour to anyone who has a need."³³⁶ Therefore, this scripture serves the dual purpose of critiquing exclusive attitudes while also reinforcing a duty to act with compassion and to be ready to help indiscriminately.

In this story, Jesus shows not only to whom a duty of care is owed and who it is owed by, but also demonstrates what the fulfilment of this duty looks like in this particular context. Luke shows that the Samaritan's compassion leads him not only to enter indiscriminately into the man's predicament, but, as Darrell Bock highlights, he also bandages him, pours oil and wine on his wounds, puts him on his donkey, leads him to the inn, and takes care of him, even leaving money for at least two weeks of lodging.³³⁷ The Samaritan helped him with his immediate problem and made future provision for the man's wellbeing, again reinforcing the positive obligation to provide for the welfare of those in need. This story not only expands one's notion of who one's neighbour is, but also urges its hearers to fulfil the needs of others to the best of their ability. The requirements for fulfilment are high, they are contextual, and, importantly, they are to be guided by compassion.

³³⁴ Ibid., 584. In his commentary, Bock particularly stresses that the lawyer was attempting to limit the definition of "neighbor" to include only those who are a part of the people of God. See Darrell Bock, *Luke*, NIV Application Commentary (Grand Rapids: Zondervan, 1996), 300.

³³⁵ William O'Neill, "Christian Hospitality and Solidarity with the Stranger," in *And You Welcomed Me*, ed. Donald Kerwin and Jill Gerschutz, 151.

³³⁶ Bock, *Luke*, 301.

³³⁷ Ibid.

Conclusion

The Old Testament required equal standing in the law for the citizen and the sojourner or foreigner and an element of positive discrimination to be granted to the sojourner in the form of the provision of welfare in order for the duty of care to be fulfilled towards them. In essence, Menachem Lorberbaum explains, the principle of *pikuah nefesh* (the principle of saving lives) overarches all obligations in the light of the *telos* of the law as “mercy, loving kindness and forgiveness” and therefore prioritises the needs of those whose lives are at risk.³³⁸ These duties, although directed to the nation of Israel, articulate principles of equality before the law, respect and a positive obligation of provision for the needy that I believe have universal application due to their embodiment of the notions of justice. All of these principles are specific developments of the fundamental requirements discussed in Chapter Five of acting within the judicial function and doing so with justice, and applying them to the context of foreigners in need.

As we have seen, the scope of this duty of care was expanded in the New Testament. The passages I have discussed reframe these laws as expectations of neighbourly conduct through narrative depictions and give a sense of embodiment of the law which is not applicable to personality-less states. However, underlying these narratives, one can see the motivations and principles that may be applicable to a state’s exercise of power. The attitudes of respect, compassion and openness are directed to motivate action, and apply in our context to the action of policy making. Furthermore, one can infer that these scriptures again

³³⁸ Laws Concerning the Sabbath, 2:1, *The Code of Maimonides (Mishneh Torah)*, Book Three, *The Book of Seasons*, trans. Shlomo Gandz and Hyman Klein (New Haven: Yale University Press, 1991), 265-344, cited in Lauberbaum, “Boundaries of the Holy Land,” 33.

support the Old Testament notion that the duty of care owed to a refugee is non-discriminatory in nature.

I conclude, therefore, that in consideration of the limitations inherent in the use of delegated power, and the principles underlying the scriptures surveyed, combined with the practicality of Luke Bretherton's argument (that it is not merely aid that refugees seek, but membership in a stable polity), an overview of the scriptural duty of care may suggest two major limitations on the power that the New Zealand Government possesses when formulating refugee policies. The first of these is that in most circumstances a theologically influenced balancing of priorities will suggest that New Zealand should open its borders to refugees and bestow upon them the benefits that derive from membership. As discussed earlier, the right to exclude is only available to a state when the acceptance of one more refugee would destabilise its judicial system and so compromise its purpose. A second limitation is that when formulating policies on the treatment of refugees after they have been accepted across the border, a state must maintain the principles of compassion, equality before the law, non-discrimination, and respect for the dignity of the person. Based upon the theological framework that I have developed, I will now seek to make a tentative practical review of the main policy changes proposed by the National Government in New Zealand.

Chapter Seven:

Application of Findings to the New Zealand Context

My theological engagement with the international, deontological debate regarding the right of a state to exclude, and the duty of care which forms part of it, has direct implications for how one approaches a critique of New Zealand refugee policy reform. I have argued that my theological perspective on this issue supports the assumption that the New Zealand Government is justified in designing and implementing its own immigration policies but I have contended that it cannot do so unilaterally as it sees fit. This sovereign control has limitations. I have argued that the Government, when forming these policies, is constrained to act within its judicial function which imposes positive and negative obligations upon it, and that, in order to serve its purpose of upholding the good of humanity and of using its power legitimately, it should act in accordance with the principle of justice. A comprehensive theological assessment of, or approach to, policy reform requires a lengthy balancing of priorities in respect of each individual policy in order to develop a holistic and coherent scheme. However, for the purposes of this limited thesis, I only intend to critique the major policies that have been presented to Parliament, noting their consistency (or inconsistency), with my theological framework.

I have argued in the previous chapter that the duty of care to refugees and asylum seekers requires a state to be governed by the principles of compassion, equality before the law, provision for the needy, respect for the dignity of the person, and non-discrimination when addressing policy issues. I will now review the specific policies that the New Zealand Government is currently considering in light of these principles. Because attitude and motivation are portrayed in scripture as vital to the upholding of justice, I will begin by examining the declared motivations behind the new policies. Second, I will evaluate the continuance of the quota system. Third, I will discuss the mandatory detention of asylum seekers, and finally, I will review the proposed restrictions on family reunification and the three year period for the granting of permanent citizenship.

