



## The State Made Flesh: Catholic Social Teaching and the Challenge of UK Asylum Seeking<sup>1</sup>

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### Abstract

This article explores the relationship between official Catholic Social Teaching on forced migration and contemporary issues in forced migration as they are experienced in a UK context. Using the work of Hannah Arendt on judgement and responsibility and Charles Taylor's analysis of the dynamics of democratic exclusion this paper concludes with a suggestion for two areas for further analysis: theological reflection on the dialectics of inclusion and exclusion in democratic nation-states; further attention to the neglected category of commutative justice as it relates to migration experience and the terms of the common good.

### Keywords

Catholic Social Teaching, forced migration, sovereignty, democratic exclusion

In which material circumstances are the profound questions of human dignity posed? Hannah Arendt argued that it is the figure of the displaced person who poses the question of dignity over and again to the discomfited modern state. The urgent question whispered by the 'edge people' of the modern state becomes: how do we, the displaced, realise dignity and human belonging in tangible political terms in a world where rights and liberties attach primarily to citizenship? Whilst this whisper remains ever present in late modernity, Arendt argues that there are periods when the ethical import of these questions intensifies and the lack of morally convincing answers from

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the liberal state becomes increasingly disturbing. I contend that we are living through one such period, as new patterns of exclusion re-shape the politics of asylum. This paper considers the relevance and adequacy of CST as a resource to address this reality.<sup>2</sup> The first section outlines formal CST as it relates to asylum and forced migration. The second section notes key areas of tension in contemporary UK practice. The final section, proposes that the patchwork of principles evident in official CST requires a foundation in a much wider theological reflection.

### Shape of Catholic Social Teaching on Asylum: A Leaven for the Increase of Solidarity

Catholic theology carries within its being a deep resonance with refugee and asylum concerns. This resonance is rooted in the fundamental character of the Church as a 'migrant reality endowed with an exilic vocation'<sup>3</sup>. Therefore, whilst ecclesiology rightly forms the primary impetus for a theological engagement with migrant concerns, any such discourse is also necessarily ethical. As Daniel Groody notes, Catholic social theory engages with migration as simultaneously a sociological fact and a theological event. To this end post-1891 Catholic social thought, whilst not inventing Catholicism's concern for the migrant, has consistently reflected on the challenges faced by migrant peoples.<sup>4</sup>

Whilst official CST lacks a critical historicity in its handling of migration, Nigerian theologian Orobator usefully proposes three disclaimers to ground further discussion. Firstly, before any précis of the official encyclical teachings, we should note that Catholic thinking about migration builds on norms for the treatment of the exile established within Judaism and antiquity and continues to have strong interfaith parallels. Secondly, any attempt to apply theological and ethical thinking to contemporary political arrangements is fraught and will be continually contested by the State and the wider public – this is an area of fundamental ethical tension. Finally, Orobator notes

<sup>2</sup> For discussion on these wider areas amongst British scholars see: Esther Reed 'Refugee Rights and State Sovereignty: Theological Perspectives on the Ethics of Territorial Borders' in *Journal of Society of Christian Ethics*, 30, 2 (2010), pp.59–79; Luke Bretherton, 'Christian Cosmopolitanism, Refugees and the Politics of Proximity' in *Christianity and Contemporary Politics*, L. Bretherton, (Oxford: Blackwell, 2009), pp.126–158; Susanna Snyder, *Asylum-Seeking, Migration and Church* (Farnham: Ashgate, forthcoming 2012).

<sup>3</sup> A. Orobator, 'Justice for the Displaced' in *Driven From Home: Protecting the Rights of Forced Migrants*, David Hollenbach ed., (Washington: Georgetown Press, 2010), pp.37–53: p. 46.

<sup>4</sup> Daniel Groody, 'A Theology of Immigration', Notre Dame Magazine (Notre Dame University 2004) <http://magazine.nd.edu/news/10587/> (accessed 28.7.2011).

that religion per se cannot cast itself heroically in relation to migrant concerns. Historically, religion has no more proved itself a benevolent actor in migration politics than the nation state: religion creates as well as cares for the displaced, and, we might add, has long been as likely to reject as welcome the displaced, even at the threshold of the parish doors.<sup>5</sup>

There is, as yet, no one summary of Church reflection on forced migration; rather CST offers a series of statements and short documents which constitute a patchwork of principles, which aim to inform a wider social theology of migration. Most CST documents on migration begin by positioning current social analysis within a unique Christian anthropology: scriptural and doctrinal. From these sources is drawn a dual narrative, which, on the one hand, points to the unique theological dignity of the migrant and, on the other, points to a wider vision of Christian sociality.

