

# Martyrdom, Antinomianism, and the Prioritising of Christians – Towards a Political Theology of Refugee Resettlement

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## ABSTRACT

This article considers the approaches taken in the United States (US) and Australia to prioritising the resettlement of Christians from Syria and Iraq. Focusing first upon respective models and the immediate political factors that lead to their adoption, it analyses in depth the specific role played by the evangelical constituency in the US, and their theologically-infused concern for the “persecuted church” in “enslaved” lands. Recognising this movement enjoys less influence in Australia, the article considers the ways in which Australia’s resettlement policies and political narratives have nonetheless increasingly participated in tropes familiar to classical antinomian political theology, not least that resettlement is tied to a redemptive generosity of the State that works to denigrate and undermine the legal obligations demanded by those who arrive irregularly by boat. The article also critiques the use of “vulnerability” as a touchstone principle for the fair allocation of scarce resettlement places, and its propensity to be used for cherry-picking purposes. Finally, as part of the argument that resettlement is susceptible to being used as a vehicle for those motivated by more explicit theological concerns, the article explores the leveraging for political, redemptive, and eschatological purposes of images and narratives of the “martyred” middle-eastern Christian.

**KEYWORDS:** resettlement, martyrdom, political theology, vulnerability, evangelicalism, antinomianism, prioritising Christians

## 1. INTRODUCTION

In the hours after President Trump signed his first Executive Order restricting travel from Muslim majority countries,<sup>1</sup> while European leaders were expressing their concern at its manifestly discriminatory impact and intent, Australian politicians remained conspicuously sanguine.

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1 Executive Order No. 13769, 82 F.R. 8977 (2017), *Protecting the Nation from Foreign Terrorist Entry into the United States* (27 January 2017).

Taking a leaf from the ASEAN's human rights "quiet diplomacy" playbook,<sup>2</sup> the then Prime Minister Malcolm Turnbull insisted that he would not "run commentary on the domestic policies of other countries", seizing the opportunity instead to promote Australia's border security as "the envy of the world".<sup>3</sup> Foreign Minister Julie Bishop felt no such reticence, congratulating the President on his adoption of "strong immigration and border protection policies",<sup>4</sup> implicitly endorsing the controversial view that the Executive Order had anything to do with either. The positively ebullient Treasurer Scott Morrison, picking up the PM's baton, claimed triumphantly that the world was finally "catching up with Australia".<sup>5</sup>

On this at least, the self-congratulatory Morrison appears to have been aping an accepted truth amongst policy-makers within successive Australian governments: that Australia's much-maligned alchemic formula to deter and deflect refugees will only enjoy normative and political legitimacy through its adoption by governments in North America and Europe.

The leaked transcript of the disconcerting first conversation between Prime Minister Turnbull and President Trump, held the day after the Executive Order's promulgation but not leaked until August that year, reflected this mindset,<sup>6</sup> the Prime Minister taking direct credit for the new American policy. "When I was speaking with Jared Kushner just the other day" said the Prime Minister, "we reflected on how *our* policies have helped to inform *your* approach. We are", he said "very much of the same mind".<sup>7</sup>

The conversation provides fertile material for examining the way States look at each other's rhetorical, political, and legal approaches to the irregular movement of people – about their efficacy, their public and electoral popularity, their political feasibility, if not necessarily their legality or pragmatic viability – and considering whether and how they can be adopted in their own backyards and maritime zones. Indeed, Donald Trump seemed particularly interested in the Prime Minister's response to his concern – his outrage – that President Obama had agreed to resettle people who were "in prison" in Nauru and Papua New Guinea. "I guarantee you they are bad. That is why they are in prison right now", said the President.<sup>8</sup> When Turnbull, increasingly desperate to save a deal which alleviates the political pressure

2 M. Davies, "The ASEAN Synthesis: Human Rights, Non-Intervention, and the ASEAN Human Rights Declaration", *Georgetown Journal of International Affairs*, 14(2), 2013, 51, 52.

3 K. Barlow & T. Compagnoni, "Malcolm Turnbull Won't Join Global Trump Criticism, 'It Is Not My Job'", *Huffington Post*, 30 Jan. 2017.

4 Interview with Julie Bishop, Minister for Foreign Affairs and Trade (Doorstop Interview, Los Angeles, United States) 29 Jan. 2017, available at: [https://foreignminister.gov.au/transcripts/Pages/2017/jb\\_tr\\_170129.aspx](https://foreignminister.gov.au/transcripts/Pages/2017/jb_tr_170129.aspx) (last visited 24 Sept. 2019).

5 C. Chang, "Trump Ban Inspires Anger Around the World", *The Australian* (online), 30 Jan. 2017, available at: <https://www.news.com.au/world/north-america/trump-ban-inspires-anger-around-the-world/news-story/95bd29507f660315436bf9d184dc192a>.

6 G. Miller, J. Vitkovskaya & R. Fischer-Baum, "'This Deal Will Make Me Look Terrible': Full Transcripts of Trump's Calls with Mexico and Australia", *Washington Post* (online), 3 Aug. 2017, available at: [https://www.washingtonpost.com/graphics/2017/politics/australia-mexico-transcripts/?utm\\_term=.2c4ef30db646](https://www.washingtonpost.com/graphics/2017/politics/australia-mexico-transcripts/?utm_term=.2c4ef30db646) (last visited 24 Sept. 2019).

7 *Ibid.* (emphasis added).

8 *Ibid.*

cooker of Australia's unsustainable offshore processing regime, explained that the refugees were not necessarily bad, it was just that Australia locks up *everyone* who arrives by boat in order to "deprive people smugglers" of their "product", Trump suddenly seemed animated and interested. "That is a good idea", said the President. "We should do that too", adding in a revealing afterthought, "You're worse than I am!"<sup>9</sup>

Commentators have parsed the leaked transcript for everything from its comic value<sup>10</sup> and the President's geopolitical naivety<sup>11</sup> and mercurial temperament,<sup>12</sup> to what it says about Australia's "border industrial complex"<sup>13</sup> and the Government's duplicity in the representation of refugees.<sup>14</sup> What seems to have escaped attention, however, is the content of the Australian policy purportedly being aped by American policy-makers. This is despite the Prime Minister's clear brag:

It is very interesting to know how you prioritize the minorities in your Executive Order. This is exactly what we have done with the program to bring in 12,000 Syrian refugees, 90% of which will be Christians.

The boast that Australia's "Christians First" resettlement policy was the inspiration for the Americans is a tall claim. If anything, as with Australia's policies of interdiction and offshore processing over the decades,<sup>15</sup> the actual policy flow was from north to south. Behind the US "Muslim Ban" and its original exemption for those from "minority religions" facing "religious persecution" lies not the hand of Australian norm entrepreneurs so much as a long-running campaign of white evangelicals whose support the Trump campaign so meticulously and successfully courted.<sup>16</sup> As several surveys indicated at the time, this group overwhelmingly

9 *Ibid.*

10 Late Night hosts, for instance, made much of the President's mangling of the Prime Minister's name.

11 D.A. Graham, "Leaked Transcripts Show How Foreign Leaders Manipulate Trump", *The Atlantic* (online), 3 Aug. 2017, available at: <https://www.theatlantic.com/international/archive/2017/08/unprecedented-look-into-trumps-stagecraft/535794/> (last visited 24 Sept. 2019).

12 J. Havercroft, A. Wiener, M. Kumm & J.L. Dunoff, "Donald Trump as Global Constitutional Breaching Experiment", *Global Constitutionalism*, 7, 2018, 1–13. The President is alleged to have slammed the telephone down in disgust at what he subsequently derided as Obama's "dumb deal" of a refugee swap.

13 C. Smith, "'Authoritarian Neoliberalism' and the Australian Border-Industrial Complex", *Competition and Change*, 23, 2018, 192–217.

14 See, for instance, J. Burnside QC, "The Leaked Transcript of Turnbull's Call with Trump Shows Him at His Worst", *The Guardian* (online), 5 Aug. 2017, available at: <https://www.theguardian.com/commentisfree/2017/aug/05/the-leaked-transcript-of-turnbulls-call-with-trump-shows-him-at-his-worst> (last visited 24 Sept. 2019).

15 See D. Ghezelbash, *Refuge Lost*, Cambridge, Cambridge University Press, 2018, on the influence of American policy-makers on Australia's Pacific Solution.

16 A.L. Whitehead, S.L. Perry, & J.O. Baker, "Make America Christian Again: Christian Nationalism and Voting for Donald Trump in the 2016 Presidential Election", *Sociology of Religion*, 79, 2018, 147–171. Trump's evangelical advisory board, which continues to meet in secret, is a who's who of influential figures in conservative evangelicalism. See K. Shellnutt & S. Eekhoff Zylstra, "Who's Who of Trump's 'Tremendous' Faith Advisers", *Christianity Today*, 22 Jun. 2016; J. Walters & S. Morris, "Trump's Evangelical Panel Remains Intact as Others Disband. Here Are His Religious Cheerleaders", *The Guardian* (online), 19 Aug. 2017, available at: <https://www.theguardian.com/us-news/2017/aug/18/donald-trump-evangelicals-charlottesville> (last visited 24 Sept. 2019).

supported the Ban, even as most evangelical leaders and non-white communities opposed it.<sup>17</sup>

Moreover, the Australian policy of prioritising Syrian and Iraqi Christian refugees for resettlement can be traced to this same movement's politicised mission: to save "martyrs" in the "persecuted church" from the existential threat posed by Islam, and through their redemptive stories revive a religion weakened by a century of secularism in the West in time for the end of days – a political theology that marries nicely with the world views of Steve Bannon and Vice President Mike Pence (who calls himself an "evangelical Catholic"), if not necessarily President Trump himself.

Some European States have pursued similarly discriminatory policies. During the refugee "crisis" of 2015,<sup>18</sup> Poland, Slovakia, and the Czech Republic all announced they would only accept Christian refugees under the EU's relocation scheme for Syrian and Iraqi refugees<sup>19</sup> set up under the European Agenda on Migration.<sup>20</sup> While rationales focused more on demographic and security threats from Muslim immigration and the maintenance of Europe's Christian character, it is not hard to discern theological commonalities, especially in the statements of those private actors with whom these governments are working.<sup>21</sup>

In the US, anti-Islamic elements of the Executive Order were notoriously easy to discern and formed the crux of both the public debate and the legal challenges. President Trump's campaign speeches, press releases, and interviews in which he had called *inter alia* for a "Muslim ban" and "a total and complete shutdown of Muslims entering the United States", were presented as evidence of manifest discriminatory intent that could overcome any argument relying solely upon the purported facial neutrality of the

17 See G. Smith, "Most White Evangelicals Approve of Trump Travel Prohibition and Express Concerns about Extremism", Pew Research Centre, 27 Feb. 2017; R. Jones & D. Cox, "47% of the Country Say Trump Has Violated the Constitution, but Few Support Impeachment", Public Religion Research Institute (PRRI), 24 Feb. 2017.

18 Noting Jane McAdam's hesitancy to describe the events of this period as a "crisis". J. McAdam, "Human Crisis or Crisis of Humanity?", Radio National *Sunday Extra*, 6 Sep. 2015, available at: <https://www.abc.net.au/radionational/programs/sundayextra/human-crisis-or-crisis-of-humanity3f/6750600> (last visited 24 Sept. 2019).

19 Z. Wasik & H. Foy, "Poland Favours Christian Refugees from Syria: Some EU States Select Churchgoing Refugees for Resettlement in Contentious Policy", *Financial Times*, 21 Aug. 2015, available at: <https://www.ft.com/content/6edfdd30-472a-11e5-b3b2-1672f710807b> (last visited 24 Sept. 2019) ("Poland agreed to accept 50 Christian families from Syria under an initiative led by a private organisation and agreed by the prime minister. Slovakia has said it will take 200 refugees from the war-torn country, but only if they are devout churchgoers. The Czech Republic applied the same criteria to 70 families granted asylum this year. 'They [non-Christian refugees] can be a threat to Poland. I think it is a great way for Isis to locate their troops [...] all around Europe,' said Miriam Shaded, head of Estera, the Polish foundation that arranged the selection and immigration of Mr Saad's and 49 other families into Poland.")

20 See European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and Committee of the Regions, A European Agenda on Migration*, COM(2015) 240 final, Brussels, 13 May 2015.

21 Above n 19, such as the work of the Estera Foundation in Poland; see also A. Rettman, "EU States Favour Christian Migrants from Middle East", *EU Observer*, 21 Aug. 2015 ("A contact from another agency which works to highlight the persecution of Christians in the Middle East [...] told this website: 'There are quite a few EU countries which have, for years, unofficially given preference to asylum applicants of Christian origin'. She named Belgium, Ireland, Hungary, Poland, Slovakia, and Sweden [...]").

Order.<sup>22</sup> Surveys on the Order's popularity almost exclusively considered its "Muslim Ban" component rather than the prioritising of Christian refugees.<sup>23</sup> Although presented as evidence of religious animus in litigation, the provenance of those provisions, and the extent to which the prioritising of Christians fulfilled a pledge to those evangelical churches that had lobbied to highlight the global plight of the "persecuted church", largely escaped critical attention. A similar gap is found in the resettlement literature more broadly. Thus, while some refugee studies scholars have started to become interested in the rise of "faith based organisations" in resettlement programmes, they have largely neglected the geopolitical theology driving many of these communities, including the affective, redemptive trope of martyrdom.<sup>24</sup>

This article starts to fill some these gaps by contrasting the history and quasi-political theologies underpinning the approaches taken in the US and Australia in their programmes to prioritise the resettlement of Christians from Syria and Iraq. In doing so, it first looks at the respective models and the immediate political factors that lead to their adoption. It then takes a closer look at the specific role played by the evangelical constituency in the US, and their theologically-infused concern for the "persecuted church" in "enslaved" lands. Recognising that this movement enjoys far less public status in Australian politics, the article considers the ways in which Australia's resettlement policies and political narratives have nonetheless over time increasingly participated in tropes familiar to classical antinomian political theology, not least in the notion that resettlement is tied to a redemptive generosity of the State that works to denigrate and undermine the legal obligations demanded by those who arrive irregularly by boat. In this context, the article also critiques the use of "vulnerability" as a touchstone principle for the fair allocation of scarce resettlement places, and its propensity to be used for cherry-picking purpose. Finally, as part of the argument that resettlement is susceptible to being used as a vehicle for those motivated by more explicit theological concerns, the article explores the leveraging for political, redemptive, and eschatological purposes of images and narratives of the "martyred" middle-eastern Christian. In doing so, the article can be seen as contributing to the "corporeal turn" in political thought in which the distinction between our biological and political lives is increasingly blurred.<sup>25</sup>

22 One of the many tests adopted by lower courts with respect to the legality of the various Executive Orders drew upon the finding in *Kleindienst v. Mandel*, 408 U.S. 753 (1972), that a court will not "look behind" the exercise of the President's discretion' taken "on the basis of a facially legitimate and bona fide reason". This formed the basis of the Supreme Court majority's rejection of challenges to the third iteration of the order in *Trump v. Hawaii*, 138 S. Ct. 2392 (2018). However, most lower courts (and the dissenting opinions) used contextual evidence to establish the religious animus underpinning the Order's true intent. See, for instance, *Washington v. Trump*, 847 F.3d 1151, 1164 (9th Cir. 2017) on EO 1; and *Hawaii and Elshikh v. Trump*, CV. NO. 17-00050 DKW-KSC (2017) on EO 2, in which Judge Watson of the US District Court for the District of Hawaii found: "The record before this Court is unique. It includes significant and un rebutted evidence of religious animus driving the promulgation of the Executive Order and its related predecessor".