Motivations Behind the Policy Reform

The motivation behind the Bill has been questioned in the submissions I have surveyed. As seen in Chapter One, the National Party listed deterrence and administrative efficiency as their primary motivations. Both of these motivations are problematic when viewed in light of the biblical principles of the duty of care. In Australia deterrence has been debated widely as it imposes harsh conditions upon those to whom it is applied, and therefore its necessity must be justified. The discussions have centred around two concerns which I will also consider: whether deterrence actually works, and whether it is morally justifiable.³³⁹

Deterrence is at odds with the overarching theological principles underpinning the duty of care as it inherently derives from an attitude of exclusion. According to my theological framework, the only valid case for deterrence would be if it was

³³⁹ Roslyn Richardson, "Sending a Strong Message? The Refugee's Reception of Australia's Immigration Deterrence Policies," Ph.D. diss., (School of Social Sciences and Liberal Studies, Charles Sturt University, May 2008), 83.

necessary in order to protect national security and stability. The stability of the state is clearly necessary for the state to maintain its function. The concern regarding national security must be genuine and the threat must be one that is considered likely to endanger the proper functioning of the state. Even if there existed a real threat of destabilisation, deterrence policies would still need to be proven to be necessary due to their harsh and restrictive nature, and there would need to be a balancing process before they could be considered theologically appropriate. This balancing must be done with an overarching attitude of compassion and respect, and with a will to fulfil the needs of the refugee seeking entry. When discussing this prioritising of migration issues, Pope John Paul II has said:³⁴⁰

“First of all, it is important to remember the principle that *immigrants must always be treated with the respect due to the dignity of every human person*. In the matter of controlling the influx of immigrants, the consideration which should rightly be given to the common good should not ignore this principle. The challenge is to combine the welcome due to every human being, especially when in need, with a reckoning of what is necessary for both the local inhabitants and the new arrivals to live a dignified and peaceful life.”

However National MP Nathan Guy has stated that the stricter policy changes were to make “New Zealand a less desirable target” for people smugglers and mass arrivals by boat.³⁴¹ It is worth considering this as a balancing factor in such decisions as the positive motivation of protecting those who are preyed upon by people smugglers does indicate respect for those being exploited and could arguably come under the Government’s mandate to exercise power in accordance

³⁴⁰ Pope John Paul II, “Message of His Holiness Pope John Paul II For The Celebration of the World Day Of Peace 2001: Dialogue Between Cultures For A Civilization Of Love And Peace,” 1 January 2001, Sec. 13 <http://www.vatican.va/holy_father/john_paul_ii/messages/peace/documents/hf_jp-ii_mes_20001208_xxxiv-world-day-for-peace_en.html> (4 June 2013).

³⁴¹ Guy, “New Measures to Deter People Smugglers Announced,” 1.

with justice. *Prima facie* however, this goal could only justify harsher controls if there existed a real and imminent threat, and if such controls were proven necessary to protect those exploited.

The necessity of harsher policies as a means of deterrence is questionable as the UNHCR has noted that global migration statistics have been rising regardless of widespread, “increasingly harsh governmental policies on detention.”³⁴² Kristin Heyer lists Europe as a case where strict refugee control and detention has been proven not to work, and has resulted in many deaths and an increase of entries by way of asylum without papers.³⁴³ Roslyn Richardson in her examination of the impact that deterrence policies had on a group of refugees who came to Australia concluded that the majority of refugees in her case study did not find the policies actively deterring as they did not receive information about them before their arrival and many of them were in such dire need for safety that the policies had no effect.³⁴⁴ In light of this evidence that the enactment of harsher laws under the justification of deterrence has not produced the desired results, this motivation remains questionable.

Again, if these harsher immigration policies could be proven to work they would still be subject to a balancing of priorities. However, in this context, there does not appear to be any significant factual support for the claim that deterrence is needed for any reason. As, noted in Chapter One, New Zealand has never had any mass arrivals by boat that have endangered national security or that might have provided encouragement for the practice of people smuggling. Thus the validity of the threat

³⁴² Alice Edwards, “Back to basics: The Right to Liberty and Security of Person and ‘Alternatives to Detention of Asylum Seekers, Stateless Persons, and Other Migrants,’” UNHCR Legal and Protection Policy Research Series, (Geneva: UNHCR, 2011), iii.

³⁴³ Kristin Heyer, “Reframing Displacement and Membership: Ethics of Migration,” *Theological Studies* 73 (2012): 191-192.

³⁴⁴ Richardson, “Sending a Strong Message?” 353-354.

has been challenged in many of the submissions.³⁴⁵ Furthermore, the HRC pointed out in their submission that people smuggling is already a punishable crime under the New Zealand Crimes Act 1961 and so the need for further deterrence is unclear.³⁴⁶

The second stated motivation behind the policy reform was administrative concerns. This too cannot be considered a valid motivation for the restriction of the rights of refugees unless the administrative issues affect the maintenance of law and order. With compassion, respect and a positive obligation to protect and aid the vulnerable as the framework within which one is working, acceptance of refugees should always be prioritised above administrative or political concerns, unless destabilisation is a real possibility.

The Quota System

As I have argued, I believe that the appropriate theological response to refugees and asylum seekers is to grant them access and citizenship. I now wish to propose that my theological view of the duty of care suggests that the quota system maintained in the new policy regime conflicts with this view as it functions on the basis of exclusion and does not involve a balancing of priorities on a case by case basis as is required in order to show proper respect to each individual refugee.

³⁴⁵ See United Nations High Commissioner for Refugees, "Submission by the Office of the United Nations High Commissioner for Refugees", s24; and Human Rights Commission, "Submission by the Human Rights Commission," s9-14.

³⁴⁶ Human Rights Commission, "Submission by the Human Rights Commission," s20.

The New Zealand quota system is the result of the New Zealand Government working with the UNHCR to provide some relief in the worldwide refugee crisis. As noted in Chapter One, the quota for refugees under the current system is 750.³⁴⁷ New Zealand is one of only a few countries which have instituted a quota system guaranteeing the acceptance and resettlement of refugees. Our quota system is particularly humanitarian as it reserves places for women at risk (75), for those who have medical issues or are disabled to an extent which places them outside the normal criteria for acceptance by resettlement countries (75 – 20 of which are reserved for those with HIV/AIDS), and for UNHCR priority protection cases (600 – including 300 places for family reunification and 35 emergency places).³⁴⁸ In this respect New Zealand is doing a lot more than many other countries in the world to respond to the refugee crisis.

However, according to the UNHCR's latest statistics there are around 34 million people of concern, and 14 million refugees, worldwide.³⁴⁹ Only one percent of this number has been resettled.³⁵⁰ The acceptance of 750 has been described as “a drop in the bucket” when considered in light of the worldwide refugee crisis.³⁵¹ A

³⁴⁷ This quota is reviewed three-yearly and is determined in dialogue with the UNHCR, national stake holders in the refugee sector, existing refugee communities and various government ministries, and is finally determined by Cabinet. See United Nations High Commissioner for Refugees, “Country Chapters - UNHCR Resettlement Handbook: New Zealand,” July 2011, s1.2-1.3, <<http://www.unhcr.org/3c5e59d04.pdf>> (3 June, 2013).