An account of the unique dignity of the migrant in current teaching draws heavily from a biblical theology grounded in the Hebrew Scriptures: in particular themes of exodus and covenant. They draw clearly from the rejoinders of the prophetic tradition to offer hospitality and care for the stranger and the oppressed, and they remind the Church that we continue to live in the context of an exilic memory. The doctrinal focus falls primarily upon a hermeneutic of Incarnation – drawing powerful theological meaning both from the concrete migration of God towards human history in the Incarnation and the earthly ministry of Christ as itself dominated by an exilic motif.<sup>6</sup> This systematic focus is complemented by the historical: noting the impact of the migrations of early Christianity and displacements of the patristic period on the formation of the doctrine of the Church. Particularly resonant are the Letter to Diognetus and I Peter, articulating Christian motifs of strangerhood, exile and pilgrimage. As the Christian community moves towards identifying itself as *paroikoi* – resident alien – these motifs are absorbed explicitly into the framework of early Christianity. In this light, long before the formal, post-1891 tradition of CST the Church had already come to view the migrant not simply as one in need but, more richly, as both a symbol of her own nature and a privileged co-worker with the Divine in the *earthly city*.

<sup>5</sup> A. Orobator, 'Justice for the Displaced: The Challenge of a Christian Understanding' in Hollenbach, ed., *Driven from Home: Protecting the Rights of Forced Migrants* (Washington: Georgetown Press, 2010) pp.37–53. On the mixed practice of the Church – exclusion as well as embrace – see Susanna Snyder, *Asylum-Seeking, Migration and the Churches*, (Farnham: Ashgate, forthcoming 2012)

<sup>6</sup> See the discussion of the biblical context and figure of Christ as refugee in *Erga Migrantes Caritas Christi*, (Vatican City: Pontifical Council for Pastoral Care of Migrants and Itinerant Peoples, 2004).

A second narrative situates the practice of migration within a reading of the social character of the Church, drawing both on the Book of Revelation and placing a particularly strong emphasis on the Pentecost narrative. Ethical import is drawn from the Pentecostal character of the Church as itself called to be an ever more vast inter-cultural society: a social body held together in a perichoretic relationship of fraternity, communication and difference. By analogy this Pentecostal sociality becomes an eschatological model that all forms of human community are called to strive towards.<sup>7</sup>

Pressing this dual narrative into principles, I now suggest that post-1891 CST has produced six patchwork principles to act as the basis for an evolving social doctrine of migration.<sup>8</sup> In the first instance, Catholic Social Teaching on migration begins by proposing the right not to be forced to migrate – expressed positively, *a right to remain*.<sup>9</sup> This right to remain is not conceived as a possessive Enlightenment right. Rather it emerges from the biblical and Thomist emphasis on the political, economic and cultural protection due to the person who belongs to a covenantal community – a fundamental right to protection.

This first principle gives way to a second: where this responsibility to protect is transgressed through conflict, persecution, violence or hunger, there is a *natural and absolute right of the individual to migrate and seek sanctuary* within an alternative political community.<sup>10</sup> Catholic Social Teaching proposes a transcendent humanism, recognising that the wellbeing of the person is tied to both the good of the bounded community *and* a prior recognition of a meaningful global citizenship through membership of the universal human family.

This implies a third principle: a moral requirement placed upon existing political communities, especially the most privileged, *to receive and protect the migrant*. This teaching emerges from the natural law tradition, but also draws strongly from notions of divine law present in biblical injunctions to offer hospitality and care for the stranger and exile.

<sup>7</sup> See Catholic Bishops' Conference of England and Wales document, *The Dispossessed: A Brief Guide to the Catholic Church's Teaching on Migrants* (2004). See also comments later in this paper on Charles Taylor's positing of the challenges of democratic communities as 'shared space'.

<sup>8</sup> My list has much in common with, but also differs subtly from Archbishop Silvano Tomasi's analysis of CST on migration under ten headings in Silvano Tomasi, 'Human Rights as a Framework for Advocacy on Behalf of the Displaced: The Approach of the Catholic Church', in *Driven from Home*, David Hollenbach ed., (Washington: Georgetown, 2010), pp.55–69.

<sup>9</sup> See *Erga Migrantes Caritas Christi (The Love of Christ Towards Migrants)*, (Vatican City: Pontifical Council for the Pastoral Care of Migrants and Itinerant Peoples, 2004).

<sup>10</sup> See Vatican II, *Gaudium et Spes (The Pastoral Constitution of the Church in the Modern World)*, 1965, n.65.

In turn, this teaching is tempered by a fourth principle: the (imperfect) *right of a sovereign political community to regulate borders and control migration*. Borders are conceived as a relative good and recognised as legitimate only insofar as they both protect the common good of the established community and are porous and humane. The task of government is to form judgements based on a balance of local and universal goods, offering sanctuary in recognition of its commitment to the universal common good and finding mediating ways to ensure maintenance of the local common good of the nation. Therefore, political communities are invited to include within the exercise of sovereignty the establishment of just measures at local, national and global level to govern sanctuary seeking: aiming to minimise and accommodate forced migration flows. Contrary to the dominant politico-economic discourse (which implies that the duty of hospitality weakens sovereignty), sovereignty and hospitality emerge in CST as mutually implicating. Furthermore whilst secular approaches tend to emphasise the weakening of hospitality as we move towards border and liminal spaces, the Catholic (and indeed other faith tradition) emphasise the opposite: the intensification of the duty to hospitality as we reach borders.<sup>11</sup>