23 See, for instance, the polling questions asked in the Pew and PRRI surveys cited in Ghezl bash, *Refugee Lost*.

24 See, for instance, C. Goodall, *Shouting Towards the Sky: The Role of Religious Individuals, Communities, Organisations and Institutions in Support for Refugees and Asylum Seekers*, UNHCR, New Issues in Refugee Research, Research Paper No. 275, Apr. 2015.

25 See P. Owens, "Reclaiming 'Bare Life'?: Against Agamben on Refugees", *International Relations*, 23, 567, 568.

One caveat is necessary. Political theology is now a sub-discipline in its own right, and has the tendency to involve scholars in poor historical and anthropological musings.<sup>26</sup> This article represents a cautious foray into the realm of political theology as a theory that helps link the explicit theological objectives of those concerned with the “persecuted church” to the quasi-theological resonances already evident in resettlement discourse. As an under-explored area in the discipline, a subsidiary aim of the article is to provoke a debate about the adequacy of political theology as a descriptive and analytic device in refugee studies more broadly.

## 2. PRIOTISING CHRISTIANS, LIMITING MUSLIMS

### 2.1. Australia’s quiet priorities

In the dying days of Prime Minister Tony Abbott’s administration in late 2015, the Australian Government announced a one-time additional 12,000 places in the resettlement programme for Syrian and Iraqi refugees. In announcing the allocation, a joint media release of three federal Ministers and the Prime Minister noted that “[o]ur focus will be on those most in need – the women, children and families of persecuted minorities who have sought refuge from the conflict in Jordan, Lebanon and Turkey.”<sup>27</sup>

Those who had followed the political debate in the year leading up to the announcement would have had little difficulty reading between the lines of the statement. Powerful voices had long been demanding that persecuted Christian be prioritised in Australia’s resettlement policy. And despite political and diplomatic prevarications otherwise,<sup>28</sup> there was little doubt that “persecuted minorities” meant Christians. Former Minister for Communications and soon-to-be Prime Minister Malcolm Turnbull was especially animated on the plight of Christians in Syria in the “increasingly sectarian Middle East”.<sup>29</sup> His views were echoed by two other senior government Ministers, both of whom had made Christianity central to their political

26 See A. Toscano, *Fanaticism: On the Uses of an Idea*, London-New York, Verso, 2010, 203f. Toscano critiques the anthropological assumption behind much “political religion” that “man is a ‘religious animal’ whose propensity to devotion can consequently be exploited for non-religious aims”.

27 Prime Minister, the Hon. Tony Abbott, Minister for Foreign Affairs, the Hon. Julie Bishop, Minister for Immigration and Border Protection, the Hon. Peter Dutton, and Minister for Social Services, the Hon. Scott Morrison, joint media release on Australia’s resettlement of an additional 12,000 refugees in response to the Syrian and Iraqi humanitarian crisis, 9 Sep. 2015.

28 L. Bourke, “Abbott Government Agrees to Resettle 12,000 Syrian Refugees in Australia”, *Sydney Morning Herald*, 9 Sep. 2015: “[Prime Minister Tony Abbott] denied there would be any preferential treatment given to Christians over Muslims despite reports of some backbench anti-Muslim sentiment. ‘It’s those who can never go back that we’re focused on,’ he said.” Similarly, Foreign Minister Julie Bishop on ABC’s Triple J Hack, 9 Sep. 2015: “TOM TILLEY: [...] Can you ensure that Christians won’t be prioritised over Muslims, purely on the basis of their religion? JULIE BISHOP: What we are doing is prioritising the persecuted minorities—that includes Muslims.”

29 A. Henderson & C. Uhlmann, “Syrian Migrant Crisis: Christians to Get Priority as Abbott Faces Pressure to Take in More Refugees”, *ABC News* (online), 8 Sep. 2015, available at: <https://www.abc.net.au/news/2015-09-08/christians-to-get-priority-in-syrian-refugee-intake/6757110> (last visited 24 Sept. 2019), quoted Malcolm Turnbull: “They are a minority, they survived in Syria, they’ve been there for thousands of years, literally since the time of Christ,” he said. “But in an increasingly sectarian Middle East, you have to ask whether the, the gaps, the spaces that they were able to live and survive in will any longer be available.”

bearings: Senate Leader Eric Abetz, a politician closely tied to the influential Australian Christian Lobby,<sup>30</sup> referred to Christians as “the most persecuted group in the world” and promoted their prioritisation;<sup>31</sup> Prime Ministerial aspirant and soon-to-be Treasurer Scott Morrison was similarly clear in his view that Christian Syrians should make up the bulk of the intake.<sup>32</sup>

These sentiments were far from uncontentious nor universally endorsed within Government or mainstream Christian groups. When codified in policy, moreover, the more blatantly discriminatory aspects of the policy were to be further sanitised by utilising the touchstone principle of vulnerability:

Priority for the 12,000 additional humanitarian places is being given to people displaced by conflict in Syria and Iraq who are:

- assessed as being most vulnerable: persecuted minorities, women, children and families with the least prospect of ever returning safely to their homes;
- located in Lebanon, Jordan and Turkey.

This includes people from a range of religious, ethnic, and other backgrounds.

The wording of the policy will be familiar to those who have worked in the resettlement field. Relying upon the broad principle of “vulnerability” – a term which now appears 105 times in the United Nations High Commissioner for Refugees’ (UNHCR) *Resettlement Handbook*<sup>33</sup> – the prioritising of those with the least prospect of returning safely is apparently designed to fit into the UNHCR’s resettlement submission category of “lack of foreseeable alternative durable solution”.<sup>34</sup> That this might involve identifying a “group” based on the shared common characteristic of “religious background” is envisaged by UNHCR itself.<sup>35</sup>

30 Senator Abetz was a frequent speaker at ACL meetings, and took policy positions consistent with ACL lobbying positions. See, for instance, J. Cadzow, “Senator Eric Abetz: Why Dumping Me Was a Big Mistake”, *The Sydney Morning Herald*, The Good Weekend, 24 Mar. 2016, citing Lyle Shelton, managing director of the Australian Christian Lobby (“We’ve been very thankful for his advocacy in the Parliament for a number of issues which we obviously hold very dear.”) Abetz has his own page on the ACL website. See [https://www.acl.org.au/tags/eric\\_abetz](https://www.acl.org.au/tags/eric_abetz).

31 Henderson & Uhlmann, “Syrian Migrant Crisis”: (“It should be on the basis of need and given the Christians are the most persecuted group in the world, and especially in the Middle East, I think it stands to reason that they would be pretty high up on the priority list for resettlement.”) Abetz’s views on both the superiority of “the Jude-Christian ethic” and its important role in impacting on the creation of law are well documented. See, for instance, T. Shepherd, “Judeo-Christianity Have Best Ethics, Says Coalition Senator Eric Abetz”, *The Advertiser* (online), 25 May 2013, available at: <https://www.adelaidenow.com.au/news/south-australia/judeo-christianity-have-best-ethics-says-coalition-senator-eric-abetz/news-story/e079225786244612c919852bee02833f> (last visited 24 Sept. 2019). See also “Q&A with Eric Abetz”, *The Catholic Leader*, 13 May 2016.

32 S. Medhora & M. Safi, “Scott Morrison Says Christians Will Be Focus of Australia’s Refugee Intake”, *The Guardian* (online), 10 Sep. 2015, available at: <https://www.theguardian.com/australia-news/2015/sep/10/scott-morrison-says-christians-will-be-focus-of-australias-refugee-intake> (last visited 24 Sept. 2019).

33 UNHCR, *UNHCR Resettlement Handbook*, Geneva, UNHCR, revised edition, Jul. 2011.

34 *Ibid.*, 287–296 (6.8 Lack of Foreseeable Alternative Durable Solutions).

35 *Ibid.*, 234 (5.7.1 Identifying a “group”).

Although privately underwhelmed by the policy, UNHCR remained largely mute on its potential discriminatory impact, perhaps persuaded by public statements not just by politicians, such as Prime Minister Tony Abbott who insisted that there would be no preferences,<sup>36</sup> but also high ranking government officials tasked with the policy's implementation. Interviewed on the ABC in November 2015, Peter Vardos, the head of the Government's Syrian Refugee Resettlement Task Force, struck a reassuring tone: "It is a non-discriminatory program across the board and I am confident that by the end of this process, when you look at the makeup of the 12,000 people, they will come from a range of ethnicities and religions."

In the event, the numbers were to prove Mr Vardos' confidence in his own Department's decision-making processes to be unfounded. Reporting in the *New York Times* in May 2017 on a Freedom of Information request, Odysseus Patrick noted that 78 per cent of the approximately 18,563 refugees from Syria and Iraq granted entry between 1 July 2015 and 6 January 2017 identified themselves as a Christian.<sup>37</sup> More recent statistics indicate that this trend has continued with the percentage of Muslim refugees resettled in Australia in the 4 years to August 2018 halved from 40.5 per cent to 19 per cent of the total humanitarian programme, despite three-quarters coming from the Muslim majority countries of Iraq, Syria, and Afghanistan.<sup>38</sup> The annual Departmental report on the 2017–2018 humanitarian programme notes the policy of focusing on 'persecuted minorities with the least prospect of safe return' remains on foot.<sup>39</sup> The statistics, although difficult to parse, indicate that this has resulted in the continuing prioritisation of Christians.<sup>40</sup>

The Australian Government, however, remains conspicuously reluctant to refer publicly to this result. The word "Christian" never appears in official reporting on resettlement from Syria and Iraq. By contrast, no such hesitancy attaches to promoting the number of Yazidi assisted, whether in annual departmental reports<sup>41</sup> or the Attorney General's submission to the United Nations Human Rights Council's

36 See above n 28.

37 O. Patrick, "Australia's Immoral Preference for Christian Refugees", *New York Times* (online), 3 May 2017, available at: <https://www.nytimes.com/2017/05/03/opinion/australias-immoral-preference-for-christian-refugees.html> (last visited 24 Sept. 2019).

38 C. Le Grand, "Muslim Intake Expected to Fall as Christians Rise", *The Australian*, 27 Aug. 2018.

39 Commonwealth of Australia, Department of Home Affairs, *Australia's Offshore Humanitarian Program: 2017–18*, 2018, 15, available at: <https://www.homeaffairs.gov.au/research-and-stats/files/australia-off-shore-humanitarian-program-2017-18.pdf>. It is notable that this terminology does not appear in the Procedural Advice Manual, which instead provides with respect to the Syrian-Iraqi caseload that "Women, family groups and unaccompanied minors who are members of persecuted minorities may prima facie be regarded as priority applicants," although it is unclear if this applies solely to the additional 12,000 places. See PAM3: Refugee and Humanitarian - Offshore humanitarian program - Visa application and related procedures.

40 The accompanying Ministerial press release boasts that "more than 7800 visas were granted to Syrians & Iraqis from persecuted minority groups including 1300 visas to vulnerable Yazidis [...]" The Hon David Coleman MP, Minister for Immigration, Citizenship and Multicultural Affairs, "2017-18 Humanitarian Program Successfully Delivered", *Media Release*, Friday, 16 Nov. 2018. As the total number for all Iraqis and Syrians was only 7,857, this leaves little room for non-minority groups. Presumably, the vast majority of entrants were therefore Christians.

41 Commonwealth of Australia, Department of Home Affairs, *Australia's Offshore Humanitarian Program*, 15 and 24.



Universal Periodic Review concerning the 12,000 additional resettlement places.<sup>42</sup> Reading these reports, one could be excused for speculating that vulnerable Christians might be a small component of the intake.

The implementation of a policy prioritising Middle Eastern Christians for resettlement thus only became manifest indirectly or inadvertently. The official line remains that Australia resettles the most vulnerable on a non-discriminatory basis. Plus, in the absence of an overarching federal non-discrimination law or an effective establishment clause in the *Constitution*,<sup>43</sup> let alone any statements about an accompanying “Muslim ban”, no question has arisen as to the legislative or constitutional validity of the actions.

Prime Minister Turnbull’s boast to President Trump that Christians were the intended recipients of Australian benevolence was therefore a refreshing moment of transparency. Where the Prime Minister was less up-front, however, was with respect to the Australia’s purported influence on the analogous US policy.

## 2.2. The provenance of US Christian refugee resettlement

As the Prime Minister would have known, the original US Executive Order implementing the Muslim Travel Ban included two provisions designed to facilitate a similarly discriminatory resettlement intake. One provided a discretion to admit individual refugees “when the person is a religious minority in his country of nationality facing religious persecution”;<sup>44</sup> the other provided that once the US Refugee Admissions Program resumed, the Secretary of State was to “prioritize refugee claims made by individuals on the basis of religious-based persecution, provided that the religion of the individual is a minority religion in the individual’s country of nationality”.<sup>45</sup>

The exemption and prioritisation were clearly intended to apply primarily to Christians: the listed countries from which otherwise barred individuals could be admitted if they hailed from a “minority religion” all had Muslim majorities. So manifest was this purpose that the provision was frequently presented as evidence in litigation of the Order’s true discriminatory intent. It thus became a liability for those in the Trump Administration defending the Order’s constitutionality in court, and was wisely excised from subsequent revisions of the Order, much to the consternation of the “persecuted church” arm of the evangelical movement who saw its inclusion as a core campaign promise.<sup>46</sup> Its replacement by a case-by-case waiver power in

42 Commonwealth Attorney General, *Australia’s Universal Periodic Review Recommendations*, Dec. 2017. In responding to recommendation 123 on “paying special attention to the implementation of national policies for marginalized or vulnerable social groups”, the Government chose to focus upon the 12,000 resettlement places, noting “[t]his included a significant number of Yazidis”. No mention is made of Christians.

43 s. 116 of the Australian *Constitution* is a much weaker provision than its American counterpart. See C. Evans, *Legal Protection of Religious Freedom in Australia*, Alexandria, The Federation Press, 2012, 88.

44 Executive Order 13769, s. 5(e)

45 *Ibid.*, s. 5(b).