³⁴⁸ *Ibid.*, s4.1.

³⁴⁹ United Nations High Commissioner for Refugees, “Total Population of concern to UNHCR: Refugees, asylum-seekers, IDPs, returnees, stateless persons, and others of concern to UNHCR by country/territory of asylum, end-2010,” Table 1. Refugees, asylum-seekers, internally displaced persons (IDPs), returnees (refugees and IDPs), stateless persons, and others of concern to UNHCR by country/territory of asylum, end-2010. <<http://www.unhcr.org/pages/4a0174156.html>> (3 June 2013). See also New Zealand Immigration, “Refugee Resettlement Fact Sheet,” 12 October 2012, <<http://www.immigration.govt.nz/migrant/general/generalinformation/media/refugeefactsheet.htm>> (3 June 2013).

³⁵⁰ New Zealand Immigration, “Refugee Resettlement Fact Sheet.”

³⁵¹ “What’s in a name? Asylum seekers as political currency,” Rachel Bogen and Dr Jay Marlowe, 22 April 2013, <http://www.auckland.ac.nz/uoa/home/about/perspectives/opinion/template/subsite_news_item.jsp?cid=560510> (3 June 2013). In the 2012 annual discussion between the UNHCR, NGO and

quota system is a logical mechanism derived from the balancing of priorities to ensure national stability. However, its rigidity and focus on exclusion, rather than inclusion, does not encapsulate the openness and compassion required by the duty of care which I have outlined in Chapter Six. It does not treat the 751st refugee with the respect required by our theological study, particularly given that this number is comparatively small when compared to the total number of immigrants entering New Zealand every year. The number does not appear proportionate to the risk of destabilisation, and therefore suggests an attitude of exclusion, perhaps on the basis self-preservation and self-interest.³⁵² A state need not establish impermeable borders in order to uphold its purpose. A state merely requires territoriality in order to rule effectively in accordance with its theological purpose. Perhaps a border policy based upon a presumption to grant open entry and membership to asylum seekers and refugees would best reflect a compassionate attitude toward those in need and fulfil the duty of care owed to them. However, I have argued in Chapter Six that when circumstances arise that potentially jeopardise the effective implementation of law and order a state must prioritise maintaining order and stability. Therefore, in a situation where the numbers of refugees and asylum seekers in New Zealand began to overwhelm these state functions, any presumption of entry would necessarily be dismissed and a full balancing of priorities on a case by case basis must take place.³⁵³ At this stage, concerns regarding the impact of accepting unlimited numbers of refugees on the economy, employment, housing etc must be assessed as they have a direct bearing upon the stable functioning of the state.

Refugee Representatives, the quota system itself was not questioned, but an increase in the quota was recommended, dependent upon the capacity of the detention centres and community support available. See UNHCR Regional Representation Canberra, "UNHCR Annual Consultations with NGO & Refugee Representatives: Summary Report, 19 November 2012," 2,

<<http://www.rc.org.nz/2012%20NZ%20Annual%20Consultations%20Report.pdf>>, (June 3 2013)

³⁵² The total number of accepted residency application for migrants numbered 37,556 for the financial year 2012/2013. 3,547 of these fell under "International/Humanitarian." See Immigration New Zealand. "R7 – Residency Applications Accepted by Financial Year." 9 July 2013, <<http://www.immigration.govt.nz/migrant/general/generalinformation/statistics/>> (4 June 2013).

³⁵³ The maintenance of law and order is dependent upon finances. If the country does not have enough money to house and provide for refugees, then the stability of society would erode and this too would be reason to refuse further entry for a time.

Mandatory Detention

As noted in Chapter One, the Amendment Bill seeks to implement mandatory detention for asylum seekers deemed as part of a “mass arrival group” for periods of up to six months. The UNHCR has declared that mandatory detention can only be considered lawful under the Refugee Convention if it “pursues a legitimate objective that is determined to be necessary, reasonable in all the circumstances and proportionate in *each individual case*.” Furthermore, it is only acceptable as a last resort.³⁵⁴ Whilst I do not address the issue regarding human rights in this thesis, the mandatory detention of refugees raises several issues. First, insofar as mandatory detention is to serve as part of the deterrence regime, it has already been shown to be flawed both morally and practically. The point has been thoroughly considered above and does not need further elaboration here. Second, mandatory detention cannot be justified in this context because it does not respect the dignity of the refugees as required by the duty of care. In support of this point I will draw upon the theological reflections offered by Australian Bishops in response to similar laws which were enacted in Australia. Third, the policy, as proposed, discriminates in its application as it only applies to those who arrive on a boat with at least ten people on board.

The Bill proposes to introduce detention clauses similar to those enacted in Australia in 1992. The Australian situation, although not directly comparable to New Zealand’s due mainly to geographical reasons, has given opportunity for theological and moral evaluation of mandatory detention as a policy. For example, the detention conditions and the diversion of boat arrivals in Australia have sparked responses from Catholic Bishops who have asserted their belief that human and civil rights do not end at a nation’s borders and are incompatible with the principle

³⁵⁴ United Nations High Commissioner for Refugees New Zealand, “Submission by the Office of the United Nations High Commissioner,” s40.

of respect for the person.³⁵⁵ In response to the documented failings of the detention regime in Australia the Catholic Church has publically claimed that they will never accept mandatory detention.³⁵⁶ Elaborating on the Compendium of the Social Doctrine of the Church, the Australian Catholic Bishops Conference declared that “Border security is the responsibility of the Government but political demands should never prevail over the value of the human person.”³⁵⁷ They also concisely expressed the inappropriateness of the application of detention in their context: “Detention is for criminals. Refugees and asylum seekers are not criminals.”³⁵⁸ Due to their theoretical and universal nature, I believe that these theological evaluations of the Catholic Church are also applicable to the policies that New Zealand intends to implement. This concern about valuing the person was also at the heart of the submissions of the HRC, the UNHCR, Caritas and the Salvation Army in New Zealand. The duty of care requires a respect for the refugee, which I believe is not upheld in the act of mandatory detention. As no reason greater than administrative efficiency and deterrence has been given, this practice which treats refugees with suspicion and views them as requiring isolation cannot be said to fulfil a duty of care to them.

Furthermore, as well as failing to show respect to refugees, the mandatory detention proposed by the Bill conflicts with the principle of non-discrimination as it discriminates on the basis of the mode of arrival of asylum seekers. The mandatory detention provisions only apply to those who are deemed to have

³⁵⁵ Heyer, “Reframing Displacement and Membership,” 195.