In this vein, and based on multifaceted theories of justice, a fifth principle takes CST beyond even much Kantian cosmopolitan theory. *Recognition of the social and political nature of the person implies a need for full migrant integration*. This implies a responsibility shared between migrant, civil society and the state to enable the meaningful participation in the host community.<sup>12</sup> To fail to offer means for participation offends against the requirements of contributive and social justice and denies the relational personhood of the migrant. In marked contrast to the focus we shall see in the final section of this paper on 'equality as sameness', the model for Christian sociality is one of participation, communication and mutual enrichment within a shared social space. This vision does not capitulate to a model of integration rooted in the assimilationist logic of market and state but rather takes as its form the Pentecostal ecclesiology we noted above. In the light of CST, migrants bear cultural and social as well as merely legal or political rights.

This theme is extended and inverted theologically by Paul VI's *Octogesima Adveniens*. Drawing on St John's Gospel, Paul VI places the host citizen centre stage: it is a condition of our knowing God

<sup>11</sup> See Benedict XVI's *Caritas in Veritate*, (Encyclical On Human Development in Charity and Truth), Vatican City (2009), n.62.

<sup>12</sup> See John Paul II, *Message for the Day of Migrants and Refugees*, (Vatican City, 2001), n.3. See also, on the question of just legislation to enable integration and participation in host communities, John Paul II, *Laborem Exercens* (Encyclical On Human Work), (Vatican City: 1981), n.23.

(both in the sense of being *able* to know God, and a responsibility of the gift of faith) that we engage actively in the love of our migrant neighbour: the presence of the migrant calls for a willingness of the settled to be unsettled. This teaching gives voice to the full and discomfiting transcendent humanism envisaged by a Christian reading of both hospitality and justice.

There is a notable widening of social and theological analysis of migration in the encyclicals following Paul VI's papacy. The beginnings of wider-ranging, more philosophically informed and integrated social theory issue from John Paul II and Benedict XVI. Both insist that migration concerns be viewed in the context of wider discussion of the twin principles of solidarity and subsidiarity as well as the political challenges of nuclear weapons, food security and increases in global inequality. Consequently they exhort the world to closer analysis of and better response to the deep roots of displacement – including addressing systems of international governance.<sup>13</sup> John Paul II notes that the implications of globalisation and the increased migrations of people create at local, national and global level increasingly intense 'socialization' between individuals and cultures. Yet, what is frequently lacking is the moral corollary to the fact of socialization: solidarity. Interdependence is a fact, but solidarity is the moral perspective we use to interpret the meaning and possibility for virtue implicit in this fact. He argued famously that solidarity,

is not a feeling of vague compassion or shallow distress at the misfortunes of so many people. . . . On the contrary, it is a firm and preserving determination to commit oneself to the common good; that is to say, to the good of all and of each. . . .because we are really responsible for all.<sup>14</sup>

Solidarity is not then, simply a duty in the face of globalised movements of people, but requires a form of active, social creativity; it implies the creation and protection of a space for human freedom which would not otherwise be. Moral responses to migration become, then, not simply a question of testing social policy against a list of requirements, but rather a wider exercise of political and cultural imagination. This understanding is largely absent from wider social reflection on migration, which tends to focus narrowly on the functions of the State.

<sup>13</sup> In *Sollicitudo Rei Socialis* (On Social Concern), (Vatican City: 1987) John Paul II reads forced migration in the context of the culture of death and continual failures to seek a peaceful international order – he suggests that the isolationism of modern states mitigates against solutions to systemic issues which lie at the root of migration concerns. In Benedict XVI's *Caritas in Veritate*, migration figures in the sociological context of all that challenges authentic human development and the opportunities for cooperation and solidarity which exist within the universal human family. See n.62.

<sup>14</sup> *Sollicitudo Rei Socialis*, n.38.

Benedict XVI's analysis develops both Paul VI's focus on human development and its obstacles and also suggests the need to invoke the principle of subsidiarity to apply to the migration question. He argues in this light that the appropriate level for moral engagement with this issue is now between states at an international level. Arguing that migration concerns now constitute 'a problem of epoch-making proportions', he argues for 'forward-looking policies of international cooperation' built on a willingness of states to collaborate in developing 'adequate international norms able to coordinate different legislative systems'.<sup>15</sup>

Sixth, and finally, regardless of policy direction or cultural differences, CST avows into the public space *the special, fundamental and particular dignity of the migrant/refugee as a sign of the Church's nature and reminder of the material reality of the human condition*. The person of the forced migrant is to be recognised starkly as not simply a political category but more fully as a kind of ethical epiphany of the human condition. As such the Church teaches the unique and special dignity of the forced migrant.<sup>16</sup>

### Shifts in the anthropology of asylum

Whilst migration has been a constant defining feature of British history, and refugee provision a structural reality since the 16<sup>th</sup> century Huguenot arrivals, we are now migrating internationally in ways quite different from the historical pattern. Such shifts are visible in the unprecedented pace, destination and complexity of motivation for migration.<sup>17</sup> By 2005 just under 200 million people worldwide, nearly 3% of world population were living outside their country of birth, with the rate of migration increasing threefold between 1965 and 2005 alone. Of these 200 million migrants the UNHCR estimates that 67 million constitute forcibly displaced persons, 26 million internally displaced by war, 25 million internally displaced by famine and natural disaster, just 16 million of these forced migrants have achieved formal legal status as refugees under the narrow terms of 1951 Convention.