46 See, for instance, the statement by Nina Shea, Director, Hudson Institute New York’s Center for Religious Freedom, “On the March 6 Executive Order”, 6 Mar. 2017, available at: <https://www.hudson.org/research/13416-on-the-march-6-executive-order> (last visited 24 Sept. 2019). Others, such as Jay Sekulow, chief counsel for the American Center for Law and Justice, which regularly advocates for persecuted Christians, argued that the amended provision would do the same work.

situations of “undue hardship” at the discretion of an executive decision-maker,<sup>47</sup> although having the potential to operate in a similar fashion, was seen as less likely to reflect adversely on legality of the Order.<sup>48</sup>

At the time of the infamous telephone conversation, however, the first Executive Order was a mere 1-day old, and still being sold as a Christians First policy by the President to his white evangelical base. For this community, the inclusion of a provision designed to save persecuted Christians was the fulfilment of a decade-long campaign that had resulted in a host of policy and legislative initiatives at State and federal levels, but nothing as sweeping as a Presidential Executive Order.

The first clue to the origin of the provision lies in the text of the original Executive Order itself. The language and mechanism used are drawn directly from the Refugee Program Integrity Restoration Act (RPIR Act),<sup>49</sup> introduced into the US House of Representatives in March 2016. The RPIR Act, which died in the 2016 Congress but was reintroduced in 2017,<sup>50</sup> would provide that the Secretary of Homeland Security “shall grant priority consideration to such applicants whose claims are based on persecution or a well-founded fear of persecution based on religion by reason of those applicants being practitioners of a minority religion in the country from which they sought refuge”.<sup>51</sup> The prioritisation of “religious persecution” above other Convention reasons was presented as compatible with both the 1951 Refugee Convention<sup>52</sup> and the core American value of being a refuge for those seeking religious freedom. As Congressman Sensenbrenner put it: “we

47 See Presidential Proclamation 9645 (Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or other Public-Safety Threats) s. 3(c)(i)(A) and s. 3(c)(iv)(D). The Department of State started fully implementing the Proclamation on 8 Dec. 2017 after the Supreme Court’s decision in *Trump v. Hawaii*, 138 S. Ct. 2392 (2018). See Media Note, Office of the Spokesperson, US Department of State, Presidential Proclamation Fully Implemented Today, 8 Dec. 2017, available at: [www.state.gov/press-releases](http://www.state.gov/press-releases). The final Proclamation also extended the prohibition to a couple of non-Muslim majority nations, notably Venezuela and North Korea.

48 The significant reduction of resettlement places and the implementation of the ban resulted in a plummeting in the number of Muslim refugees overall but little evidence of a significant rise in Christian resettlement from these banned countries. See V. Macchi, “US Accepts Record-High Percentage of Christian Refugees”, *Voice of America* (online), 29 Jun. 2018, available at: <https://www.voanews.com/a/us-accepts-record-high-number-christian-refugees/4460670.html> (last visited 24 Sept. 2019); S. Smith, “Only 10 Christian Refugees From Iraq and Syria Admitted to US in 2018; Evangelicals Respond”, *The Christian Post*, available at: <https://www.christianpost.com/news/only-10-christian-refugees-from-iraq-and-syria-admitted-to-us-in-2018-evangelicals-respond-225161/> (last visited 24 Sept. 2019) (“we are suffering when we see brothers and sisters in Christ persecuted for their faith and then turned away from the U.S. refugee resettlement program”: Trillia Newbell, Director of Community Outreach at the Southern Baptist Convention’s Ethics & Religious Liberty Commission); N. Rush, “Refugee Resettlement Admissions in FY 2018”, Center for Immigration Studies, 1 Oct. 2018, available at: <https://cis.org/Rush/Refugee-Resettlement-Admissions-FY-2018> (last visited 24 Sept. 2019).

49 H.R. 4731 – 114th Congress: Refugee Program Integrity Restoration Act of 2016. The Bill contained other problematic provisions, such as s. 6 which authorises the continuous mass surveillance of refugees based solely on the fact that they were admitted to the US as refugees. Other provisions address purported “fraudulent” claims, extend cessation grounds, and delay residency. Although of concern, these provisions are beyond the scope of this article.

50 H.R. 2826 – 115th Congress: Refugee Program Integrity Restoration Act of 2017.

51 s. 6(4), Refugee Program Integrity Restoration Act, H.R. 4731.

52 Convention relating to the Status of Refugees, as amended by the Refugee Protocol, Art. 1A(2), which includes “religion” as one of its five Convention reasons in the refugee definition.

ought to say that people who are subjected to religious persecution should be close to the front of the line in being able to obtain refugee status”.<sup>53</sup> Also picked up by the Executive Order was the RPIR Act’s use of a pre-existing “listing” mechanism, only applying to persons from those countries identified by the Commission on International Religious Freedom’s Annual Report – itself a product of an earlier successful push to prioritise for resettlement those facing religious persecution in the Communist East, now applicable primarily to nations in the Middle East.<sup>54</sup>

As with the Executive Order, the RPIR Act would have carried out two long-standing policy objectives by limiting Muslim immigration through the prioritisation of Christian refugees from Muslim majority States. Its facially neutral application to all religious minorities facing religious discrimination failed to persuade those familiar with the anti-Islamic context within which the Bill was born. As Congresswoman Zoe Lofgren put it, “[t]his provision is reminiscent of prior proposals, effectively prioritizing Christian refugees. It appears to be crafted to exclude Muslims from Middle Eastern countries.”<sup>55</sup>

These prior proposals included more egregiously discriminatory legislation such as Ted Cruz’s bluntly-named Terrorist Refugee Infiltration Prevention Act of 2015 (TRIP Act),<sup>56</sup> which would have placed a 3-year moratorium on any refugees from a list of countries – a list which happens to correspond almost exactly with Homeland Security’s list of (Muslim majority) countries to which the original Executive Order applied.<sup>57</sup> The TRIP Act included exemptions for “victims of genocide”, which Senator Ted Cruz claimed included “Yazidis and certain Christian sects, including Assyrians, who, amazingly, still speak a form of Aramaic that is believed to have been spoken by Jesus Christ”<sup>58</sup> – a formula of words drawn directly from the “persecuted church” promotional material explored below. Legal advice would undoubtedly have demonstrated just how high a bar it was to prove “genocide” under the 1948

53 *Transcript*, Committee on the Judiciary, House of Representatives, Wednesday, 16 Mar. 2016, [956]–[957].

54 The Bill would amend s. 207(c) of the Immigration and Nationality Act (concerning the admission by the Attorney General of refugees) to require the Secretary of Homeland Security to grant priority to individuals from religious minorities facing religious persecution who are from ‘a country listed as a “Country of Particular Concern” in the annual report of the Commission on International Religious Freedom under s. 203 of the International Religious Freedom Act of 1998.

55 *Transcript*, Committee on the Judiciary, House of Representatives, Wednesday, 16 Mar. 2016, [452]–[454], available at: <https://judiciary.house.gov/wp-content/uploads/2016/03/03.16.16-Markup-Transcript.pdf>.

56 S.2302 – Terrorist Refugee Infiltration Prevention Act of 2015, 114th Congress (2015–2016) (Introduced 18 Nov. 2015); an identical Bill was introduced into the House by Rep Ron DeSantis: H.R.4143 – Terrorist Refugee Infiltration Prevention Act of 2015 (Introduced 1 Dec. 2015).

57 The TRIP Act would apply to Iraq, Libya, Somalia, Syria, and Yemen (see s. 2(1)(A)); the Executive Order applied to these countries as well as Iran and Sudan, which are designated as State Sponsors of Terrorism. As some have pointed out, this list was purportedly based on those States which had been identified by the Homeland Security under the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015 as being exempted from the visa waiver program on the basis of security concerns. However, whereas the exemption required nationals from these countries to obtain a visa, the Order imposed a blanket ban.

58 Senator T. Cruz, “Why the Terrorist Refugee Infiltration Prevention Act of 2015 is Necessary”, *The Washington Times* (online), 19 Nov. 2015, available at: <https://www.washingtontimes.com/news/2015/nov/19/sen-ted-cruz-why-terrorist-refugee-infiltration-pr/> (last visited 24 Sept. 2019).

Genocide Convention definition, as required by the legislation (although it is notable that officials in the Obama administration also used this terminology). Subsequent bills such as the Save Christians from Genocide Act<sup>59</sup> therefore merely recognised the genocide of Christians and Yazidis in Iraq, Syria, Pakistan, Iran, and Libya as legislative facts and provided for their expedited processing.

The discriminatory intent manifests more blatantly in those provisions of the RPIR Act that purport to provide federal imprimatur to steps taken by States that have attempted to block the settlement of Syrian (viz Muslim) refugees.<sup>60</sup> By the time of Trump's election, governors and legislatures in over 30 states (including then Governor Mike Pence in Indiana) had initiated such measures, invariably accompanied by rhetoric that expressly denigrated Muslim refugees as potential security threats.<sup>61</sup> These steps were to run into predictable constitutional obstacles, either by falling foul of the 14th Amendment's requirement of "equal protection" of the law (which precludes discrimination on the grounds of national origin), or for overstepping state competence with respect to immigration. Whether such restrictions on state competencies can be gazumped by congressional decree is untested in the courts, but seems unlikely.<sup>62</sup> What is apparent, however, is that the RPIR Act was an attempt under the guise of states' rights to institute a quasi-Muslim Ban alongside a centrally implemented Christians First resettlement policy: States would be allowed to block refugees on the grounds of national origin, while the Congress – having wrested control of immigration quotas and priorities from the executive – would mandate the cherry picking of "persecuted minorities" in countries where religious freedom was under threat.

The RPIR Act would also have reduced the annual intake to 60,000,<sup>63</sup> something subsequently more than achieved by the Executive Order which declared "the entry of more than 50,000 refugees in fiscal year 2017 would be detrimental to the interests of the United States". This number has since plummeted, the cap being lowered first to 45,000 in Financial Year 2018, and 30,000 for 2019.<sup>64</sup> Actual numbers of

59 H.R.565, 115th Congress (2017–2018). See also H.R.390 – *Iraq and Syria Genocide Relief and Accountability Act of 2018*, 115th Congress (2017–2018).

60 s. 9 would have precluded resettlement in any state or locality where the Governor or chief executive had taken any action "formally disapproving of resettlement". Several commentators pointed out that State governments lacked the authority to dictate immigration policy to the President. There were also problems relating to the 14th Amendment. See discussion in *Exodus Refugee Immigration Inc v. Mike Pence*, US District Court, Southern District Indiana, Case No. 1:15-cv-01858-TWP-DML (2017). See "Indiana's Refugee Order: Exodus, Continued", *The Economist* (online), 19 May 2016, available at: <https://www.economist.com/news/usa/21694832-most-other-governors-seem-have-quietly-dropped-matter-indianas-governor-losing>.

61 See R. Felton, T. Dart & M. Teague, "Growing Number of US States Seek to Block Acceptance of Syrian Refugees", *The Guardian* (online), 17 Nov. 2015, available at: <https://www.theguardian.com/us-news/2015/nov/16/us-states-block-syrian-refugees-michigan>.

62 For full analysis, see K.J. Fandl, "States' Rights and Refugee Resettlement", *Texas International Law Journal*, 52, 2017, 71–102.

63 The 2016 Bill set the statutory limit at 60,000. This was amended to 50,000 in the 2017 Bill. For an analysis of the latter, see Cato Institute, *Statement on Refugee Program Integrity Restoration Act of 2017 – H.R. 2826*, 14 Jun. 2017, available at: <https://www.cato.org/blog/refugee-program-integrity-restoration-act-2017-hr-2826>.

64 *Presidential Memorandum for the Secretary of State*, 4 Oct. 2018, available at: <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-secretary-state-13/>.

those admitted have been significantly lower than these caps, representing an unprecedented attack on UNHCR's global resettlement programme<sup>65</sup> and virtually crippling the organisations that implement them domestically, many of which are faith-based.<sup>66</sup>

Complementing these moves to limit Muslim resettlement and prioritise Christian resettlement were those anti-Islamic measures banning the use of “foreign law” in State courts adopted across the union over the previous 5 years.<sup>67</sup> Although these laws often omit to mention Sharia,<sup>68</sup> they participate clearly in a geopolitical culture war long professed by certain parts of the white evangelical community. As the Concerned Women for America put it in commenting on the North Carolina legislation, “[w]e will protect the Judeo-Christian values upon which our nation was founded. Sharia Law goes beyond religious liberties; Sharia violates individual's constitutional rights.”<sup>69</sup> Similar language was to be employed by Donald Trump as his campaign gained traction in 2016. By August, candidate Trump had even adopted the narrative that “we” were at “war” with Islam, a sentiment straight from the white nationalist evangelical worldview.<sup>70</sup>

The first Executive Order's immediate provenance – its text, mechanism, and manifest purpose – can thus be traced to legislative steps at State and federal levels to mandate religious bias in refugee resettlement policy. As much of this had been playing out within the unsettled domain of “immigration federalism”,<sup>71</sup> the Order also threw a bone to sympathetic states, echoing the language of their “anti-foreign

65 See International Rescue Committee, “Refugee Resettlement by the Numbers: FY17 vs. FY18 Arrivals Comparison”, International Rescue Committee, undated, available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/refugeearrivalsanalysisoct-aug3.pdf>.

66 E. McFarlan Miller, “Two Years after Trump's Travel Ban, Faith-Based Refugee Groups Struggle”, *National Catholic Reporter*, 5 Feb. 2019, available at: <https://www.ncronline.org/news/justice/two-years-after-trumps-travel-ban-faith-based-refugee-groups-struggle> (last visited 24 Sept. 2019).

67 See Council on American-Islamic Relations (CAIR), *Anti-Islam Legislation*, Sep. 2014, available at: <http://www.islamophobia.org/images/pdf/2013LegislationUpdate.pdf>. Although the Bills usually do not single out Islam, they frequently contain provisions that draw directly on templates drafted by the anti-Islam organisation American Laws for American Courts. See CAIR, “2013 Report - Legislating Fear: Islamophobia and its Impact in the United States” (2014), available at <https://www.cair.com/legislating-fear-2013-report> (last visited 24 Sept. 2019); American Civil Liberties Union. And the website it appears on [https://www.aclu.org/sites/default/files/field\\_document/Nothing\\_To\\_Fear\\_Report\\_FINAL\\_MAY\\_2011.pdf](https://www.aclu.org/sites/default/files/field_document/Nothing_To_Fear_Report_FINAL_MAY_2011.pdf).

68 “Supporters of anti-Islam legislation have generally evolved their strategies to mask the intended vilification of Islam, generally no longer mentioning ‘Islam’ or ‘Sharia’ in a bill’s text. However, Mississippi’s HB 711 and HB 1333 both explicitly stated that ‘foreign law’ includes ‘sharia law.’” CAIR, *Anti-Islam Legislation*, 4.

69 *Ibid.*, 6.

70 The trajectory of Trump's anti-Muslim and Sharia messaging is evident in J. Johnson & A. Hauslohner, “I Think Islam Hates Us: A Timeline of Trump's Comments about Islam and Muslims”, *The Washington Post*, 20 May 2017, including his use of the term “war” in March 2016 to describe the relationship with Islam when asked whether he trusts Muslims in the US (“Anderson, we have a major, major problem. This is, in a sense, this is a war.”)