³⁵⁶ Australian Catholic Bishops Conference, “Statement on Christmas Island Protests Regarding Immigration Detention: 17 March 2011,” 1, <http://www.catholic.org.au/index.php?option=com_googlesearch_cse&n=30&cx=005680077799946883158%3Am8qgjyrtxdxq&cof=FORID%3A11&ie=ISO-8859-1&q=christmas+island+protests&hl=en> (4 June 2013).

³⁵⁷ Ibid. Also see The Vatican, “Compendium of the Social Doctrine of the Church,” April 2005, s505, <http://www.vatican.va/roman_curia/pontifical_councils/justpeace/documents/rc_pc_justpeace_doc_20060526_compendio-dott-soc_en.html> (4 June 2013).

³⁵⁸ Australian Catholic Bishops Conference, “Statement on Christmas Island Protests,” 1.

arrived as part of a “mass arrival group,” and then, are applied to that entire group without consideration of the necessity of detention on a case by case basis.

Family Reunification and Citizenship Reconsideration

In accordance with the sentiments of the HRC and UNHCR which we discussed in Chapter One, these policies appear to be inconsistent with the duty of care because they do not comply with the obligation to treat refugees with compassion and respect. These policies do not take into account the experiences and trauma suffered by those seeking refuge and asylum but instead would leave them in a place of uncertainty and undue stress. As the submissions of the above organisations highlighted, this would result in poor mental health and reduced resettlement success. The UNHCR also noted that in other jurisdictions the restriction of family reunification has encouraged family members to take undue risks in attempting to reunite with their loved ones upon whom they are dependent.³⁵⁹ As well as failing to respect the person, again these policies are also discriminatory as they only apply to “mass arrival groups.” A theological understanding of the duty of care would suggest that such policies should not be implemented.

Agreement with Australia

Another threat to New Zealand fulfilling its duty of care to refugees (and aiding another state in abdicating its responsibility in this regard), is the recent agreement by the New Zealand Government to accept 150 detained asylum seekers from Australia. This is undesirable for two main reasons. First, the New Zealand government’s acceptance of this arrangement has been criticised as indicating that

³⁵⁹ United Nations High Commissioner for Refugees, “Submission by the Office of the United Nations High Commissioner,” s91(d).

it is “tacitly accepting Australia’s practice of mandatory detention which has received international condemnation for human rights abuses.”³⁶⁰ Second, as I have argued, the fulfilment of the duty of care to refugees necessitates a preference for the granting of membership of the state. This arrangement enables Australia to offload its responsibilities toward refugees and asylum seekers, thus enabling Australia’s non-fulfilment of its duty of care. This outsourcing (so to speak) of the fulfilment of the duty of care is one of several “solutions” (among privatisation and extraterritoriality) which states have attempted to implement to circumvent their international and moral obligations.³⁶¹ These “solutions” treat refugees as a burden and a drain on resources and, at best as Cole highlighted, are unethical and, at worst as Bogen and Marlowe have suggested,³⁶² treat refugees as political currency.³⁶²

Conclusion

I have argued that the theological duty of care is incompatible with various aspects of the refugee regime proposed in New Zealand. The motivations behind the reforms conflict with the principles of respect, compassion and provision of care for the refugee. The quota system has some positive aspects to it, such as reserving spaces for the most needy of those seeking entrance, which do live up to the requirement set out in scripture of providing positive provisions for the welfare of the refugee and acting with compassion. However, the framework of an established quota is problematic. I have argued that respect for each individual refugee requires a more porous and open system with a presumption of acceptance and with exclusion as a last resort in cases where there is an imminent

³⁶⁰ Bogen and Marlowe, “What’s in a Name?,” 1.

³⁶¹ Gameltoft-Hansen believes that “the concern is that privatisation and extra-territorialisation are used as pretext for effectively circumventing basic human rights obligations, either because they are not applicable extraterritorially or when private actors carry out controls, or because the rights are simply not realised.” See Gameltoft-Hansen, *Access to Asylum*, 3.

³⁶² Wellman and Cole *Debating the Ethics of Immigration*, 253-254; Bogen and Marlowe, “What’s in a Name?,” 1.

threat of destabilisation should more refugees be accepted. The introduction of greater restrictions on the rights of refugees and asylum seekers once they enter New Zealand also fails to address refugees and asylum seekers with dignity or respect. In their application the policies would discriminate on the basis of the mode of arrival of the asylum seeker, and would not adhere to the limitation suggested by my theological framework of equal treatment before the law and non-discrimination. Therefore, I conclude that from a theological perspective the proposed policy reforms need to be revised in light of these criticisms.

Conclusion

The global refugee crisis is an issue of great concern with more and more displaced people suffering from persecution and instability. In response to this growing problem, New Zealand has been reforming its refugee policies in order to accommodate the possibility of an increase in asylum seekers appearing upon its shores. This context provided the opportunity to consider the questions which this thesis has sought to answer: “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?”

I conclude 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. I will now summarise in greater detail the conclusions which I came to in each chapter to reach this general conclusion before suggesting some areas which could benefit from further work.

I began in Chapter One by examining the context for refugee policy reform in New Zealand, looking at New Zealand's national and international obligations and current policies. I summarised the proposed changes in the Immigration Amendment Bill, and the policy changes which the Honourable Nathan Guy announced would accompany these legal changes. I then surveyed several submissions to the select committee on the proposed policy reforms by statutory bodies and prominent Christian organisations. From this examination, I concluded that the debate was largely confined to whether or not the reforms complied with New Zealand's legal obligations. The remaining concerns related to the holistic wellbeing of those who would be subject to the policy changes. Although the Christian organisation CARITAS stated the principles underlying its submission, no clear theological position or reasoning was put forward in the submissions of the two Christian organisations reviewed. Public opinion served to show that there are mixed responses to the proposed policy reforms. I concluded that overall, the debate was restricted in nature, primarily focussing upon the congruency of the changes with New Zealand's existing legal obligations, while wider international debates and concerns were overlooked. I also found that there has been some, but relatively little, ethical debate regarding the reforms that appeals to values that encompass more than merely human rights. This space creates a prime opportunity for theological reflection.

Despite the limited nature of the debate in New Zealand, it has been important to note that this discussion is taking place within wider international debates regarding the refugee crisis; New Zealand should look to engage with these wider debates in order to formulate an informed and ethical refugee regime which seeks to contribute toward the easing of the international refugee crisis. As I articulated in my introduction, my study has been motivated by the prophetic tradition which, I have stated, encourages those who follow Christ to question unjust societal structures and to ask deeper questions regarding political systems and processes. In light of these two concerns, I placed my discussion of refugee policy reform 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.' 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.