We should note that this international framework for defining refugees is widely judged to be fraying at the seams, formed as it was in a Cold War world focused on conflict between states and

<sup>15</sup> *Caritas in Veritate*, n. 62.

<sup>16</sup> For a theological analysis of this see Orobator, 'Justice for the Displaced' in *Driven From Home*, David Hollenbach ed., (Washington: Georgetown Press, 2010).

<sup>17</sup> Andres Solimano, *International Migration in the Age of Crisis and Globalization: Historical and Recent Experiences*, (Cambridge: Cambridge University Press, 2010), pp.4–6.

ideologies and yet now failing to serve the perceived needs of governments or forced migrants. On the one hand, many forced migrants note that the Convention fails to provide a moral or legal framework for handling those fleeing famine, natural disaster, disease, and food security challenges.<sup>18</sup> On the other hand, the very states (including the UK), whose foreign policy traded on a strategic welcome to the asylum seekers of the Cold War, have long since come to articulate the presence of asylum-seekers as an unwelcome challenge. Following the peak numbers of 2000–2006, numbers claiming asylum in the UK are once again declining, but the political discourse, to which we now turn, has become increasingly brittle.<sup>19</sup>

The intensification of migration and the absence of consistent and effective integration strategies appear to create a disproportionate sense of burden amongst host communities, and further reinforce the popular perception of a situation out of control.<sup>20</sup> Amongst ordinary British voters there is clearly a disproportionate focus on asylum as *the* immigration issue. This heightened concern is matched by confusion and misperception in awareness of migration facts. A 2008 YouGov poll commissioned by the right-leaning think-tank, The Centre for Social Justice, found that 89% of people agreed that refugee protection is an important part of being British. However, of this same sample, 71% thought that Britain took too many asylum seekers, with nearly half believing the application figures to be nearly 4 times their actual level. 78% thought that the main reason asylum seekers came to the UK was for the benefit system, (which incidentally most respondents believed to be at least three times more generous than it is).<sup>21</sup>

In contrast to public perception, the UK fails to make even the top-ten list of host nations for refugees: Iran and Pakistan typically top the lists. Nearly half of all migration remains south-south migration. The overwhelming majority of refugees and forced migrants continue to move within their region of origin: Asia, Middle East, Latin American

<sup>18</sup> This essay uses the terms forced migrant, asylum seeker and refugee, understanding that in a UK context many forced migrants claim asylum because that is the only meaningful category/channel for application, but relatively few will have a recognized claim under the narrow and particular terms of the 1951 Convention (and 1967 Protocol); yet many remain de facto forced migrants, whose claim on a host nation is a moral claim for state protection.

<sup>19</sup> Arguably, whilst both the number of applications and number of those accepted as refugees declined through the second half of the 2000s, the political tension over the issue continued to rise, measured through opinion poll ratings. For a thorough analysis of UK social policy during this period see Sarah Spencer, *The Migration Debate* (London: Policy Press, 2011).

<sup>20</sup> Andres Solimano, *International Migration in the Age of Crisis and Globalisation: Historical and Recent Experiences* (Cambridge: Cambridge University Press, 2010) p. 5.

<sup>21</sup> See report *Asylum Matters: Restoring Trust in the UK Asylum System* (London: Centre for Social Justice, 2008).



and Africa; tending to move towards countries where bonds of family, culture and language are strong. In strong contrast to the public and political perception that most asylum seekers ‘choose’ the UK as a favoured destination state because of the welfare state, those who find themselves on British shores claiming asylum explain their reasons for being here variously, including family or cultural ties, previous colonial ties between country of origin and the UK, but also in many cases a sense that Britain was the only place they imagined getting a genuinely fair hearing.<sup>22</sup> We should note that a significant minority find themselves here accidentally – under the terms of the Dublin Convention asylum seekers are obliged to claim asylum in the first European country they enter. This agreement was intended to prevent multiple asylum claims, but in acting to prevent ‘asylum shopping’ it has left many obliged to claim asylum in countries they have no desire to be in and without support structures. Two examples suffice to humanise this analysis: typically a middle-eastern asylum seeker might be picked up at Heathrow en-route to family already safely in Canada and find herself required to claim asylum over a period of months or years in a country she has no connection to and no desire to remain in. Alternatively a French-speaking Congolese asylum seeker might be able to get to London but not to Paris where he has family, again navigating the asylum system in a third language and with potentially little support.