71 “Immigration federalism” has become a term of art of late, being coined initially by C.M. Rodriguez, “The Significance of the Local in Immigration Regulation”, *Michigan Law Review*, 106, 2008, 567–642. More recently, see P. Gulasekaram & S. Karthick Ramakrishnan, *The New Immigration Federalism*, Cambridge, Cambridge University Press, 2015. See also H.K. Gerken, “Federalism as the New Nationalism: An Overview”, *Yale Law Journal*, 123, 2013–2014, 1889.

law” statutes about the dangers of Sharia in its opening paragraph which originally referred ominously to “those who would place violent religious edicts over American law” before being changed to “ideologies”.<sup>72</sup> States and local jurisdictions would, moreover, “be granted a role in the process of determining the placement or settlement in their jurisdictions” of refugees.<sup>73</sup> For those familiar with its background, this could only mean providing States with the authority to keep out Muslims.

### 2.3. The white nationalist evangelical constituency and the Executive Order

Alongside Israel and pro-life appointments to the Supreme Court, laws prioritising Christians for resettlement had long been a key political objective of white nationalist evangelical community. Indeed, the legal team at the American Center for Law and Justice, founded by televangelist Pat Robertson to rival the ACLU and “advocate for evangelical causes”,<sup>74</sup> had drafted the template “anti-foreign law” statute adopted across the country. Couched in the rhetoric of “religious freedom”, the prioritising of Christian refugees married with the well-identified concerns of this community about immigration and what Janelle Wong calls “their perceived in-group embattlement in the face of demographic change”<sup>75</sup> – concerns which subsequent studies indicate were greater motivators than other traditional pro-life factors amongst evangelical voters.<sup>76</sup> It also echoed the “status threat” concerns of white Trump voters more generally; as Diana Mutz’s work indicates, “[t]hose who felt that the hierarchy was being upended – with whites discriminated against more than blacks, Christians discriminated against more than Muslims, and men discriminated against more than women – were most likely to support Trump.”<sup>77</sup> This sense of embattlement<sup>78</sup> was heightened by concerns about, the security of the southern border, and the plight of white Christians generally. The Trump campaign wooed this community throughout 2016, and reaped the reward on election night, winning over 81 per cent of the white

72 The original draft stated: “We cannot, and should not, admit into our country those who do not support the U.S. Constitution, or those who would place violent religious edicts over American law.” The final Order replaced “We” with “the United States”, and “religious edicts” with “ideologies”.

73 Under the Order, the Secretary for Homeland Security “shall devise a proposal to lawfully promote such involvement”. Executive Order 13769 – Travel ban 1. 5(g). Executive Order 13780 – Travel ban 2. 6(d) is substantially similar. Interestingly, this paragraph was a late addition to the draft. See D. Yanofsky, “Track Changes: How Trump’s Executive Order on Immigration Changed between the Draft and Final Version”, *Quartz Media*, 29 Jan. 2017, available at: <https://qz.com/897707/how-trumps-immigration-order-changed-between-the-draft-and-final-version/>.

74 D. Hawkins, “Jay Sekulow, Trump’s Unlikely Lawyer”, *The Washington Post*, 19 Jun. 2017.

75 J.S. Wong, *Immigrants, Evangelicals, and Politics in an Era of Demographic Change*, London, Russell Sage, 2018, 52–59.

76 See, for instance, the study conducted by the Billy Graham Institute, reported in E. Stetzer, “Debunking the 81 Percent”, *Christianity Today*, Oct. 2018, 21–22, where immigration and “religious liberty” were considered far more significant factors than abortion, the Supreme Court or the President’s character. More generally, see Wong, *Immigrants, Evangelicals, and Politics in an Era of Demographic Change*.

77 See D. Mutz, “Status Threat, Not Economic Hardship, Explains the 2016 Presidential Vote”, *Proceedings of the National Academy of Sciences*, 115(9), 2018, 4330, 4338, cited by R. Eatwell & M. Goodwin, *National Populism: The Revolt Against Democracy*, London, Pelican Books, 2018, 4.

78 Wong, *Immigrants, Evangelicals, and Politics in an Era of Demographic Change*, 95 (“the belief that whites face as much discrimination as out-groups, such as Muslims, or even more”).

evangelical vote.<sup>79</sup> The new Administration was clearly keen to signal its appreciation in the opening days of the administration. The Executive Order must, in part, be seen in this light.

The ground was carefully laid for the Order to be received as a promise fulfilled in the run up to its promulgation. Talking “exclusively” to Pat Robertson’s Christian Broadcasting Network (CBN) on the morning of the signing, the President delivered relatively succinctly tailored answers to questions which addressed each of this constituency’s political imperatives, indicating not just that his Supreme Court pick would be acceptable (“I think the person that I pick will be big, big. I think people are going to love it. I think evangelicals, Christians will love my pick”), that the US embassy would be moved to Jerusalem (“It’s a big, big decision but we are setting the issue right now. I have always liked the concept of doing it [...]”), and that Christian refugees from Syria would be assisted (“Do you know if you were a Christian in Syria it was impossible, at least very tough to get into the United States? If you were a Muslim you could come in, but if you were a Christian, it was almost impossible. [...] So we are going to help them.”).<sup>80</sup> CBN’s online news outlet put it more succinctly, announcing in its leader for the interview that “President Trump says persecuted Christians will be given priority as refugees”.<sup>81</sup> Similar headlines would appear across the Christian press as news of the Order spread. The Christians First message had been received.

Whether by coincidence or design, the deliberateness of the messaging was to be reinforced by the appearance on the very same day of Vice President Mike Pence before an appreciative crowd at *March for Life*, the annual anti-abortion “pilgrimage” (as its website calls it) to the capital on the anniversary of *Roe v. Wade*. The first time a Vice President had attended the rally (President Trump appeared by video feed in 2018 and 2019), Pence opened his remarks by noting that the Supreme Court had “turned away” from the “unalienable” God-given right to life in the Declaration of Independence, but that “next week, President Donald Trump will announce a Supreme Court nominee who will uphold the God-given liberties enshrined in our Constitution”. Moreover, as the Vice President reminded the audience, the President on his first day in office had reinstated the Mexico City

79 The 81-16 differential in the exit polls from Election Day has been widely reported and analysed. Explaining the phenomenon is outside the purview of this article. For an alternative take (and an overview of the arguments), see M. Renaud, “Myths Debunked: Why Did White Evangelical Christians Vote for Trump?”, The Martin Marty Center for the Public Understanding of Religion, The University of Chicago, 19 Jan. 2017, available at: <https://divinity.uchicago.edu/sightings/myths-debunked-why-did-white-evangelical-christians-vote-trump>.

80 DB: “Persecuted Christians, we’ve talked about this, the refugees overseas. The refugee program, or the refugee changes you’re looking to make. As it relates to persecuted Christians, do you see them as kind of a priority here? - Trump: Yes. - DB: You do? - Trump: They’ve been horribly treated. Do you know if you were a Christian in Syria it was impossible, at least very tough to get into the United States? If you were a Muslim you could come in, but if you were a Christian, it was almost impossible and the reason that was so unfair, is that the – everybody was persecuted in all fairness, but they were chopping off the heads of everybody but more so the Christians. And I thought it was very, very unfair. So we are going to help them.”

81 “The Full Interview: President Trump Talks with CBN’s David Brody”, *CBN News*, 1 Jan. 2017, available at: <https://www1.cbn.com/cbnnews/politics/2017/january/president-trump-to-sit-down-with-news-for-exclusive-interview-friday> (last visited 24 Sept. 2019).

Policy – known by its detractors as the “global gag rule” – “to prevent foreign aid from funding organizations that promote or perform abortions worldwide”. Again, the message was clear: foreign policy, immigration, and the judiciary would soon be instruments for promoting the evangelical political agenda to protect life, religious freedom and the persecuted church, prepare the way for the second coming in Jerusalem, and restore Christianity to its ordained role in America.

Within days, President Trump would nominate Justice Gorsuch to the Supreme Court, and issue the Muslim Travel Ban. The first weeks of the Trump Administration, in other words, were heady days for this branch of the evangelical movement.

The following section takes the analysis further back, exploring the theological concerns of this constituency as they manifested in the years leading up to the introduction of Christians First policies in the US and Australia.

### 3. SAVING MARTYRED CHRISTIANS: UNPACKING A CONTEMPORARY POLITICAL MARTYROLOGY OF THE PERSECUTED CHURCH

#### 3.1. The 10/40 Window, Syria, and the persecuted church

The establishment of a powerful lobby adept at using political and legal tools to expose restrictions on religious freedom globally can be traced back to the successful campaign to enact that International Religious Freedom Act of 1998 (the IFRA) which requires the Government produce every year a list of “countries of concern” that are guilty of violating religious freedoms. While the coalition that fought for the IFRA had been led by evangelicals, it included Jews, Catholics, and Tibetan Buddhists. In more recent years, however, the campaign for religious freedom abroad has become the almost exclusive domain of conservative Christian groups dedicated to raising the plight of the “persecuted church”, the focus of concern moving from the former Communist East to what is known in evangelical circles as the 10/40 Window.

Consistent with the merging of the religious freedom agenda with evangelicalism’s global mission, the 10/40 Window describes the area between 10 and 40 degrees north of the equator, covering the Middle East and much of Asia where high concentrations of the globe’s so-called “unreached people” live.<sup>82</sup> In evangelical writings, the term has become the signifier of the “enslaved” nations, many of which are also marked as persecutors of Christians, and most of which have Muslim majorities. For present purposes, it is also the site of those stories which confirm the essence of a faith whose truth is revealed by the acts of martyrdom and suffering.<sup>83</sup>

82 “Officially, the 10/40 Window was a map of (missionary) opportunity; in practice, it often became a signifier of the ‘enslaved,’ unreached nations of the world, many of which would also be marked as persecutors of Christians.” M. McAlister, “The Persecuted Body: Evangelical Internationalism, Islam, and the Politics of Fear”, in M. Laffan & M. Weiss (eds.), *Facing Fear: The History of an Emotion in Global Perspective*, Princeton, Princeton University Press, 2012, 145.

83 This is explored below in more depth. For a contemporary evangelical overview of the 10/40 Window, see M.A. Rynkiewich, “Corporate Metaphors and Strategic Thinking: “The 10/40 Window” in the American Evangelical Worldview”, *Missiology: An International Review*, 25, 2007, 217–241. See also J. Dittmer, A. Ingram & M. Kuus, *Mapping the End Times: American Evangelical Geopolitics and Apocalyptic*



Specific lobbying for the resettlement of Christian refugees from the 10/40 Window picked up steam during the Syrian civil war when, from August 2014, the news cycle became saturated with reports of the targeting of Yazidi and Christian minority communities. Their brutal persecution by Islamic State made the tragedy unfolding in the Middle East and North Africa suddenly personal – and political – in the Christian West. Church groups, talkback hosts, and the established religious freedom movement took up the plight of minorities, calling for intervention to prevent a “Christian genocide” – a description taken up by then candidate Trump in his famous “America First” foreign policy speech in April 2016, reiterated subsequently on the campaign trail, and, as noted above, incorporated as the title of legislative attempts to prioritise Christian resettlement.

That those being targeted were somehow like “us” – Christian, and the subject of Muslim hatred – was palpable and often explicit. Churches of all denominations spoke of “solidarity in suffering” with those persecuted overseas; websites with names like *solidaritypersecutedchurch.org* and *indefenceofchristians.org* sprang up in 2016 to join the more established persecuted church sites; lobby groups, conferences, dedicated prayer days, books, pamphlets, maps of the 10/40 Window, songs, articles, and even the co-option of a symbol used by ISIS to identify Christians (an Arabic “nun” for Nazarene),<sup>84</sup> all focused on demonstrating solidarity with and obligation towards one’s persecuted Christian brethren abroad. This tendency towards affiliation was to extend beyond the community of the faith to simplify the nature of the conflict. For instance, the Yazidis – a non-Christian animist community targeted by ISIS in Syria and Iraq – were often merged in the public imagination with their Christian compatriots, inaccurate headlines eliding the two under the same banner as “Christian minorities”.<sup>85</sup> The binary discourse inevitably extended beyond ISIS to Muslims more generally. In this sense, the very notion that Christians by definition are vulnerable and incapable of ever living again in Muslim lands – the thrust of the Australian Government’s policy rationale for prioritising Christians for resettlement<sup>86</sup> – is an exercise in orientalist reasoning that essentialises the Christian “us” facing the implacable Muslim foe.

*Visions*, London, Routledge, 2010; “What is the 10/40 Window?”, *Joshua Project*, available at: [https://joshuaproject.net/resources/articles/10\\_40\\_window](https://joshuaproject.net/resources/articles/10_40_window) (last visited 24 Sept. 2019).

84 One Pinterest follower posted the icon noting: “My next tattoo. ‘I am Nazarene’ with an Arabic N. If people who are being persecuted for having this still follow God, I will have it, too!”

85 See, for instance, the headline in *The Guardian* on 13 Jul. 2015 referring to Yazidi Christians and describing a “rampage through Christian areas of northern Iraq last summer” instead of “Yazidi-dominated areas”. A retraction was subsequently published. Or *The Australian’s* headline of 11 Aug. 2014 (“Yazidi Christian exodus as IS radicals attack”), which was never corrected. *Fox News*, *The Daily Express* (“They sell Yazidi Christian women and young girls for sex to other ISIS fighters”), *The Daily Mail*, *The Sunday Mirror*, *The Advertiser* (“the persecuted Yazidi Christian minority”), the AAP (“Iraq’s Yazidi Christian minority sought refuge from Islamic State (IS) forces”), the *Jerusalem Post* (“Yazidi Christian children [...]”). *Christian News*, and online bloggers have all made similar mistakes, reflecting the widespread nature of the misconception.

86 Prime Minister Turnbull was transparent about this in the discussion with President Trump: “when the situation in the Middle East settles down – the people that are going to be most unlikely to have a continuing home are those Christian minorities”. See also his interview on ABC before the leaders’ summit, above n 29.