In Chapter Two, I examined the arguments of two prominent political philosophers in the deontological debate 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 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, as we have seen, 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 constructs 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.

After surveying existing theological scholarship on this topic in Chapter Three, in chapter Four I developed a theological perspective on the justifiability and legitimacy of states which is very different from these two 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 have argued that existing scholarship, and my reading of scripture, suggest 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 have concluded that the criteria by which to measure the justification of the state is the communion or unity of humanity with God. Thus I concluded that humanity's unity and communion with God is what the state must uphold in order to justify its coercive nature.

As explained in Chapter Two, Wellman and Cole understand the role of the state to be the upholding of human rights. However, I have argued that one can deduce 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 have 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 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.

However, I proceeded to confirm this assumption of justification 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 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 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 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. 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.³⁶³ However, importantly, this new era will only happen after the parousia when God's kingdom will be

³⁶³ O'Donovan, "Nation, State and Civil Society in the Western Biblical Tradition," 286.

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, Chapter Five 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.

However, I 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. I concluded that a theological perspective on issues of power necessarily differed from the perspective offered by Wellman. 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 (according to Wellman's definition). 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.

Chapter Six then detailed 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. I argued that, the cosmopolitan view encouraged by holding theological thought to the *telos* of the nation, provides 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, following Bretherton's argument, 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 then would rejection of a refugee or asylum seeker be considered appropriate.

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.

In Chapter Seven I applied these principles to the Government's proposed refugee reforms. My earlier engagement with the deontological debate led me to maintain that the New Zealand state is theologically justified and legitimate in determining its own border policies. However, it must comply with the delimitations of power that I set out previously. In aid of the assessment of their compliance, I found that the theological imperative to act justly requires that motivations behind policies are important. I found the motivation of deterrence set out by the Government as a justification for the harsher restrictions on refugees' freedoms questionable in this context because, as I have illustrated, deterrence has not proven to be effective and is unnecessary.

I also took issue with the retention of 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."³⁶⁴ With an attitude of compassion, each case must be balanced against the realistic possibility of

³⁶⁴ Paul Sydnor, "Understanding Forced Displacement of Refugees in Terms of the Person," *Transformation: An International Journal of Holistic Mission Studies* 28 (2011): 55.

destabilisation (with an honest admission that such destabilisation may never actually occur, due to New Zealand's isolated circumstance).

I further concluded that the policies of mandatory detention, the restrictions on family reunification and the reassessment of claims to residency after three years, 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 reforms 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..."³⁶⁵ 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.

³⁶⁵ 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).

Areas for Further Research

Christine Pohl has commented on the problematic nature of the underlying issues of the refugee crisis. She has asserted that it would take a major global commitment on the part of the international community to address the issues that create the immigration dilemmas that states now face. Pohl says that “unless the problems of economic, social and political injustice - the problems that stand behind refugee flows and desperate asylum seekers - are addressed, hospitality is only a stop gap measure in meeting needs. While necessary, it is also profoundly inadequate.”³⁶⁶ Further theological engagement with debates that impact upon the refugee crisis, such as this thesis has sought to provide, is needed. Furthermore, interaction between such engagement and theological research into other policy areas, such as economics and finance, foreign aid, and international relations, which could also indirectly provide solutions to this crisis, is desirable. This could provide a more holistic theological engagement with the refugee crisis and serve as a basis for developing plans for future political or social action in support of a more preventative approach than has been considered by the New Zealand Government in this reform process.

³⁶⁶ Pohl, “Responding to Strangers,” 96.

Post Script:

The Immigration Amendment Act 2013

Since the research and writing of this thesis, the Immigration Amendment Bill has passed into law as the Immigration Amendment Act 2013. This Act contains several changes since its proposal as the Immigration Amendment Bill (16-1) which is the version which this thesis discussed. Regarding the major amendments which I listed in Chapter 1, the only significant change was to the definition of a “mass arrival group.” The number of people deemed to constitute a “mass arrival group” has been amended from “more than 10” to “more than 30.”³⁶⁷ As at the date of the submission of this thesis for examination, I am unaware of the accompanying proposed policy changes having been actualised.

³⁶⁷ New Zealand Parliament. Immigration Amendment Act 2013, clause 5 (new s9A).

Bibliography

- Abizadeh, Arash. "Closed Borders, Human Rights, and Democratic Legitimation." In *Driven From Home: Protecting the Rights of Forced Migrants*, ed. David Hollenbach, 147-166. Washington: Georgetown University Press, 2010.
- Allen, Leslie. *Ezekiel 20-48*. Word Biblical Commentary. Dallas: Word Books, 1990.
- Ansley, Greg. "Record Level of Asylum Seekers a Blow to Gillard." *New Zealand Herald*. 31 July, 2012.
<http://www.nzherald.co.nz/world/news/article.cfm?c_id=2&objectid=10823342> (6 August 2012).
- Atkinson, Nigel. *Richard Hooker and the Authority of Scripture, Tradition and Reason: Reformed Theologian of the Church of England?* Carlisle: Paternoster Press, 1997.
- Attorney General of New Zealand. "Immigration (Mass Arrivals) Amendment Bill." 3 April 2012. <<http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/immigration-mass-arrivals-amendment-bill>> (10 May 2013).
- Australian Catholic Bishops Conference. "Statement on Christmas Island Protests Regarding Immigration Detention." 17 March 2011.
<http://www.catholic.org.au/index.php?option=com_googlesearch_cse&n=30&cx=005680077799946883158%3Am8qgjyrtxdxq&cof=FORID%3A11&ie=ISO-8859-1&q=christmas+island+protests&hl=en> (4 June 2013).
- Australian Government, Department of Immigration and Citizenship, "Asylum Trends: Australia 2011-2012 Annual Publication."
<http://www.immi.gov.au/media/publications/statistics/asylum/_files/asylum-trends-aus-annual-2011-12.pdf> (10 May 2013).
- Avalon Project, Yale Law School (reproduced by). "Treaty of Westphalia: Peace Treaty between the Holy Roman Emperor and the King of France and their respective Allies," LXIV.
<http://avalon.law.yale.edu/17th_century/westphal.asp> (13 May 2013).