The following analysis situates these misperceptions and the challenges within a wider and deliberate state policy of isolationism and exclusion.<sup>23</sup> These exclusionary practices have two main consequences that might be considered to have *theological* import: firstly, that they mitigate against the possibility of wider social solidarity with those seeking asylum; and secondly, through this complex interaction between asylum seeker and state we find profound shifts in the exercise of state sovereignty. This reality presents a fundamental challenge to Christian readings of the purposes of government.

### Politics of sovereignty and the shifting character of the nation-state

We can deduce from recent sociologies of forced migration three critical shifts in the exercise of sovereign state power in relation to those

<sup>22</sup> These observations are based on five years work by the author amongst detained asylum seekers. Formal studies confirm these findings: Robinson and Segrott, *Understanding the Decision-Making of Asylum Seekers* (London: Home Office, 2002); Zetter et al, *An Assessment of the Impact of Asylum Policies in Europe: 1990–2000* (London: Home Office Research Study 259, 2003); H. Crawley, *Chance or Choice: Understanding Why Asylum Seekers Come To The UK* (London: Refugee Council, 2010).

<sup>23</sup> On the shaping of public opinion see articles in the special journal edition and book publication Sarah Spencer, ‘The Politics of Migration’, *The Political Quarterly* (Oxford: Blackwell, 2003).

seeking asylum. I summarise these here as: 1) intensification in the use of cruel and draconian powers of detention and forced expulsion by the state; 2) use of legislative power to remove welfare support and legal provision in order to deter future asylum claimants; 3) new practices of displacement of the responsibilities of the sovereign state onto private actors, and into offshore and inter-territorial spaces which aim to create maximum 'horizontal and vertical' distance between the sovereign state and the asylum seeker.<sup>24</sup> I understand these practices to constitute a fundamental giving way to the temptations latent within the practice of modern sovereignty, and to exist in fundamental tension with the principles of CST. I offer just three brief examples in policy practice.

### *Intensification in the use of cruel power*

Over the last decade, through a series of reforming Immigration Acts the use of detention, forced removal and deportation has been substantially increased. Alongside this, government has moved to reduce the time periods available to submit evidence, to reduce and in some instances remove welfare support and to reduce legal aid provision. Despite interesting new initiatives the coalition government has made clear its determination to further reduce processing times as well as to reduce legal aid as a disincentive to appeal legal decisions. The single, stated aim of current UK government immigration policy – against which it formally evaluates all its migration policy – is to reduce the number of migrants entering and remaining within the UK. The clear goal of both recent administrations has been to deter future entrants, to work harder to distinguish so-called deserving from undeserving migrants (and note: creating new moral narratives needed to sustain such new political categories). For those already in the system the aim is to increase the volume of returns.<sup>25</sup>

Matthew Gibney argues that the turn towards significantly increased deportation and removal marks a notable departure from previous policy, not simply insofar as it has vastly increased the

<sup>24</sup> See foreword to Thomas Gammeltoft-Hansen, *Access to Asylum*, (Cambridge, Cambridge University Press, 2011).

<sup>25</sup> For a summary of new policy initiatives and their impact, see Matthew Gibney, 'Asylum and the Expansion of Deportation in the United Kingdom', *Government and Opposition*, Vol 43, No. 2, pp.146–167, 2008. See also Home Office, *Controlling our Borders: Making Migration Work for Britain*, (London: Home Office, February 2005). On the non-suspensive right of appeal for applications from 'safe' countries required to appeal from abroad see the 2002 Nationality, Immigration and Asylum Act. On new case worker pattern, see information from Refugee Council, 'The New Asylum Model', Refugee Council Briefing, August 2007, <http://www.refugeecouncil.org.uk/policy/briefings/2007/nam.htm> (accessed 1.7.2011).

number of forced returns (more than doubling in nine years under Blair alone) but, insofar as such policy has turned the *symbolic* but largely unused coercive power of the liberal state into a *practical* mechanism of the state's daily life, this increased use of cruel power changes subtly but importantly the character of the sovereign state.<sup>26</sup> Whilst the state has always possessed an arsenal of cruel powers, liberal states claim to differentiate themselves by largely refraining from deploying such powers.<sup>27</sup> Gibney is clearly concerned that the increased use of cruel power against migrants is in the end a form of deeply damaging liberal democratic self-harm, the stuff of Hegelian tragedy.

### *Privative policy*

Judge Stephen Sedley singles out for comment the use of recent legislation to create new privations. The removal of food vouchers, housing and legal aid is intended to act as a deterrent to other claimants and has become a structural part of an asylum deterrence policy: the welfare state a weapon in an arsenal. But Sedley goes further and argues that the use of legislation to reduce and remove provision moved into a sphere where it has begun to challenge the basic constitutional framework that structures British justice.<sup>28</sup> Addressing the 2004 Asylum and Immigration Act he argues that policy makers introduced a blatant constitutional challenge to act as a 'lightning conductor' in order to distract from other dubious constitutional provisions they wished to see passed into law. The lightning conductor clause stated that the Act would remove all appeal and judicial review rights from the asylum and immigration system. No decision of the Tribunals could be challenged, unless the Tribunal itself wished to challenge its own decision. This prompted a major Parliamentary revolt and the clause was dropped. However, in the furore the lesser noticed but equally dubious Section 8 passed with comparatively little comment. It stated that both an immigration officer and an immigration judge were to take into account in determining the credibility of an asylum seeker's statement a number of things, including whether a

<sup>26</sup> Gibney, *op cit*. See also Sarah Spencer, *The Migration Debate* (London: Policy Press, 2011).