The narratives of persecution were also accompanied by shocking images of mass crucifixions, forced conversions, and beheadings. In addition to the martyrdom they proved, such images played into the widespread post-9/11 fears of a victimised, weakened Christendom facing the existential threat of Islam – a trope that was effectively exploited by Steve Bannon, the then “news” editor of the alt-right website Breitbart<sup>87</sup> and soon-to-be chief executive of Donald Trump’s presidential campaign. Bannon’s world view is influenced by the “clash of civilizations” thesis and a critique of a supine secularised West weakened by its alienation from its “Judeo-Christian” roots, a message he took on his “populist road show” across Europe in late 2018 which has significant synergies with thinkers in American right-wing evangelical circles who blame European secularism for “undermining its will to fight for what is right, weakening its ability to resist Islamic expansionism”.<sup>88</sup>

Although independent media sources did not depict the reports of persecution as forms of self-sacrifice, let alone as noble and necessary – elements of most definitions of martyrdom<sup>89</sup> – Christian media interpreted the news through such a theological lens, accusing the mainstream media of a Muslim-friendly cover-up. Thus, a widely disseminated piece in the leading online *Christian Post* claimed the media were being “politically correct” by ignoring the fact that Christians were being crucified for “refusing to embrace Islam”.<sup>90</sup>

The redemptive side of the narrative was (and remains) manifest. The website for Voice of the Martyrs, one of the leading organisations in the field, instructs readers to “[b]e inspired with stories of victorious faith”, promising that “Your Christian friends will be blessed by stories of persecuted family”. Unsurprisingly, Christian imagery of those martyred was to figure prominently in these groups’ promotional material, not least the gruesome use by ISIS of crucifixion, the very symbol of the sacrifice that since Augustine (and possibly earlier) has been positioned at the heart of the Christian faith. Crucifixion and its vicarious sacrificial importance are also crucial features of evangelical theology and teachings.<sup>91</sup> The theological salience of the title of Raymond Ibrahim’s hugely popular book, *Crucified Again: Exposing Islam’s New War on Christians*,<sup>92</sup> would not have been lost on those immersed in this

87 W.S. Hylton, “Down the Breitbart Hole”, *New York Times*, 16 Aug. 2017.

88 J. Micklethwait & A. Wooldridge, *God Is Back: How the Global Revival of Faith Is Changing the World*, New York, Penguin Press, 2009, 362; J. Lester Feder, “This Is How Steve Bannon Sees The Entire World”, *BuzzFeed*, 16 Nov. 2016, providing a transcript of comments made by Bannon at a conference at the Vatican in August 2014. For Bannon’s more recent promotion of his anti-establishment global populist ‘Movement’, see his interview with Nicholas Farrell in the *The Telegraph Magazine*, “We Want to Save Western Civilisation”, 1 Dec. 2018.

89 See discussion below, text accompanying n 162, for a discussion of martyrdom’s definition.

90 The *Christian Post*’s website makes the claim to be “a leading online Christian news publication”; its wiki entry boasts that the site enjoys 10 million each month. For its selection as representing white Christian American perspectives, see J.F. Hoops, “The Constitution of a ‘Moral Issue’ Through Mediated Representations in Christian Newspapers”, in O.O. Banjo & K. Morant Williams (eds.), *Contemporary Christian Culture: Messages, Missions, and Dilemmas*, Lanham, MD, Lexington Books, 2017, 31–33.

91 See discussion in text accompanying n 186 regarding the Bebbington Quadrilateral definition of evangelicalism.

92 R. Ibrahim, *Crucified Again: Exposing Islam’s New War on Christians*, Washington, DC, Regnery Publishing, 2013.

tradition. Drawing upon the story of St Peter's martyrdom from the Apocrypha,<sup>93</sup> the story has appeared in various books of martyrs for hundreds of years, including the sensationally popular *Jesus Freaks*, a contemporary book of martyrs with a specific youth audience first published in 1999, and widely referenced by the "persecuted church" community.<sup>94</sup>

The image of crucifixion also feeds into another common theme: that the communities targeted were somehow prototypically, authentically Christian – described in language picked up by politicians as different as Malcolm Turnbull and Ted Cruz as "ancient" Christian villages, where "the inhabitants still spoke Aramaic, the language of Christ". This link to the martyrdom of the founders of the faith only adds to the metonymic and metaphoric power of the killings, as if they have taken on the same quality as that of the first martyred Christians. Saving the authentic Christian again resonates with the roots of evangelicalism, itself a movement founded in the search for the authentic text and the authentic faith.<sup>95</sup> Such affective tropes were leveraged particularly effectively by established Faith-based anti-persecution groups such as Open Doors,<sup>96</sup> Voice of the Martyrs<sup>97</sup> (whose website has the apt address of persecution.org) and the umbrella International Christian Association – organisations that by the turn of the millennium, and certainly by 2015, had global reach.

Accusations that liberal elites were turning a blind eye to the persecuted church were levelled by right-wing organisations and politicians in the US and Australia against the media generally, and UNHCR specifically in its selection of refugees for resettlement, feeding into the anti-globalist rhetoric which frequently finds its target in the agencies of the United Nations.<sup>98</sup> These allegations soon seeped into more mainstream Christian circles. In the United Kingdom, for instance, the former Archbishop of Canterbury accused UNHCR and government agencies of institutional bias and political correctness.<sup>99</sup> American evangelical organisations meanwhile

93 As commonly told, Peter meets Jesus while fleeing persecution in Rome and, on asking him where he was going ("quo vadis"), is told "I am going to Rome to be crucified again"; understanding that this refers to his own martyrdom in Christ's example, Peter returns to Rome to face his inevitable fate.

94 dc Talk and the Voice of the Martyrs, *Jesus Freaks: Martyrs: Stories of Those Who Stood for Jesus*, Tulsa, Okla, Bethany House, 1999. A second volume of stories was published in 2003.

95 M.R. Amstutz, *Evangelicals and American Foreign Policy*, Oxford, Oxford University Press, 2014, 2.

96 *Open Doors: Serving Persecuted Christians Worldwide*, describes itself as "empowering Christians who are persecuted for their beliefs."

97 Under Our Beliefs: 10. We believe that God has given to us as part of His Church, the Body of Christ, responsibility to care for the members of that Body, to "weep with those who weep" (Romans 12:15) and to "Remember the prisoners as if chained with them – those who are mistreated – since you yourselves are in the body also" (Hebrews 13:3).

98 See, for example, Shea, "On the March 6 Executive Order": "the UN marginalizes these minorities, not only from Syrian refugee resettlement referrals, but from other UN programs substantially funded by the U.S [...]". The right-wing Gatestone Institute, although technically not affiliated to any faith-based group, has been a viral source for this propaganda. See, for instance, J. Bergman, "UK: Discrimination against Christian Refugees", *Gatestone Institute*, 6 Aug. 2018; R. Ibrahim, "UK: Radical Muslims Welcome, Persecuted Christians Need Not Apply", *Gatestone Institute*, 31 Mar. 2019. Other far right outlets such as *The New American* have had a similar editorial line.

99 G. Carey, "Christians Face Genocide, but the Government Looks the Other Way", *The Telegraph*, 12 Apr. 2017. It is worth noting that the claims of UN bias are highly dubious and based on false or misleading statistics and assertions. See J. Meservey, "The Dilemma of Syrian Christian Refugee Resettlement and How the U.S. Can Help", *Issue Brief*, The Heritage Foundation, 22 Mar. 2017; J. Hattem, "UN: Critics

called for an end to provision of aid to Iraq and Syria through the United Nations, which the Administration duly listened to, renegotiating its contribution to the United Nations Development Programme in January 2018 in order to “provide support directly to persecuted communities through USAID”.<sup>100</sup>

These themes – from martyrdom by crucifixion and Islam’s purported duty to eradicate Christianity, to the United Nations’ anti-Christian bias and the “political correctness” of passive Western governments – originated in the US but were adopted and promoted by Australian media outlets and certain Christian constituencies. They were also pressed with particular effectiveness by the Australian Christian Lobby (ACL), a relatively small lobby group tied closely to the neo-Pentecostalist movement that had successfully positioned itself as mainstream and representative despite holding recognisably far right positions on a range of social issues.<sup>101</sup> Although pitched with less obviously anti-Islamic animus (despite occasional lapses),<sup>102</sup> the ACL’s lobbying took on the familiar conjoined political objectives of “religious freedom and persecution”.<sup>103</sup> Policy forums,<sup>104</sup> national prayer vigils,<sup>105</sup> keynote speeches, and tailored election material helped raise awareness of the persecution of religious minorities in the Middle East and promoted a doubling of the resettlement intake in order to prioritise “vulnerable” and “persecuted religious minorities”.<sup>106</sup>

Wrong on Christian Syrian Refugees”, *The Hill*, 20 Dec. 2015; B. Freilick, “The U.S. Does Not Shortchange Christian Refugees”, Human Rights Watch, 15 Feb. 2017, available at: <https://www.hrw.org/news/2017/02/15/us-does-not-shortchange-christian-refugees> (last visited 24 Sept. 2019); R. Farley, “Christian Refugees ‘Unfairly’ Kept Out?”, FactCheck.org, 31 Jan. 2017, available at: <https://www.factcheck.org/2017/01/christian-refugees-unfairly-kept-out-of-u-s/> (last visited 24 Sept. 2019); M. Kreidie, “Why Do So Few Christian Syrian Refugees Register With The United Nations High Commissioner For Refugees?”, *Rozenberg Quarterly*, Jun. 2017, available at: <http://rozenbergquarterly.com/why-do-so-few-christian-syrian-refugees-register-with-the-united-nations-high-commissioner-for-refugees/> (last visited 24 Sept. 2019).

- 100 G. Russell, “Pence Promise Fulfilled: US Changes Rules on the UN to Help Christian and Minority Victims of ‘Genocide’ in Iraq”, *Fox News*, 11 Jan. 2018. This involves moneys provided to the UN’s Funding Facility for Stabilization in Iraq (FFS) programme.
- 101 M. Maddox, “Right-wing Christian Intervention in a Naïve Polity: The Australian Christian Lobby”, *Political Theology*, 15, 2014, 132. Maddox argues that despite holding “extremist” views (which she defines, in part, as a belief in “membership of the elite as due to innate qualities”: 142), and representing a small and shrinking Christian right-wing in Australia, the ACL has enjoyed unprecedented success by presenting itself as a non-partisan, non-denomination, middle-of-the-road “peak body” representing Australia’s “Christian majority”: *ibid.*, 147.
- 102 Lyle Shelton, in conversation with News Corporation’s Greg Sheridan of *The Australian* on ACL’s *Voice for Values Radio*, asked rhetorically: “So the real aim of Islam has always been to suppress Christianity, to essentially eradicate it and what we’re seeing today is really the essence of what true Islam’s attitude towards Christianity.” Although he denied it, this was undoubtedly the implied thrust of Sheridan’s potted history of Christian–Muslim relations in the Middle East. See Lyle Shelton, “Is helping high risk refugees discrimination?” *Voice for Values*, 16 Aug 2016. available at: [https://www.acl.org.au/is\\_helping\\_high\\_risk\\_refugees\\_discrimination](https://www.acl.org.au/is_helping_high_risk_refugees_discrimination) (last visited 24 September 2019).
- 103 Maddox, “Right-wing Christian Intervention in a Naïve Polity”, 138.
- 104 See, for instance, “Policy Solutions for Persecuted Religious Minorities”, organized as an event running alongside the Australian Labor Party (ALP) annual national conference in July 2015. See Media Release, “ACL Urges ALP Delegates to Back Doubling of Refugee Intake”, 24 Jul. 2015.
- 105 “Australian Churches Unite in Solidarity”, Anglican Communion News Service, 3 Nov. 2014, noting that the ACL campaign involved 660 churches across Australia.
- 106 While the ACL called for an increase in the humanitarian intake, they invariably promoted prioritization for “vulnerable minorities”. See, for instance, ACL Media Release, 22 Jul. 2013, “PNG agreement an opportunity to reset priorities and expand refugee intake” (“We must prioritise our offer of refuge to those

As in the United States, the policy focus of the ACL honed in on the Government's resettlement programme. Again, the call quickly went mainstream, the Catholic Archbishop of Sydney, Anthony Fisher, calling for an increase in the intake of Christian refugees, saying: "It's estimated 100,000 Christians are now martyred every year, 11 killed for their faith every hour."<sup>107</sup>

As noted above, these lines were soon to be adopted by several high-profile politicians, and not just the usual suspects on the political far right, but all Prime Ministerial aspirants in the Liberal party, from the incumbent Tony Abbott, to his successor Malcolm Turnbull, to the eventual nemesis of both men, the avowedly neo-Pentecostalist Minister for Immigration, eventual Treasurer and seemingly accidental Prime Minister, Scott Morrison, who had had carriage of the refugee intake at crucial times, and who credits himself with "stopping the boats".<sup>108</sup>

This is the context within which the September 2015 policy change in Australia took place. How it was to be achieved with such little fanfare or opposition raises questions about the ways in which the ground had long been set for resettlement policy to be used as a vehicle for ideological, and specifically Christian objectives.

#### 4. AUSTRALIAN RESETTLEMENT: GENEROSITY AND THE RISE OF ANTINOMIANISM

##### 4.1. Resettlement in Australia: historical revisionism

The commonly recited history of Australia's resettlement programme has a distinctly Whiggish hue, depicting a policy normatively evolving from pre-Second World War exclusion on grounds of race – the infamous white Australia policy – to become the oft-touted symbol of the values of diversity, generosity, and humanitarianism of multicultural Australia. Politicians and government publications tell of the hundreds of thousands resettled from post-war Europe, of Australian leadership in efforts to resettle Vietnamese refugees in the 1970s, and of the establishment of an official, non-discriminatory resettlement programme that, as Prime Minister Turnbull told the Leaders' Summit on Refugees hosted by President Obama in September 2016, is "one of the most generous and compassionate resettlement programmes in the world"<sup>109</sup> – a formula of words used by every Prime Minister and Immigration Minister for the past two decades. As historian Klaus Neumann puts it, this refrain

who are proven vulnerable minorities and Syria and Egypt should be our immediate focus," Mr Shelton said.) See also the "Australian Christian Lobby federal election 2016 policy questionnaire to political parties", question 11 ("Will your party commit to a doubling of the annual humanitarian intake with a weighting given to those in most need such as persecuted religious minorities?").

- 107 "Fleeing Christians Should Go to Front of Queue: Archbishop", *The Australian*, 15 Sep. 2015.
- 108 Although proud of his Christianity, Scott Morrison has insisted that it does not inform his policy choices. For contrasting views of the influence of his faith, see J. Boyce, "The Devil and Scott Morrison", *The Monthly*, Feb. 2019; and J. Sandeman, "The Monthly Gets Scott Morrison's Christianity Badly Wrong", *Eternity News*, 4 Feb. 2019.
- 109 Prime Minister Malcolm Turnbull, Speech to the United Nations General Assembly, 20 Sep. 2016, and Speech at President Obama's Leaders' Summit on Refugees, 21 Sep. 2016. See also the Prime Minister's remarks at Refugee Week, 2018, which traces the modern history of Australian generosity to the immediate post war period ("our humanitarian resettlement program began on a large scale in 1947 after the Second World War").

has in turn become “the background chorus accompanying debates about public policy”, which takes as a given Australia long-established generosity towards refugees.<sup>110</sup>

Even if it is accurate today with respect to resettlement,<sup>111</sup> the claim to world-leading humanitarianism stands on exceedingly wobbly historical footings. A host of historians have presented a rather less altruistic picture of the motivations underpinning Australia’s resettlement policies from the 1940s to the 1970s. While Australia resettled over 180,000 displaced persons from post-war Europe, this was driven less by a humanitarian ethos than an economic imperative that coincided fortuitously with foreign policy priorities while posing little if any threat to domestic, racially-dictated demographic goals. The hypocrisy of the humanitarian rationale was recognised, and criticised, at the time, with the International Refugee Organisation – the precursor to UNHCR – expressing its exasperation “that Australia was less interested in helping the unfortunate than in finding healthy and industrious ‘factory fodder’ for its population and development programs”.<sup>112</sup> As Matthew Gibney puts it, “refugees contributed to the state’s economic, demographic and foreign policy goals; they did not challenge the state’s national identity as a European country; and they entered in a manner which could be strictly managed and controlled, namely, through resettlement programmes”.<sup>113</sup> Resettlement policy, in other words, was politicised from its inception.