- Bartholomew, Craig and Michael Goheen. *The Drama of Scripture: Finding Our Place in the Biblical Story*. Grand Rapids: Baker Academic, 2004.
- Berger, Mark. "From Nation Building to State Building: The Geopolitics of Development, the Nation-State System and Changing Global Order." *Third World Quarterly* 27 (2006) 1: 5-25.
- Block, Daniel. *The Book of Ezekiel: Chapters 25-48*. The New International Commentary on the Old Testament. Grand Rapids: Eerdmans, 1998.
- _____. *Deuteronomy*. The NIV Application Commentary. Grand Rapids: Zondervan, 2012.
- Bock, Darren. *Luke*. NIV Application Commentary. Grand Rapids: Zondervan, 1996.
- Bogen, Rachel and Dr Jay Marlowe. "What's in a name? Asylum seekers as political currency." University of Auckland. 22 April 2013.
<http://www.auckland.ac.nz/uoa/home/about/perspectives/opinion/template/subsite_news_item.jsp?cid=560510> (3 June 2013).
- Bretherton, Luke. *Christianity and Contemporary Politics: The Conditions and Possibilities of Faithful Witness*. Chichester: Wiley-Blackwell, 2010.
- Bruce, F. F. *The Book of Acts*. The New International Commentary on the New Testament. Grand Rapids: Eerdmans, 1975.
- Brueggemann, Walter. *Deuteronomy*. Abingdon Old Testament Commentaries. Nashville: Abingdon Press, 2001.
- _____. *The Land: Place as Gift, Promise and Challenge in Biblical Faith*. Minneapolis: Fortress Press, 1989.
- Bruner, Frederick. *The Churchbook: Matthew 13-28*. Grand Rapids: Eerdmans, 2004.
- CARITAS. "Submission to the Transport and Industrial Relations Select Committee on the Immigration Amendment Bill 2012." 8 June 2012.
<<http://www.caritas.org.nz/sites/default/files/Caritas%20submission%20-%20Immigration%20Amendment%20Bill%202012.pdf>> (14 May 2013).
- Christensen, Duane. *Deuteronomy 21:10-34:12*. Word Biblical Commentary. Nashville: Thomas Nelson, 2002.

- Dibelius, M. *Aufsätze zur Apostelgeschichte*. Gottingen: 1951. Cited in F. F. Bruce, *The Book of Acts*. The New International Commentary on the New Testament. Grand Rapids: Eerdmans, 1975.
- Duguid, Iain. *Ezekiel*. The NIV Application Commentary. Grand Rapids: Zondervan, 1999.
- Edwards, Alice. "Back to basics: The Right to Liberty and Security of Person and 'Alternatives to Detention of Asylum Seekers, Stateless Persons, and Other Migrants.'" UNHCR Legal and Protection Policy Research Series. Geneva: UNHCR, 2011.
- Fee, Gordon. *Philippians*. The IVP New Testament Commentary Series. Downers Grove: Intervarsity Press, 1999.
- Fox, James. "Natural Law." *The Catholic Encyclopedia*. Vol. 9. New York: Robert Appleton Company, 1910. <<http://www.newadvent.org/cathen/09076a.htm>> (18 July 2013).
- Gameltoft-Hansen, Thomas. *Access to Asylum: International Refugee Law and the Globalisation of Migration Control*. Cambridge: Cambridge University Press, 2011.
- Garland, David. *Colossians/Philemon*. NIV Application Commentary. Grand Rapids: Zondervan, 1998.
- Gray, Sherman. *The Least of my Brothers: Matthew 25:31-46 A History of Interpretation*. SBL Dissertation Series 114. Atlanta, Scholars Press: 1989.
- Groody, Daniel. "Crossing the Divide: Foundations of a Theology of Migration and Refugees," *Theological Studies* 70 (2009): 638-667.
- Gurnery, O. R. and S. N. Kramer. *Sumerian Literary Texts in the Ashmolean Museum*. Oxford: Clarendon Press, 1976. Cited in Gordon Wenham, *Genesis 1-15*. Word Biblical Commentary. Waco: Word Books, 1987.
- Guy, Nathan. "New measures to deter people smugglers announced." 30 April 2012. <<http://www.national.org.nz/Article.aspx?articleId=38387>> (10 May 2013).
- Hagner, Donald. *Matthew 14-28*. Word Biblical Commentary. Dallas: Word Books, 1995.

- Hamilton, Victor. *The Book of Genesis: Chapters 1-17*. The New International Commentary on the Old Testament. Grand Rapids: Eerdmans, 1990.
- Hanson, Paul. *Political Engagement as Biblical Mandate*. Eugene: Cascade Books, 2010.
- Harding, Christopher and Nicola Harding. "Who Designed the Westphalian System? Probing the Epistemology of the Westphalian Debates: "Moses was but a Juggler and King James the New Solomon." *Law, Culture and the Humanities* 2 (2006): 399-419.
- Heyer, Kristin. "Reframing Displacement and Membership: Ethics of Migration." *Theological Studies* 73 (2012): 188-206.
- The Holy Bible, English Standard Version. Crossway Bibles: Wheaton, 2001.
- Immigration New Zealand. "R7 – Residency Applications Accepted by Financial Year." 9 July 2013.
<<http://www.immigration.govt.nz/migrant/general/generalinformation/statistics/>> (4 June 2013).
- Immigration New Zealand. "Refugee Resettlement Fact Sheet." 12 October 2012.
<<http://www.immigration.govt.nz/migrant/general/generalinformation/media/refugeefactsheet.htm>> (3 June 2013).
- Jewett, Robert. *Romans: A Commentary*. Hermeneia Series. Minneapolis: Fortress Press, 2007.
- Kant, Immanuel. "Perpetual Peace: A Philosophical Sketch."
<<https://www.mtholyoke.edu/acad/intrel/kant/kant1.htm>> (14 May 2013).
- Kapitan, Tomis. "Self-Determination and International Order." *The Monist* 89, 2 (2006): 356-370.
- Kasemann, Ernst. *Commentary on Romans*. Translated by Geoffrey Bromiley. London: SCM Press Limited, 1980.
- Kayaoglu, Turan. "Westphalian Eurocentrism in International Relations Theory." *International Studies Review* 12 (2010): 193-217.
- Kerwin, Donald. "Rights, the Common Good, and Sovereignty." In *And You Welcomed Me: Migration and Catholic Social Teaching*, ed. Donald Kerwin and Jill Gerschutz. Lanham: Lexington Books, 2009.

Kofman, Daniel. "The Normative Limits to the Dispersal of Territorial Sovereignty." *The Monist* 90:1 (2007): 65-85.