<sup>27</sup> Gibney, *op cit*, pp.146–167. This article offers a fundamental and wide-ranging analysis of the implications for the liberal state of this shift towards active use of 'cruel power' in asylum cases. My analysis here is very much in debt to Gibney. See also *Asylum Matters* (Centre for Social Justice, 2008). Figures for cases overturned on appeal continue around 20% mark. See also Stephen Sedley, *Ashes and Sparks: Essays on Law and Justice*, (Cambridge: Cambridge University Press, 2011), pp.388–9.

<sup>28</sup> Stephen Sedley, *Ashes and Sparks: Essays on Law and Justice*, (Cambridge: Cambridge University Press, 2011), pp.388–9. See also p.383, pp.271–2, p.187.

false passport had been used. This fact alone should be judged by both immigration officer and judge to seriously damage a claimant's credibility and, as such constituted a serious intrusion into judicial independence, not to mention an irrational provision that failed to note the realities of how one might actually manage to escape a dangerous regime.

### *Displacement of powers*

Thomas Gammeltoft-Hansen's analysis of asylum practice in the context of International Law demonstrates resoundingly that sovereign states, and the UK very much among them, are moving to displace their migration control functions onto the high seas, into isolated detention centres and offshore handling facilities and into the hands of private security firms. These practices have a range of consequences including the distancing of the state from formal, direct responsibility for the moral conduct of these processes, but equally concerning for Catholic Social Teaching, the conscious use of such distancing mechanisms to prevent assimilation, integration and socialisation of asylum seeker populations with host populations. This is the antithesis of the call for coordinated international migrant structures in *Caritas in Veritate*.

Yet, *Caritas in Veritate*, with its focus on the International, misses perhaps the most invidious, mundane and ordinary injustices of European asylum practice. Numerous reputable independent reports indicate that these shifts in state practice are experienced as denials of natural justice – and what we might refer to within the framework of CST as commutative justice. Given voice through such reports, asylum seekers and forced migrants frequently express their frustration, bewilderment, distrust, and anger towards a system which many feel fails to respond to even their most basic human needs.<sup>29</sup> Concrete experiences which appear to betray a natural sense of justice and which cause enormous distress to individual asylum seekers include: the increased use of the arbitrary detention of asylum seekers for administrative purposes; lack of access to competent immigration solicitors; proposed restrictions to legal aid; the criminalisation of undocumented asylum seekers; use of the tactical splitting of families to achieve returns; use of arbitrary and terrifying dawn raids; lack of translation services meaning that many cannot complete the

<sup>29</sup> Reports of the Independent Asylum Commission (www.independentasylumcommission.org), *Asylum Matters: Restoring Trust in the UK Asylum System* (London: Centre for Social Justice, 2008), Report to the United Kingdom Border Agency on "Outsourcing Abuse": Baroness Nuala O'Loan, March 2010, *Detained and Denied: The Clinical Care of Immigration Detainees Living with HIV* (London: Medical Justice, 2011).

very forms that are the gateway to safety; the inefficiency in private Section 4 and Section 95 voucher and ID card provision, which, for many asylum seekers, means lengthy periods of destitution and the lack of access to basic health care. Sociologist Liza Schuster argues that these individual grievances need to be seen within the context of a European failure of asylum regimes. Her work portrays the stories of young Afghan men desperate to take responsibility for themselves – but unable to understand and negotiate the system they are subject to; the story of European governments using the international framework in order to actively evade its own responsibilities; and the story of charities and NGOs seeking to negotiate this minefield and assuming civil society's responsibility to ensure in this mess some basic level of care and hospitality.<sup>30</sup>

In a set of unfinished writings on the nature of judgement, Hannah Arendt offered the following warning signs of forms of political judgement that have lost their moral force: firstly, political systems whose complexity and opaqueness seems to defy the comprehension of those whose lives and well-being are dependent on it; secondly, political processes whose systems come to treat the human life they handle as essentially superfluous; thirdly, systems whereby human life appears to be treated through systems of automation where 'calculating' rather than 'thinking' dominates.<sup>31</sup> Taken together these factors indicate signs of a system manifesting a fundamental crisis of human value. Applied to Liza Schuster's findings, Arendt appears to offer an acute analysis of the moral failures of the politico-economic approach to migration, and helps provide a further context in which to situate the logic that has led to such intensive shifts in the practices of sovereignty.