Australia was not, of course, the only country to exploit the ready resource of cheap labour in the form of European displaced persons to feed its booming post war economy. Nor was it the only State to marry economic opportunity to the ideological “interest-convergence” of the Cold War.<sup>114</sup> Co-opting the refugee from the communist East as a symbol the West’s normative superiority was a defining feature of refugee politics in the Cold War. And while refugee law was to operate as a useful handmaiden to this objective, masking politicisation in legalist apolitical categories of persecution and Convention reasons,<sup>115</sup> it was in the discretionary realm of resettlement (and the other non-legal “durable solutions”) that ideological objectives could

110 K. Neumann, “Oblivious to the Obvious? Australian Asylum-Seeker Policies and the Use of the Past”, in K. Neumann & G. Tavan (eds.), *Does History Matter?: Making and Debating Citizenship, Immigration and Refugee Policy in Australia and New Zealand*, Canberra, ANU E Press, 2009, 47, 60. Newman calls the representation of history an exercise in “highly selected memory”.

111 The claim is misleading at best. See RMIT ABC Fact Check: *Does Australia Run the Most Generous Refugee Program Per Capita in the World?* 23 Feb. 2018. As Tim Costello put it, Australia’s intake “is sort of the pimple on the hippopotamus” in A. Henderson, “World Vision: Australia’s Refugee Intake Increase the ‘Pimple on the Hippopotamus’”, *ABC News* (online), 9 Sep. 2015, available at: <https://www.abc.net.au/news/2015-09-09/australia-refugee-intake-pimple-on-the-hippopotamus/6760586> (last visited 24 Sept. 2019).

112 C. Price, “Immigration Policies and Refugees in Australia”, *International Migration Review*, 15, 1981, 99, 101, cited in M.J. Gibney, *The Ethics and Politics of Asylum*, Cambridge, Cambridge University Press, 2004, 177.

113 Gibney, *The Ethics and Politics of Asylum*, 178. That travel to Australia was facilitated by the International Refugee Organization itself, which owned and operated a fleet of ships for this purpose, provided an added financial incentive to use displaced persons to feed Australia’s post-war economy.

114 J.C. Hathaway, “Can International Refugee Law be Made Relevant Again?”, in J.C. Hathaway (ed.), *Reconceiving International Refugee Law*, The Hague; London, Martinus Nijhoff, 1997, xvii–xx (“The Demise of the Interest Convergence”).

115 B.S. Chimni, “The Geopolitics of Refugee Studies: A View from the South”, *Journal of Refugee Studies*, 4, 1998, 350.

best be achieved.<sup>116</sup> Indeed, the history of resettlement can, in part, be told as a long and continuing struggle by UNHCR to address the tendency of States to manipulate their programmes for ideological, demographic, economic, and political purposes.<sup>117</sup>

Australian refugee resettlement as a humanitarian policy goal in its own right is usually traced to the response to the Indochina refugee crisis of the late 1970s. In Australia's historical imagination, no event is seen as more demonstrative of the State's exemplary generosity. Prime Minister Malcolm Fraser's acceptance of Vietnamese refugees from camps in South East Asia animated his reputation until his death in 2015 and is frequently cited even by the advocacy community as reflecting a golden age, in contrast to the cynical politics driving today's harsh deflection policies, holding out a nostalgic promise of what 'we' are still capable of achieving.<sup>118</sup> Yet this story has also come under critical scrutiny. Cabinet documents show that the Fraser Government's primary motivation was a desire to sustain its appearance of control over borders,<sup>119</sup> and to avoid the electoral backlash potentially triggered by unplanned boat arrivals.<sup>120</sup> Indeed, Katrina Stats assigns to the Fraser Government responsibility for originating the rhetorical dichotomy that dominates today's refugee discourse – that the good refugee is the one waiting for resettlement, the bad refugee the one breaching our sovereignty by coming unlawfully by boat.<sup>121</sup>

The use of resettlement as a wedge against irregular boat arrivals, and in turn to denigrate Australia's international legal obligations, became more strategic and sophisticated in the late 1990s. Of particular consequence was the Howard Government's decision in 1996 that every visa granted to a refugee recognised onshore would result in a place being taken off the humanitarian resettlement quota, a policy of divide and rule that turned naturally sympathetic communities against those who were now seen as taking a long-awaited place of a relative waiting overseas.<sup>122</sup>

116 See in this context J.C. Hathaway, "Refugee Solutions, or Solutions to Refugeehood?", *Refuge*, 24, 2007, 3–10.

117 An example of relatively recent UNHCR criticism of cherry picking can be seen in the Convention Plus discussions in 2001, where concerns were expressed at "the present trend of categorising refugees into 'first class refugees' and others", which "turns into a fight between various resettlement countries on getting the most 'attractive' refugees". See M. Zieck, "Doomed to Fail from the Outset? UNHCR's Convention Plus Initiative Revisited", *International Journal of Refugee Law*, 21(3), 2009, 387, 405; and M. Zieck, "'Quota Refugees', the Dutch Contribution to Global 'Burden Sharing' by Means of Resettlement of Refugees", *International Journal of Legal Information*, 39, 2011, 130, 143f.

118 According to Katrina Stats, Fraser's policies are "almost universally acclaimed as having been proactive, generous, effective and humanitarian in spirit", and "the antithesis of current policies": K. Stats, "Welcome to Australia? A Reappraisal of the Fraser Government's Approach to Refugees, 1975–83", *Australian Journal of International Affairs*, 69, 2014, 69–70, 75.

119 M. Gibney, *The ethics and politics of asylum: liberal democracy and the response to refugees*, Cambridge, Cambridge University Press, 2006. According to Gibney, to sustain an appearance of control and counter accusations of loss of sovereignty, Fraser negotiated agreements with neighbouring countries to accept more quota refugees, in exchange for measures to stop boat arrivals.

120 *Ibid.*; also C. Higgins, *Asylum by Boat: Origins of Australia's Refugee Policy*, Sydney, NSW, UNSW Press, 2017, who draws in part on the work of N. Viviani, *The Long Journey: Vietnamese Migration and Settlement in Australia*, Melbourne, Melbourne University Press, 1984.

121 Stats, "Welcome to Australia?", 80.

122 See E. Karlsen, J. Phillips & E. Koleth, "Seeking Asylum: Australia's Humanitarian Program", Department of Parliamentary Services, Information Analysis Advice, 21 Jan. 2011, 11; E. Karlsen, *Refugee Resettlement to Australia: What Are the Facts?*, Department of Parliamentary Services, Research Paper, 7 Sep. 2016, 11–12. Note that the deductions are made from the special humanitarian

The Government thus managed to create the reality of the queue jumper through a statistical sleight of hand, the queue becoming the dominant political and ethical justificatory metaphor, and the perverse mechanism for the distribution of the scarce resource of refugee rights.<sup>123</sup>

#### 4.2. Resettlement and the antinomian wedge

Linking the onshore and offshore programmes, as many commentators have noted, blurred the distinction between legal obligations under the 1951 Refugee Convention (and other human rights treaties) towards those within Australian territory and jurisdiction, and the policy-based voluntary resettlement programme.<sup>124</sup> It also, however, coloured the ethical nature of the public power used to implement each programme. In this context, John Howard's election manifesto pledge that "we will decide who comes to this country and the circumstances in which they come", was understood implicitly to be more than a re-assertion of a muscular sovereignty over borders; it was formulation of an ethical hierarchy, a statement of preference for resettlement decisions governed by unreviewable sovereign choice over slavish adherence to treaty obligations triggered by irregular boat arrivals. That it has become a mantra of Prime Ministers ever since, accepted as a self-evidently normative truth, is testament to the extent to which its inherent antinomian character has become ingrained in the Australian political psyche.

An indication of this mindset is the extent to which the Refugee Convention has become characterised as an out-of-date pull factor – a product being sold by people smugglers to their queue jumping clients,<sup>125</sup> and thus tainted by association. Politicians from all sides periodically question its adequacy and relevance,<sup>126</sup> intimating an openness to consider withdrawal, and setting it against the democratic will of

programme's annual quota, not the offshore refugee category visas. The policy has been consistently opposed by the advocacy community for being inconsistent with international practice, blurring the distinction between obligations and voluntary contributions, and fomenting hostility. See J. McAdam, "Australia and Asylum Seekers", *International Journal of Refugee Law*, 25, 2013, 435, 439; Refugee Council of Australia, "Links Between the Onshore and Offshore Programs", May 2012.

123 For a fascinating analysis of the metaphor of the queue as a distributional mechanism for allocation of refugee rights, see K. Young, "Rights and Queues: On Distributive Contests in the Modern State", *Columbia Journal of Transnational Law*, 55, 2016, 65–137.

124 Refugee Council of Australia, "Links Between the onshore and Offshore Program"; St Vincent de Paul, Submission to Department of Immigration and Border Protection Australia's Humanitarian Programme, 2017-18 Discussion Paper, 7, available at: [https://www.vinnies.org.au/icms\\_docs/270943\\_Submission-Humanitarian\\_Program\\_2017-18.pdf](https://www.vinnies.org.au/icms_docs/270943_Submission-Humanitarian_Program_2017-18.pdf).

125 "[The] difficulty we have got with the convention is not the document itself but how lawyers and others have interpreted it for the last 50 to 60 years [...] it is now being used as a tool by people smugglers to basically run death voyages". Immigration Minister Scott Morrison, 3 August 2014, on 2GB, reported by D. Hurst, "Scott Morrison Calls for Reinterpretation of Refugee Convention: Immigration Minister Says Convention Is Being Used by People Smugglers to 'Run Death Voyages'", *The Guardian* (online), 4 Aug. 2014, available at: <https://www.theguardian.com/world/2014/aug/04/scott-morrison-calls-for-re-interpretation-of-refugee-convention> (last visited 24 Sept. 2019).

126 This was particularly apparent in the run up to the 2013 elections. See "Refugee Convention Withdrawal 'an Option'", *Sydney Morning Herald*, 19 Jul. 013 ("Asked if a Coalition government would take Australia out of the 1951 convention, [Scott Morrison] replied that he thought all options had to be kept open. [...] Prime Minister Kevin Rudd [...] indicated the government might call for the 60-year-old UN convention to be changed to reflect current movements of displaced people around the world.").



the people to determine their own law and not be dictated to by “advocates” and “international courts”.<sup>127</sup> Similar suspicion has been cast against the implementing legislation, the Migration Act 1958 (Cth), and its judicial interpretation as a “reflection” of international obligations that had been used to read down otherwise broad ministerial discretions.<sup>128</sup> Amendments to the Act in 2015 removed or quarantined all references to the Convention and its protection obligations; even *non-refoulement*, the cornerstone principle of the discipline, was to be explicitly excised from decision-making about deportation, becoming what one jurist memorably called a “mandatory irrelevant consideration”.<sup>129</sup> The executive was to be unimpeded by law in the defence of the “sovereign borders”.<sup>130</sup>

The Refugee Convention, in other words, although entered voluntarily, is now depicted as being imposed and interpreted in such a way as to represent an undemocratic infringement of sovereignty and a threat to border protection. Such sovereignty is more ethically and authentically exercised in extending Australia’s famed generosity to those languishing overseas in the camps, rather than towards the irregular arrival whose genuineness (ethically rather than legally)<sup>131</sup> is increasingly suspect. This reasoning was to justify the raft of legislative changes which were to entrench the ethical divide by removing basic procedural rights from onshore irregular arrivals and treating their stories with a higher degree of suspicion, a type of presumptive lack of credibility not applied to offshore applicants.<sup>132</sup> Each amendment, moreover, would be justified by reference to the normative onshore–offshore dichotomy and the metaphor of the queue.<sup>133</sup> The logic of this narrative was to reach its nadir in the

127 “[...] the Australian Parliament, the Australian people will define our obligations and particularly the interpretation of those obligations and we are not going to hand that off to advocates and others around the world and through other international courts dictating to Australia what our obligations are. [...] We are a sovereign country. We get to decide what our rules are and what our obligations are.” Scott Morrison, Minister for Immigration, 25 Sep. 2014, discussing the ‘Legacy Caseload’ Bill.

128 See *Plaintiff M61/2010E v The Commonwealth (Offshore Processing Case)* (2010) 243 CLR 319, 339 [27], and the host of cases which were to follow in its wake. See M. Zagor, “Adventures in the Grey Zone: Constitutionalism, Rights and the Review of the Executive Power in the Migration Context”, in J. Bell & M.-L. Paris (eds.), *Rights-Based Constitutional Review: Constitutional Courts in a Changing Landscape*, Cheltenham, Edward Elgar, 2016, 180–217.

129 Stephen Lloyd SC, transcript, *Minister for Immigration and Border Protection & Anor v SZSSJ*, HCATrans 133 (7 Jun. 2016). See Migration Act 1958 (Cth) s. 197C. This has led to the rather bizarre but inescapable conclusion that the Minister *must* deport refugees as required “as soon as reasonably practicable” under s. 198, and cannot even consider *refoulement* obligations when exercising this power under s. 197C. See *DMH16 v. Minister for Immigration and Border Protection* [2017] FCA 448, which has been followed in over a dozen subsequent cases.

130 Operation Sovereign Borders is the military-led response to “combat people smuggling and protect [Australia’s] borders” which the Coalition took to the September 2013 federal election.

131 Acceptance rates of irregular maritime arrivals consistently range from 85 to 95 per cent. By contrast, upwards of 90 per cent of those who apply under the Refugee and Special Humanitarian Program are rejected, regardless of merit.

132 It is beyond the scope of this article to outline these changes in detail. For more, see submissions to parliamentary inquiries into the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014, and to the Migration Amendment (Protection and Other Measures) Act 2015.

133 See, for instance, the discussion in committee in Commonwealth of Australia, Official Committee Hansard, Legal and Constitutional Affairs Legislation Committee, *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014*, 14 Nov. 2014, where the

trope, reflected primarily in a line of speeches by Malcolm Turnbull, both before and while Prime Minister, that harsh, even “cruel” policies towards irregular arrival was a precondition for the capacity to exercise generosity.<sup>134</sup>

Three more recent developments in Australia’s resettlement policy further consolidate the invidious linkage between the onshore and resettlement programmes. The first is the so-called “no advantage” principle coined by the Expert Panel on Asylum Seekers in 2012 under which asylum-seekers who arrive irregularly “gain no benefit by choosing not to seek protection through established mechanisms”; they would receive no “advantage” over those who are waiting or have waited in the mythical queue for resettlement.<sup>135</sup> At ethical and legal levels, the principle raised significant concerns at its unveiling. No rule exists in law or ethics that would justify deliberately placing a refugee over whom a State has effective control into a highly vulnerable condition that would have characterised their stay in, for instance, a refugee camp overseas, let alone provide for that situation to continue for an indefinite, protracted period. Although this was not how the “principle” was explained as operating by the Panel, it has in effect become the outcome for those irregular maritime arrivals taken offshore for processing.