Kukathas, Chandran. "The case for open immigration." In *Contemporary Debates in Applied Ethics*, ed. Andrew I Cohen and Christopher Wellman, 207-221. Oxford: Blackwell Publishing, 2005.

Liefeld, Walter. *1 and 2 Timothy/Titus*. The NIV Application Commentary. Grand Rapids: Zondervan, 1999.

Lorberbaum, Menachem "Boundaries of the Holy Land." In *States, Nations and Borders: The Ethics of Making Boundaries*, ed. Allen Buchanan and Margaret Moore, 19-40. Cambridge: Cambridge University Press, 2003.

Luz, Ulrich. *Matthew 21-28*, Hermeneia – a Critical and Historical Commentary on the Bible. Minneapolis: Augsburg Fortress, 2005.

Martins, E. A. "Biblical Theology." *Global Dictionary of Theology*, eds. William A Dyrness and Veli-Matti Karkkainen. Intervarsity Press: Downers Grove, 2008, 109-110.

McConville, J. G. *Deuteronomy*. Apollos Old Testament Commentary. Leicester: Apollos, 2002.

McKnight, Scott. *1 Peter*. The NIV Application Commentary. Grand Rapids: Zondervan, 1999.

McLean, Iain, with Alistair McMillan. *The Concise Oxford Dictionary of Politics*. 3rd ed. Oxford: Oxford University Press, 2009.
<<http://www.oxfordreference.com/view/10.1093/oi/authority.20110803100224764>> (27 June 2013).

Miller, David. "Immigrants, Nations and Citizenship." *Journal of Political Philosophy* 16:4 (2008): 371-390.

. "Immigration: The Case for Limits." In *Contemporary Debates in Applied Ethics*, ed. A. I Cohen and C. H. Wellman, 193-220. Oxford: Blackwell, 2005.

. *National Responsibility and Global Justice*. Oxford: Oxford University Press, 2007.

Moo, Douglas. *The Epistle to the Romans*. The New International Commentary on the New Testament. Grand Rapids: Eerdmans, 1996.

Morris, Leon. *The Gospel According to Matthew*. Grand Rapids: Eerdmans, 1992.

Mott, Stephen. *A Christian Perspective on Political Thought*. Oxford: Oxford University Press, 1993.

_____. *Biblical Ethics and Social Change*. Oxford: Oxford University Press, 1982.

Mounce, Robert. *The Book of Revelation*. The New International Commentary on the New Testament. Rev. ed. Grand Rapids: Eerdmans, 1998.

Muilenburg, James. *The Way of Israel: Biblical Faith and Ethics*. London: Routledge and Kegan Paul Ltd, 1962.

Navari, Cornelia. "States and State systems: Democratic, Westphalian or Both?" *Review of International Studies* 33 (2007): 577-595.

New Zealand Attorney General. "Immigration (Mass Arrivals) Amendment Bill." 3 April 2012, <<http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/immigration-mass-arrivals-amendment-bill>> (10 May 2013).

New Zealand Audit Bureau of Circulation Inc. "Press Audit Results." <http://newspaper.abc.org.nz/audit.html?org=npa&publicationid=%25&mode=embargo&npa_admin=1&publicationtype=19&memberid=%25&type=%25> (14 May 2013).

New Zealand Herald Editor. "Govt Should Open Arms to Boat People." Friday 4 May 2012. <http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10803336> (14 May 2013).

New Zealand Human Rights Commission. "Submission by the Human Rights Commission: Immigration Amendment Bill 2012." 8 June 2012. <http://www.hrc.co.nz/wp-content/uploads/2012/06/Submission-on-Immigration-Bill_NZHRC.pdf> (10 May 2013).

New Zealand Parliament. Immigration Amendment Bill (16-1) 2012.

_____. Immigration Amendment Act 2013.

Nolland, John. *Luke 9:21-18:34*. Word Biblical Commentary. Dallas: Word Books, 1993.

- _____. *The Gospel of Matthew*. The New International Greek Testament Commentary. Grand Rapids: Eerdmans, 2005.
- Oberman, Kieran. "Immigration, Global Poverty and the Right to Stay." *Political Studies* 59 (2011): 253-268.
- O'Brien, Peter. *Colossians, Philemon*. Word Biblical Commentary. Waco: Word Books, 1982.
- Oden, Amy. ed. *And You Welcomed Me: A Sourcebook on Hospitality in Early Christianity*. Nashville: Abingdon Press, 2001.
- O'Donovan, Oliver and Joan Lockwood O'Donovan. *Bonds of Imperfection: Christian Politics Past and Present*. Grand Rapids: Eerdmans, 2004.
- O'Donovan, Oliver. "Christianity and Territorial Right." In *States, Nations and Borders: The Ethics of Making Boundaries*, ed. Allen Buchanan and Margaret Moore, 127-142. Cambridge: Cambridge University Press, 2003.
- _____. *The Desire of the Nations: Rediscovering the Roots of Political Theology*. Cambridge: Cambridge University Press, 1996.
- O'Neill, William. "Christian Hospitality and Solidarity with the Stranger." In *And You Welcomed Me: Migration and Catholic Social Teaching*, ed. Donald Kerwin and Jill Gerschutz, 149-155. Lanham: Lexington Books, 2009.
- Osborne, Grant. *Revelation*. Baker Exegetical Commentary on the New Testament. Grand Rapids: Baker Academic, 2002.
- Pannenberg, Wolfhart. *Ethics*. Philadelphia: Westminster Press, 1981.
- Parliament of Australia, Senate Committees, Joint Select Committee on Australia's Immigration Detention Network. "Final Report."
<http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=immigration_detention_cte/immigration_detention/report/c07.htm clause 7.67> (10 May 2013).
- Pohl, Christine. "Responding to Strangers: Insights from the Christian Tradition." *Studies in Christian Ethics* 19:1 (2006): 86-101.
- 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).