In the light of this exposition, we might usefully now pause and subject our earlier theological norms to a critique. The final section of this paper will argue that, despite the distinctive scriptural, theological and social sensibility marking official Catholic approaches to migration there remain both areas of underdevelopment and omission in official migration social teaching, which continue to limit its political, pastoral and social impact in the service to the forced migrant. I address two such areas.

### The failure of judgement and the dynamics of democratic exclusion

Whilst CST has significant value as a body of clear and authoritative social teaching, it has a tendency to approach social questions

<sup>30</sup> *ibid.*

<sup>31</sup> Presumably, as implied earlier, this applies as much to banking practice as it does to the complexity and inhumanity of aspects of the asylum system.

in an overly deductive fashion, thus becoming detached from the 'co-belonging of deed and vision' as well as manifesting a lack of engagement with the insights of broader political philosophies.<sup>32</sup> The first weakness can lead to a failure to engage sufficiently in the practical reality to which it attends, the second to a failure to develop a philosophically and theologically robust engagement with modernity as the context of the Church's own thinking, practice and teaching.<sup>33</sup>

Whilst a correlation of the six principles outlined above to the practices outlined in the first half of this paper suggest areas of radical tension, I also wish to argue that this teaching has a tendency to hover rather abstractly over two important areas: the first is the challenge posed to the dignity of judgement itself as a prized virtue in the migration process, and in particular the importance of attending to the virtue of commutative justice as a vital basis for ensuring the hallowing of bare migrant life. Secondly, this relates to a missing wider, theological analysis of the prevailing political dynamics of liberal modernity and state sovereignty, which structure practices of democratic exclusion. To borrow and apply to migrant concerns John Milbank's language, the difficult and unwelcome revelation born by those seeking asylum, might be captured thus: forced migrants' experience Enlightenment modernity as simultaneously, intensely and dramatically, loss and gain – we have gained the discourse of natural rights rooted in individual liberty and equality and a nascent politics of universal human rights, but we have lost the terms of a freer movement and form of association, in which identities were tied less strongly to the politics of State membership. A space for a meaningful universal dignity and freedom narrows as State implies nation, and nationalisms and the popular will of democracies produce their superfluous others. There is too little space in a short paper to explore these themes in full: my argument is that attention to these two themes is necessary as the basis for the development of contemporary CST. The remainder of this paper offers an initial stimulus towards this wider development.

### *On the virtue of commutative justice and the dignity of judgement*

Despite the understandable and important focus of *Caritas in Veritate* on an international agenda, the experience of many British forced migrants is that the absence of just legislation at a national level (and even where legislative protection nominally exists there is an

<sup>32</sup> John Milbank, 'On Complex Space' in *The Word Made Strange* (Oxford: Blackwell, 1997), p.270.

<sup>33</sup> See John Milbank's chapter 'On Complex Space' in J. Milbank, *The Word Made Strange: Theology, Language, Culture*, (Oxford: Blackwell, 1997).

absence of qualities of judgement exercised by those responsible for enacting the law) has a profound effect on the possibilities of a just outcome. It also erodes any sense of dignity for the migrant negotiating the claims process; CST has failed to understand that procedural justice *relates directly* to outcome justice, commutative justice to social and distributive justice. Recent official Papal CST, the documents produced by Bishops' conferences and the writing of Catholic theologians have tended to focus on the terms of wider distributive and social justice and have largely failed to address the terms of commutative justice more fully in the light of the cultures of asylum practice.

Focusing more acutely on the terms of commutative justice creates two potentially interesting directions of travel: it brings attention back to the practices of the state and the responsibilities they bear for upholding practices of human dignity. However, addressing questions of commutative justice also focuses attention on the position of communities on some of the most deprived estates in the country who carry the State's displaced moral burden, required to act as 'host' to large numbers of asylum seekers. It creates a mutual category for handling both duty to outsider and responsibility to established community – something current social policy so manifestly lacks. In failing to meet the terms of commutative justice, the state fails in its dual responsibility to negotiate the local and universal common good. It is also notable that addressing this aspect of just conduct (and its absence) has been at the heart of much distinctive transformative Church action and campaigning. It is at the heart of diocesan and local Church befriending schemes, the Sanctuary Pledge campaign, and Citizens for Sanctuary achievements at Lunar House, amongst many others.<sup>34</sup>

### *On democratic exclusion*

Any attempt to regenerate such inter-subjective responsibilities needs to be framed, however, within an acute analysis of modernity as well as a set of theological norms. It is Charles Taylor's work that offers resources for a further, Catholic philosophical development.<sup>35</sup> Taylor's contribution to developing the scope of CST on migration

<sup>34</sup> On the Lunar House campaign and involvement of Catholic women religious see Austen Ivereigh, *Faithful Citizens* (London: DLT, 2009); on wider Church initiatives see Susanna Snyder, *Asylum-Seeking, Migration and Churches* (Farnham: Ashgate, forthcoming 2012).