“No advantage”, in other words, reflects the logic of Australia’s draconian regime. As a rhetorical device, it consolidates the framing the irregular arrival as an exploitative advantage seeker in contrast with those who wait passively for assistance that might never arrive. This good refugee must, it seems, retain hope – or perhaps faith – in their own eventual salvation, but make no demand in law that it be brought about.

Secondly, there is the much-vaunted pilot project of private sponsorship in the resettlement programme (now the Community Support Program). Although warmly received in the refugee resettlement sector (especially by church groups), the programme failed to adhere to the basic principle of additionality,<sup>136</sup> thereby threatening to be less a mechanism for creating new “pathways” and alleviating burdens on first countries of refuge than a privatisation and outsourcing of a core governmental function.<sup>137</sup> Without the introduction of adequate safeguards, the programme may become yet another avenue for the degradation of the non-discriminatory

“queue” was repeatedly raised as a justification for the removal of onshore procedural rights for “unauthorised maritime arrivals”.

- 134 For a fascinating review of the development of Turnbull’s thinking on this utilitarian compromise before becoming Prime Minister, see E. Karlsen, “Politics is the Art of the Possible’, but Is Malcolm Turnbull Likely to Change the Government’s Hard-Line Approach to Asylum Seekers?”, *Parliamentary Library*, 1 Feb. 2016, available at: [https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/FlagPost/2016/February/Turnbull\\_on\\_asylum\\_seekers](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/FlagPost/2016/February/Turnbull_on_asylum_seekers). His rhetoric became more succinct as Prime Minister (e.g. “The Foundation of Our Generous Humanitarian Programs Is Secure Borders”, Media Release, Doorstop Interview, 14 Nov. 2016).
- 135 See Australian Government, *Report of the Expert Panel on Asylum Seekers*, Aug. 2012, 8, 11, 12, 14, 20, 36, 41, 47, and 48.
- 136 See J. Hyndman, W. Payne & S. Jimenez, “Private Refugee Sponsorship in Canada”, *Forced Migration Review*, 54, 2017, 56, 59.
- 137 See K. Hoang, “The Risks and Rewards of Private Humanitarian and Refugee Sponsorship”, The Lowy Institute, *The Interpreter*, 16 May 2017, available at: <https://www.loyyinstitute.org/the-interpreter/risks-and-rewards-private-humanitarian-and-refugee-sponsorship>.

programme as special interests use private sponsorship to cherry pick and game the system.

Finally, there is the programme analysed in this article – the creation of a one-off resettlement cohort for a specific group which now appears to have become normalised as governing the selection of refugees and displaced persons from certain Muslim majority countries. As noted above, the programme differs from the aborted US model by avoiding the manifestly discriminatory national ban component, and staying quiet on the prioritisation of Christians. Instead, it purports to employ what look like UNHCR's own categories of vulnerability, relying on relatively innocuous looking internal policy processes to inform decision-making. The result, however, has been a very clear discriminatory intake. Quietly accompanying the programme, according to UNHCR and governmental sources, is a move away from UNHCR referrals, with numbers shrinking dramatically in the past 3 years from 10,000 in 2012–2013 to 5,000 in 2016–2017.<sup>138</sup>

The co-option of vulnerability might seem opportunistic, but it is a difficult policy parameter to argue against. Vulnerability is currently enjoying a normative and legal moment. Long presented by some jurists as a panacea to some of the ills inherent in the categorisation approach of discrimination law,<sup>139</sup> the principle is appearing in jurisprudence and scholarship as a way of identifying particular needs and rights, including in the refugee context.<sup>140</sup> UNHCR has long used the principle to identify its categories of those most in need of resettlement – the most vulnerable of the vulnerable (in that refugees generally are inherently vulnerable, as has been recognised by the European Court of Human Rights).

While it is beyond the scope of this article to provide a detailed analysis of vulnerability as a juristic principle,<sup>141</sup> it is worth noting three things which make vulnerability susceptible to co-option and potential abuse. First is that, despite its ubiquity in UNHCR resettlement policy, it is nowhere adequately defined. Relatedly, its use as a principle for identifying categories of persons (or “groups” as the *Resettlement Handbook* puts it) is incompatible with the theory of its early proponents that it be used on a case-by-case basis to avoid discrimination law's tendency towards categorical, generalised thinking. Finally, although its applicability in rights jurisprudence is proving somewhat fruitful, it is questionable whether any principle based on an

138 Chip Le Grand, “Muslim Intake Expected to Fall as Christians Rise”: “Australia’s acceptance of all refugees referred by the UNHCR had dropped from 10,000 in 2012-13 to about 5000 in 2016-2017.” See Questions Taken on Notice, Budget Estimates Hearing, 22 May 2017, (BE17/154) – UNHCR referrals – Programme 2.4: Refugee and Humanitarian Assistance. Note that Le Grand’s reference to “refugees” is inaccurate, as the programme covers wider categories of displaced persons.

139 Seminal work in this area has been carried out in M. Fineman, “The Vulnerable Subject and the Responsive State”, *Emory Law Journal*, 60, 2010–2011, 251; M. Fineman & A. Greer (eds.), *Vulnerability: Reflections on a New Ethical Foundation for Law and Politics*, London; New York, Routledge, 2013.

140 See L. Peroni & A. Timmer, “Vulnerable Groups: the Promise of an Emergent Concept in European Human Rights Convention Law”, *International Journal of Constitutional Law*, 11, 2013, 1056; and V. Flegar, “Vulnerability and the Principle of Nonrefoulement in the European Court of Human Rights: Towards an Increased Scope of Protection for Persons Fleeing from Extreme Poverty?”, *Contemporary Readings in Law and Social Justice*, 8, 2016, 148.

141 For a step in this direction in the resettlement context, see M. O’Sullivan, “The Ethics of Resettlement: Australia and the Asia-Pacific Region”, *The International Journal of Human Rights*, 20(2), 2016, 241–263.

inherent human condition can operate as the touchstone standard for fairly distributing the scarce resource of a resettlement place when that scarcity is itself so perversely pronounced, and when the international community routinely fails even to come close to meeting demand.<sup>142</sup> By UNHCR estimates, the international community currently meets a mere 0.5 percent of identified needs through resettlement. When a resource is as rare as a resettlement place, the need as great as it currently stands, and the mechanism for distribution founded on unimpeded sovereign discretion, vulnerability can do little more than operate as a smokescreen to hide the workings of an inherently arbitrary regime.

### 4.3. “Generosity but . . .” – towards a political theology of Australian resettlement

To conclude this overview of the normative-legal trajectory of Australia’s resettlement programme, it is necessary to return to the initial theme: if there has been one constant refrain characterising the last 18 years, repeated in various guises by Ministers of all stripes, it is the assertion, originally made by John Howard as the Tampa threatened to enter Australian territorial waters, that “we are a generous open hearted people taking more refugees on a per capita basis than any nation except Canada [. . .] [b]ut we will decide who comes to this country and the circumstances in which they come”.<sup>143</sup> As noted, it is common to hear the latter part of this statement, the classic call to unbridled sovereignty; my students, even those who were babies at the time it was uttered, are all familiar with its Schmittian “decider” aspect. But it is its assertion of generosity that determines sovereignty’s ethical contours, that consolidates the nation’s self-image, and that allows the Government to identify and confer the gift of recognition on the authentic, deserving refugee while decrying those who lack such qualities – the “illegal” maritime arrival. Identifying the bogus, advantage-seeking refugee has a constitutive function when accompanied by sovereign generosity.

As Derrida noted with respect to the related notion of hospitality (at least hospitality with a small “h”), generosity also contains its own logic of limitation, exclusion, and control.<sup>144</sup> An analysis of the term’s appearance in political speeches indicates that it is almost invariably espoused at the very moment of its denial. Its usage, in other words, emphasises both its own limits and its potential to exploitation, as well as the superior status of those with the resources to bestow generosity on worthy recipients. The etymology of the term similarly associates generosity with nobility and privilege, its bestowal conferring and confirming the moral order, or in this case

142 UNHCR, *Projected Global Resettlement Needs*, 24th Annual Tripartite Consultations on Resettlement, 25–26 Jun. 2018. As the press release for the report noted, the number of refugees who need a solution in third countries had grown to a projected 1.4 million in 2019, while the number of resettlement places globally had dropped to just 75,000 in 2017. “On these figures, it would take 18 years for the world’s most vulnerable refugees to be resettled.”

143 Prime Minister John Howard, Speech, Election Campaign Launch, 28 Oct. 2001.

144 For a clear overview of Derridean (h)ospitality and its applicability to Australian refugee rhetoric, see M. La Caze, “Not Just Visitors: Cosmopolitanism, Hospitality, and Refugees”, *Philosophy Today*, 48(3), 2004, 313–324.

a moral geopolitical order. It thus creates, in Didier Fassin's words, only a fleeting illusion of a common human condition.<sup>145</sup>

As noted, in the Australian resettlement context, this generosity is identified exclusively with an absolute sovereign discretion in choosing people for – and bestowing upon them – a place in the resettlement programme, in contrast to the international legal obligations imposed by the Convention. Underpinning the retreat from the Convention in all its many manifestations is therefore a normative antinomian framework, founded on and reflected in Australia's generous nature, which makes ethical sense to its adherents.

The most recent manifestation of this logic, as Prime Minister Turnbull intimated, is found in the assertion that the ability to be generous is conditional upon the political violence perpetrated on irregular arrivals. At one level, it is the perfect political violence logic loop – a cruel-to-be-kind utilitarianism, the rationalised justificatory discourse of deterrence married with the virtue ethics of generosity. But there is also a sacrificial-type quality to the logic – almost a fetishisation of the suffering we cause.<sup>146</sup>

In this sense, the resettlement discourse in Australian politics contains recognisable seeds of a thin political theology – themes and concepts in the political and legal discourse that have a quasi-religious resonance. At one level, identifying these themes might seem like an exercise in either false equivalencies or misleading analogies – criticisms readily levelled against political theology more generally.<sup>147</sup> What makes the observation relevant in this context, however, is the adoption of resettlement as a vehicle for manifestly religious purposes.<sup>148</sup> These resonances and familiarities, in other words, provide clues for resettlement's propensity to be co-opted by religious groups for theological rather than humanitarian purposes.

#### 4.4. Resettlement and the Law-Grace Cunundrum

As noted above, Australia's resettlement programme has been used effectively as a wedge against international legal obligations in favour of a classical sovereign discretion. Although the analogy at first blush may seem somewhat forced, this can be read as partaking of those elements of classic Christian antinomianism in the denigration of the Law as impeding Grace, here understood as the exercise of the sovereign's authentic moral agency – the autonomous free will to choose and act for the good by

145 D. Fassin, *Humanitarian Reason – A Moral History of the Present*, Berkeley, University of California Press, 2012, xi.

146 For the view that this fetishization of political violence also occurs in the critical refugee literature, not least the work of Agamben, see I. Tyler, "Welcome to Britain': The Cultural Politics of Asylum", *European Journal of Cultural Studies*, 9, 2006, 185, 197–198.

147 See H. Blumenberg, *The Legitimacy of the Modern Age*, trans. Robert M. Wallace, Cambridge, MA, London, MIT Press, 1983, 94 ("Is political theology' only the sum of a set of metaphors, whose selection reveals more about the character of the situations in which use is made of them than about the origin of the ideas and concepts that are employed in dealing with such situations?"); and Toscano, *Fanaticism*, especially ch 6, where he criticises Cohn's *Pursuit of the Millennium* and John Gray's work as theories "of secular form as a vehicle for religious content" that use "analogies impervious to massive historical discrepancies" (208–10); see also J.D. Haskell, *Political Theology and International Law*, Leiden, Brill, 2018, 4 ("The analogy in these studies is usually wildly under-theorized.").

148 While recognising that the metaphor of the vehicle is also open to critique.

lifting the refugee from their fallen state.<sup>149</sup> The law's impediment has a clear logic: how can one be truly generous, truly good, when one is merely following a legal obligation? As with redemption, the resettlement place is neither something that can be demanded of the sovereign nor expected as a right.

From a theoretical perspective, the synergies with classical political theology, at least as expounded by Carl Schmitt, are patent.<sup>150</sup> True political sovereignty, as Carl Schmitt put it, is exercised – indeed, it can only be genuinely exercised – outside of the law in the law's suspension, or, as David Dyzenhaus puts it, when the law “recedes” leaving the legally unconstrained sovereign to act.<sup>151</sup> In developing his ideas, Schmitt appears to have modelled this sovereign on a hidden, transcendent (rather than immanent) decision-making God.<sup>152</sup> In this case, it operates either in the largely legally unbounded and hidden discretionary space of a resettlement programme,<sup>153</sup> or in the area carved out of the law for the free exercise of sovereignty, that grey zone of executive discretion on those Pacific islands outside the Australian State's traditional jurisdiction, subject only to the non-compellable Ministerial discretions which now fill the migration statute books.<sup>154</sup> Similarly, as Prime Minister Turnbull repeatedly intimated, genuine generosity requires unimpeded control over the borders if the State is to fulfil its true redemptive purpose through its sovereign decisions. We must limit non-discretionary legal obligation in order to protect ourselves and our capacity to do good. This, in turn, has involved the denigration of the law – domestic and international – as an impediment to transcendent grace. As

149 For an account of the connection between autonomy and sovereignty, see J.B. Schneewind, *The Invention of Autonomy*, Cambridge, Cambridge University Press, 1998.

150 C. Schmitt, *Political Theology: Four Chapters on the Theory of Sovereignty*, trans. George Schwab, Chicago, University of Chicago Press, 2005. MIT Press, 1988. Schmitt is not, of course, the only exponent of such theories, but his work remains the starting point for much of the writing in the area. Moreover, Schmitt was motivated by disdain for liberal democratic decision-making and a desire to see politics return to a transcendent form. See M. Lilla in *The Reckless Mind: Intellectuals in Politics*, New York, New York Review of Books, 2001, 68–70, who, drawing upon Heinrich Meier's *The Lesson of Carl Schmitt*, University of Chicago Press, 1998, notes: “beneath Schmitt's surface realism lie some very firm notions about the ideal political order and how nearly the Catholic Church once embodied it. [...] [H]e had a very precise (if fictional) idea of the unified Christian world we had lost, and this remained his standard for measuring all subsequent political developments.” There are parallels here with Steve Bannon's political theology. See interviews cited in n 28.

151 See D. Dyzenhaus, *The Constitution of Law: Legality in a Time of Emergency*, Cambridge, Cambridge University Press, 2006, 39.