- Pope John Paul II. "Message Of His Holiness Pope John Paul II For The Celebration Of The World Day Of Peace 2001: Dialogue Between Cultures for a Civilization Of Love And Peace." 1 January 2001, <http://www.vatican.va/holy_father/john_paul_ii/messages/peace/documents/hf_jp-ii_mes_20001208_xxxiv-world-day-for-peace_en.html> (4 June 2013).
- Reed, Esther. "Refugee Rights and State Sovereignty: Theological Perspectives on the Ethics of Territorial Borders." *Journal of the Society of Christian Ethics* 30:2 (2010): 59-78.
- Refugee Council of New Zealand. "United Nations Slams Government Immigration Bill." 15 June 2012. <<http://www.scoop.co.nz/stories/PO1206/S00208/united-nations-slams-government-immigration-bill.htm>> (10 May 2013).
- Richardson, Roslyn. "Sending a Strong Message? The Refugee's Reception of Australia's Immigration Deterrence Policies." Ph.D. diss., School of Social Sciences and Liberal Studies, Charles Sturt University, May 2008.
- The Salvation Army. "Immigration Amendment Bill, Transport and Industrial Relations Select Committee, The Salvation Army (New Zealand, Fiji and Tonga) Submission." <<http://www.salvationarmy.org.nz/uploads/file/20130415SPPUImmigration%20Amendment%20Bill%20submission.pdf>> (14 May 2013).
- Scheffer, Paul. "Closed Borders, Closed Minds." *The Times Higher Education Supplement: THE 2034* (Jan 2012): 54.
- Senior, Donald. "Beloved Aliens and Exiles." In *A Promised Land A Perilous Journey: Theological Perspectives on Migration*, ed. Daniel Groody and Gioacchino Campese, 20-34. Indiana: University of Notre Dame Press, 2008.
- Sidgwick, H. *The Elements of Politics*. 2nd ed. London: Macmillan, 1897. Cited in David Miller, "Immigrants, Nations and Citizenship," *Journal of Political Philosophy* 16:4 (2008): 373-374.
- Singgih, Emmanuel. "Towards a Post Colonial Interpretation of Romans 13:1-7: Karl Barth, Robert Jewett and the Context of Reformation in Present-day Indonesia." *Asia Journal of Theology* 23:1 (April 2009): 111-122.

- Skinner, Hannah. "Going Public with Public Theology: Developing Meaningful Discourse with the Wider World." In *Through the Eye of a Needle: Theological Conversations over Political Economy*, ed. J. Atherton and Hannah Skinner, 13-31. Peterborough: Epworth, 2007.
- Smalley, Stephen. *The Revelation to John: A Commentary on the Greek Text of the Apocalypse*. Downers Grove: Intervarsity Press: 2005.
- Stahlin, G. *Die Apostelgeschichte*. Das Neue Testament Deutsch. Gottingen: 1970. Cited in Howard Marshall. *Acts*. Tyndale New Testament Commentaries. Leicester: Intervarsity Press, 1980.
- Sutherland, Arthur. *I Was a Stranger: A Christian Theology of Hospitality*. Nashville: Abingdon Press, 2006.
- Sydnor, Paul. "Understanding Forced Displacement of Refugees in Terms of the Person." *Transformation: An International Journal of Holistic Mission Studies* 28 (2011): 51-61.
- Thielman, Frank. *Philippians*. NIV Application Commentary. Grand Rapids: Zondervan, 1995.
- Tigay, Jeffrey. *Deuteronomy*. JPS Torah Commentary. Philadelphia: The Jewish Publication Society, 1996.
- Towner, Philip. *The Letters to Timothy and Titus*. The New International Commentary on the New Testament. Grand Rapids: Eerdmans, 2006.
- United Nations General Assembly. "Draft Convention relating to the Status of Refugees." 14 December 1950, A/RES/429. <<http://www.refworld.org/docid/3b00f08a27.html>> (10 May 2013).
- United Nations High Commissioner for Refugees. Convention and Protocol Relating to the Status of Refugees 1951. <<http://www.unhcr.org/3b66c2aa10.html>> (10 May 2013).
- _____. "Country Chapters - UNHCR Resettlement Handbook: New Zealand." July 2011. <<http://www.unhcr.org/3c5e59d04.pdf>> (3 June 2013).

- _____. "Refugee Resettlement Fact Sheet: New Zealand Immigration." 12 October 2012.
<<http://www.immigration.govt.nz/migrant/general/generalinformation/media/efugeefactsheet.htm>> (3 June 2013).
- _____. "State Parties to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol." <<http://www.unhcr.org/3b73b0d63.html>> (6 August, 2013).
- _____. "Submission by the Office of the United Nations High Commissioner for Refugees New Zealand Immigration Amendment Bill 2012." 8 June 2012.
<http://unhcr.org.au/unhcr/images/2012-06-08_UNHCR%20Submission%20to%20the%20NZL%20Immigration%20Amendment%20Bill.pdf> (10 May 2013).
- _____. "Total Population of Concern to UNHCR: Refugees, Asylum-seekers, IDPs, Returnees, Stateless Persons, and Others of Concern to UNHCR by Country/Territory of Asylum, End-2010."
<http://www.unhcr.org/pages/4a0174156.html>> (3 June 2013).

United States Conference of Catholic Bishops and Conferencia Del Episcopado Mexicano. *Strangers No Longer: Together on the Journey of Hope*. Washington D.C. United States Conference of Catholic Bishops, 2003.

The Vatican. "Compendium of the Social Doctrine of the Church." April 2005.
<http://www.vatican.va/roman_curia/pontifical_councils/justpeace/document/s/rc_pc_justpeace_doc_20060526_compendio-dott-soc_en.html> (4 June 2013).

Walton, John. *Genesis*. The NIV Application Commentary: From Biblical Text to Contemporary Life. Grand Rapids: Zondervan, 2001.

Walzer, Michael. *Spheres of Justice: A Defence of Pluralism and Equality*. New York: Basic Books, 1983.

Wellman, Christopher and Phillip Cole. *Debating the Ethics of Immigration: Is There a Right to Exclude?* Oxford: Oxford Press: 2011.

Wells, Samuel. *Improvisation: The Drama of Christian Ethics*. Grand Rapids: Brazos Press, 2004.

Wenham, Gordon. *Genesis 1-15*. Word Biblical Commentary. Waco: Word Books, 1987.

_____. "Sanctuary Symbolism in the Garden of Eden Story." *Proceedings of the Ninth World Congress of Jewish Studies*. Jerusalem: World Union of Jewish Studies, 1986.

We're Better Than That Group. "We're Better Than That." Media Clip.
<http://www.youtube.com/watch?v=18rX4Z_OkBY> (4 June 2013).

Westermann, Claus. *Genesis 1-11: A Commentary*. London: SPCK, 1984.

Wilkins, Michael. *Matthew*, NIV Application Commentary. Grand Rapids: Zondervan, 2004.

Wright, Christopher. *Old Testament Ethics for the People of God*. InterVarsity Press: Downers Grove, 2004.

Wright, N. T. "Can the Bible be Authoritative?" *Vox Evangelica* 21 (1991): 7–32.