<sup>35</sup> This section draws heavily from Taylor's essays 'Nationalism and Modernity' and 'Democratic Exclusion (and its Remedies?)' in Charles Taylor, *Dilemmas and Connections: Selected Essays* (Cambridge, Mass.: Harvard University Press, 2011)

is centred in his analysis of democratic exclusion. The theologian Giovanni Battistella notes that ‘the temptation of sovereignty is to feel free from obligations towards foreigners, who have no claims on the state.’<sup>36</sup> In response to this reality, he suggests that it is international Human Rights culture that provides a challenge to the reductivist politico-economic approach. Whilst Taylor is not addressing forced migration per se, the implications of his work on modernity and liberal democracy suggests that the picture is much more complex than this. I contend that CST badly needs to grasp this analysis and draw it into the fabric of its own envisioning of both the situation of the forced migrant and the alternative political cultures which might be encouraged and animated through Catholic social thought.

Taylor professes himself to be against simple theoretical denunciations of nationalisms and exclusions and calls instead for a deeper understanding and engagement with the culture of modernity. The theological corollary would seem to be a nuanced theology of culture that understands the tensions and contradictions, aspirations and failures of the nation state and seeks to convert those aspirations towards a truer source. Taylor describes his task as ‘to perceive more clearly and starkly the nature of our democratic dilemma’; this democratic dilemma produces its “other” and has consequences for the vulnerable outsider. The picture which emerges from Taylor is this: the treatment of asylum seekers is bound up in the wider politico-economic process of state cultures, linked to the wider process of mutual formation of state and nation. Modernity is thus presented to us in moral terms as embodying ‘a drive towards inclusion with a standing temptation towards exclusion’.

The problem with asylum seekers is that their claim is simply and absolutely a *moral* claim: that is a claim to protection, to political membership of a stable territory that provides the conditions for basic well-being. Yet the State cannot relate easily to an absolute moral claim made by an outsider – for the State it will always be more complex than that. Drawing on Ernest Gellner’s analysis of modern societies as economies, Taylor argues that one key role of the state is to produce and manage the conditions required by markets.<sup>37</sup> The market needs a flexible and highly mobile workforce (and at this level is attracted to migrant labour) but this workforce needs to manifest a homogeneous culture, which enables broad-based, context-free communication; a standard language and culture. The political corollary of this economic process is found thus: the ‘standing dilemma’ of

<sup>36</sup> Graziano Battistella, ‘Migration and Human Dignity: From Policies of Exclusion to Policies Based on Human Rights’, in *Promised Land, Perilous Journey: Theological Perspectives on Migration*, eds. Daniel Groody and Gioacchino Campese (University of Notre Dame Press, 2008) pp177–191, p.181.

<sup>37</sup> Ernest Gellner, *Nations and Nationalism* (New York: Cornell University Press, 1983).



democracies is the need for strong social cohesion and high levels of participation. In modern societies the State takes on this role as educator and facilitator of the homogeneous culture. What emerges into view is a dialectical process of creation of state and nation, in which, despite appearances, nationalism does not drive homogeneity, rather homogeneity is a requirement of the state and eventually emerges as a product: nationalism.

In turn this implies for the outsider a double dialectic: firstly, as noted, a desire (at least in periods of growth) to consume the labour of the migrant other, but a desire to limit the presence, volume and permanence of outsiders, who bring an indigestible and threatening pluralism. The second dialectic emerges from the logic of the political superstructure itself: regimes of popular sovereignty offer no formal place to the outsider and in and of themselves generate no moral limits to the treatment of the outsider, yet their wider discourse of legitimacy trades ideologically from the notion of a radical equality. Thus through the grating and grinding of this dialectic, modernity produces its own uniquely modern anti-modernity. Both political and economic structures produce a strong temptation to exclude and to think in terms of instrumentalist moralities which struggle to handle moral claims for protection *qua* moral claims: to dignity, the universal destination of goods and the notion of a complex, shared political community. This becomes a wider crisis of human value when this temptation to exclude is combined with a system failing to uphold standards of judgement: failing to check its own temptation to exclude. This is precisely the direction of travel evident in the UK and wider European asylum practice. And yet this failure ultimately erodes not just the outsider seeking protection but modernity itself.

Taylor suggests that the shared civic task for our times is to construct philosophical and political ways to imagine how we might hold democracy to its primarily inclusive desires, and resist its exclusive and homogenising tendencies through imagining new patterns of 'shared identity space', which become capable of handling provisional and complex social identities. Political ecclesiology provides a vision of a 'Pentecostal' sociality as a transformation of the Babel experience. Both Taylor's analysis and the wider logic of CST present invitations to faith communities and theologians to embody such a sociality by being truly present to those who so particularly represent the sign of the Church's own nature in our cultures. Almost inevitably this means engaging a willingness to 'get in the way' of the State. We do this because, theologically speaking, it is right to do so and a condition of knowing God, but also because in the end it steadies the self-harming hand of modernity, challenging what we have come to see as the inevitable temptations of sovereignty. This is neither a theological baptism of modernity nor a further Catholic anti-modernism, but expresses the value of the Church's Social Teaching

as an envisioning *within* culture: an expression of the logic of gift: charity in the context of a multivalent truth.

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