152 Lilla, *The Reckless Mind*, 70; see also J. de Ville, *Constitutional Theory: Schmitt after Derrida*, Milton, Taylor and Francis, 2017, 78–80, especially n 19 (“there can be no appeal to a transcendent source of power such as God in a democratic state. Such an appeal [...] would entail a denial of immanence.”) See also E. Runions, *The Babylon Complex: Theopolitical Fantasies of War, Sex, and Sovereignty*, New York, Fordham University, 2014, who notes these similarities. Talking about “theonomists”, she notes at 91: “Like Schmitt, they advocate strong political leaders who make *exceptions to existing laws* when politically and morally necessary. Like Schmitt, their vision for politics requires *enemies, conflict, and war*. Like Schmitt, they wish to *reinvigorate weakened authorities and natural hierarchies*. And, like Schmitt, they wish to *reclaim transcendence* as a guarantor for the decision on the exception.” (emphasis in original)

153 Decisions about visas under the resettlement programme are governed by law, but the criteria are much more open, reasons for decisions very brief, and opportunities for review non-existent.

154 See G. Triggs, Australian Human Rights Commissioner, *Human Rights and the Overreach of Executive Discretion: Citizenship, Asylum Seekers and Whistleblowers*, Annual Tony Blackshield Lecture delivered at Macquarie Law School, Macquarie University, 5 Nov. 2015.

Vincent Lloyd points out, this dynamic of law versus grace is a common feature of different political theologies.<sup>155</sup>

At the individual rather than State level, those who insist on strict adherence to the law – the refugee who demands we face their humanity, their bare life, and adhere to our obligation to provide them with protection<sup>156</sup> – are treated as not deserving of long-term protection.<sup>157</sup> They are instead cast out into indefinite limbo – the lack of finiteness to their predicament identified as the source of serious harm – before being eligible for potential redemption, once again through a discretionary “resettlement” programme;<sup>158</sup> their eventual salvation is something no government will guarantee or be compelled to dispense. Consistent with the dominant policy setting in Australia of the past few decades, this state of purgatory, if not necessarily the actual suffering experienced, acts as a deterrent, a sign to others of the true way to salvation: to be humble, patient, meekly awaiting the sovereign’s redemptive touch to be raised to full personhood through resettlement in the liberal west.

Refugee politics is not alone in drawing upon such quasi-theological tropes. Scholars such as Mutua, for instance, have discussed the “grand narrative” of the human rights movement as mired in the three-dimensional prism of savage–victim–saviour. Talal Asad has similarly observed the redemptive nature of the modern human rights enterprise, redeeming traditional cultures for liberal humanity.<sup>159</sup> Even international law, as Martii Koskenniemi has intimated, has a redemptive streak to it, not least in its contemporary guise as a law of humanity, implemented and exercised primarily by those in the geopolitical north.<sup>160</sup>

The analysis of refugee law through this prism, however, is oddly rare. So far, the analysis has been broad brush, inviting easy targets for theoretical critique. While several avenues present themselves for deeper analysis, one stands out as particularly

155 V. Lloyd, *The Problem with Grace: Reconfiguring Political Theology*, Stanford, Stanford University Press, 2011, 2. The notion of state power being wielded to confer grace is ingrained in American political rhetoric. Runions, *The Babylon Complex*, 83, cites President Obama concerning aid efforts in Haiti: “God’s grace, and the compassion and decency of the American people, is expressed [...] through our Armed Forces, through the efforts of our entire government, through similar efforts [...] around the world.”

156 For a Levinasian account of this encounter, see I. Mann, *Humanity at Sea: Maritime Migration and the Foundations of International Law*, Cambridge, Cambridge University Press, 2016.

157 “Unauthorised maritime arrivals” who were not taken offshore for processing and settlement elsewhere are entitled only to “temporary protection visas”.

158 The use of the term “resettlement” by Australian authorities for the Cambodian agreement has been rightly condemned by the refugee advocacy community. See UNHCR, “UNHCR Statement on Australia–Cambodia Agreement on Refugee Relocation”, Press Release, UNHCR, 26 Sep. 2014, available at: <https://www.unhcr.org/news/press/2014/9/542526db9/unhcr-statement-australia-cambodia-agreement-refugee-relocation.html> (last visited 24 Sept. 2019); and M. Falla, “Outsourcing Obligations to Developing Nations: Australia’s Refugee Resettlement Agreement with Cambodia”, *Monash University Law Review*, 42(2), 2016, 638.

159 T. Asad, *Formations of the Secular: Christianity, Islam, Modernity*, Stanford, CA, Stanford University Press, 2003, Ch. 4 (“Redeeming the ‘Human’ Through Human Rights”).

160 The nineteenth-century depiction of international law as the “gentle civilizer” of nations has a distinctively evangelical hue about it. M. Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960*, Cambridge, Cambridge University Press, 2009; see also M. Koskenniemi, “International Law as Political Theology: How to Read Noms der Erde”, *Constellations*, 11(4), 2004, 492. For an analysis of how international lawyers have started to participate in the tendency to explain politics through the prism of religion, see Haskell, *Political Theology and International Law*.

relevant to strengthen the thesis and assist in an explanation of how resettlement has become an effective, affective vehicle for a more express political theology of the politicised wing of the evangelical movement – the theological and political role played by those who would die for their faith in the global battle for the end of times – the Christian martyr.

## 5. CONCLUSION: TOWARDS A MARTYROLOGY OF RESETTLEMENT

Martyrdom lies in the very heart of Christianity. Built around the figure of the crucified Christ and the self-sacrifice of his followers, suffering for one's faith became a central theological motif from the earliest days of the new religion, with martyrdom narratives key sites for the construction of Christian identity.<sup>161</sup> And while the veneration of martyrs was initially treated with disdain in the protestant schism, it was not long before the new branches of Christianity took their own distinct martyrological turn.<sup>162</sup>

Given its enduring theological and cultural potency, it is unsurprising to find martyrology the subject of a vast and diverse literature with scholars quibbling over everything from its core definitional attributes to its historical provenance, theological function, and sociological purpose. Despite this cacophony, several interrelated themes emerge from the scholarship relevant to the current inquiry into martyrdom's role in humanitarian and refugee political discourses.

First, witnessing acts of martyrdom has always had constitutive, redemptive, and political functions. Despite being the etymological root of the word, the martyr as "witness" refers not just the victim whose death stands as a testament to the truth (the *superstes*), but also to those exposed – through transmitted word and image – to the narrative of the martyrdom (the *testis*).<sup>163</sup> Indeed, one of the common attributes of many of the definitions of martyrdom is some form of *vicarious* suffering which brings with it a vicarious benefit.<sup>164</sup> The story of another's persecution, in other words, can be the vehicle for one's own redemption. This lies at the core of the redemptive message of Jesus on the Cross, a death that is "vicarious and atoning",

161 See, for instance, D. Boyarin, *Dying for God: Martyrdom and the Making of Christianity and Judaism*, Stanford, CA, Stanford University Press, 1999, for an influential study of the entanglement of Jewish and Christian discourses of martyrdom in the invention of their separate identities.

162 The publication of *Foxes Book of Martyrs* is usually taken as reflection of martyrdom's renewed vigour in Protestantism in England.

163 The terminology of *testis* and *superstes* are borrowed from G. Agamben, *Remnants of Auschwitz: The Witness and the Archive*, New York, Zone Books, 1999. A discussion of the relationship between these two ways of "witnessing" is explored in Fassin, *Humanitarian Reason*, Ch. 8.

164 Droge and Tabor, in their classic work establishing the distinction between suicide and martyrdom introduced by Augustine, include the "vicarious benefit resulting from their suffering and death" as one of their widely-adopted five characteristics of martyrdom. See A.J. Droge & J.D. Tabor, *A Noble Death: Suicide and Martyrdom among Jews and Christians in Antiquity*, San Francisco, CA, HarperSanFrancisco, 1991, 75. Although they conclude that the distinction between suicide and martyrdom is in the eye of the beholder, they identify the following five characteristics of deaths characterised as martyrdom: (1) they reflect situations of opposition and persecution; (2) the choice to die, which these individuals make, is viewed by the authors as necessary, noble, and heroic; (3) these individuals are often eager to die; indeed, in several cases they end up directly killing themselves; (4) there is often the idea of vicarious benefit resulting from their suffering and death; (5) the expectation of vindication and reward beyond death, more often than not, is a prime motivation for the choice of death.



according to the statement of faith of the World Evangelical Alliance.<sup>165</sup> A contemporary manifestation of this dynamic is found in the “persecuted church” movement where, as Omri Elisha puts it, supporters are urged “to share the mantle of martyrdom by engaging in purposeful acts of religious mediation, including the consumption and circulation of martyrological media”,<sup>166</sup> with the martyr’s personal narrative at their core. Tapping into technologies of contemporary consumerism,<sup>167</sup> what is promised is an experience that would be recognised by the early Christians familiar with the message of *Hebrews* and *Acts*: the transformative act of “witnessing” the suffering of martyrs.

René Girard makes the observation that this seemingly miraculous, transformative power of “empathetic imagining” with a victim lies at the heart of all religions (and much literature).<sup>168</sup> The mechanism at play is thus not exclusive to Christianity. Nonetheless, Christianity is unique in making such suffering so central to the experience and identity of both the founder of the faith – whose death is commonly understood theologically as an act of sacrifice, of “making sacred” – and of the believer, encouraged in the earliest texts to follow in the founder’s steps.<sup>169</sup> As Girard puts it, “[d]ying in the same way as Jesus did, for the same reasons as he did, the martyrs multiply the revelation of the founding violence.”<sup>170</sup> For the early church, persecution was thus synonymous with authentic faith and grace; as Saint Paul promised in *Second Timothy* 3:12, “everyone who wants to live a godly life in Christ Jesus will be persecuted” – a promise that retains its salience amongst today’s martyrologically-minded believers who regularly cite these scriptural sources.<sup>171</sup>

- 165 T. Larsen, “Defining and Locating Evangelicalism”, in T. Larson & D.J. Treier (eds.), *The Cambridge Companion to Evangelical Theology*, Cambridge, Cambridge University Press, 2007, 9: “evangelicals have viewed the nature of the work of Christ on the cross as vicarious and/or substitutionary.”
- 166 O. Elisha, “Saved by a Martyr: Evangelical Mediation, Sanctification, and the ‘Persecuted Church’”, *Journal of the American Academy of Religion*, 84(4), 2016, 1056, 1058.
- 167 Elisha considers the many products, from t-shirts, videos, attendance at conferences (with titles such as ‘Bound with Them’), and reading of books (notably *Jesus Freaks*, essentially a book of the martyrs for the Gen Y) that are designed to deepen spiritual ties with foreign believers who have suffered, creating what the church calls “fellowship” with the “living martyrs”. *Ibid.* See also McAlister, “The Persecuted Body”: “The 10/40 Window was appealing not only as a concept but also as a marketing tool. One could buy 10/40 Window calendars (featuring a different “people group” each month) or maps, movies, and newsletters.”
- 168 It is also, of course, one of the dynamics at work in the discourse of human rights. See R. Meister, *After Evil: A Politics of Human Rights*, New York, Columbia UP, 2010, 149, for a discussion of Levinas’s attempt to resolve some of the contradictions involved in such imagining. And for the potential pathologies that plague the empathy which lies at the heart of contemporary humanitarianism, see Fassin, *Humanitarian Reason*, pp 26–29.
- 169 *Epistle to the Hebrews* stands out in this regard. See B.R. Dyer, *Suffering in the Face of Death: The Epistle to the Hebrews and its Context of Situation*, London; New York, NY, Bloomsbury, 2017.
- 170 Girard, *Things Hidden*, extracted in J.G. Williams, *The Girard Reader*, New York, Crossroad Publishing, 2000, 170. I note that Girard attempts to re-characterise Christ’s death as “nonsacrificial”. This is, however, an outlier view, and while compelling within Girard’s own sophisticated theology, inconsistent with the way the death has been understood by the church and followers.
- 171 “It is always going to occur, because Christ promised it would. Our mission is to fellowship with those enduring persecution, support them when and where we can, and be a blessing to them. In turn, we are blessed with their testimonies of God’s faithfulness.” Todd Nettleton, spokesman for Voice of the Martyrs, quoted in C. Kolker, “The Blood of the Lambs”, *Los Angeles Times*, 28 Mar. 2004, available at: <https://www.latimes.com/la-tm-martyr13revmar28-story.html>.

These themes are reflected in the refugee martyrology literature: persecution is evidence of the truth, and is thus a blessing;<sup>172</sup> narratives and images of persecution, presented and consumed through a range of media and technologies, provide an avenue for this to be experienced.

Secondly, the benefit resulting from the act of witnessing martyrdom manifests not just in terms of personal redemption, but in institutional consolidation. The prescient statement by the second century theologian Tertullian that “the blood of the martyrs is the seed of the Church” is thus as much a sociological observation as a theological assertion. For today’s evangelical leaders concerned both with the “persecuted church” in the 10/40 Window and the mission of their own church, Tertullian’s observation retains its motivating power, appearing frequently in promotional material. As DeSoucey et al. point out, for reputational entrepreneurs in these institutions “the leveraging of the martyr’s story makes tangible the values and beliefs” they seek to promote.<sup>173</sup> A history of martyrdom indicates that it was ever thus. Christian identity has always been sharpened through stories of suffering at the hands of implacable agents of violence.<sup>174</sup>

Thirdly, with the political revival and repositioning of the evangelical movement in the United States, it was also inevitable that the martyrology at its core would find an outlet in contemporary humanitarianism. Drawn from shared roots, the similarities between the theological and humanitarian narratives are striking. Both are engaged, as Didier Fassin points out, in an “empathetic search for suffering”,<sup>175</sup> and both adopt the figure of the vicarious witness. Humanitarian organisations present themselves as the moral witnesses of the age, providing a “voice for the voiceless”, the victim who cannot (or sometimes will not) speak for themselves. The self-identification of the role of the humanitarian as “bearing witness” is ubiquitous, from the realm of human rights,<sup>176</sup> to refugee protection,<sup>177</sup> to the delivery of aid.<sup>178</sup>

172 One consequence of this is that the common assertion that Christians are the most persecuted people on earth also acts as a statement of the truth of the faith.

173 M. DeSoucey, J.-E. Pozner, C. Fields, K. Dobansky & G.A. Fine, “Memory and Sacrifice: An Embodied Theory of Martyrdom”, *Cultural Sociology*, 2(1), 2008, 99, 100. Again, Fassin throws light on the dynamic at work, noting that humanitarian testimony produces what he calls the “political work of subjectivation” ie the creation of the victim as subject, by a third party witness. Fassin asks of those who report these testimonies – from political authorities and humanitarian organisations, to religious leaders and psychiatrists: “What truth are they trying to make him [*sic.*] tell, or to tell through him?”

174 As Shelly Matthews points out, the story of “the first martyr”, Stephen, was designed so as to construct Jewish and Christian identities “along a simple binary: to be a non-believing Jew [ie not believing in Christ] is to be an agent of violence; to be a Christian is to suffer”. In doing so, the story consolidated a master narrative of Christian origins that has survived to this day. It also has an ambiguous relationship to power, inverting categories of strength and weakness – something which Nietzsche found ethically objectionable in both Judaism and Christianity – while masking the reality of imperial violence. See S. Matthews, *Perfect Martyr: The Stoning of Stephen and the Construction of Christian Identity*, Oxford, Oxford University Press, 2012, 9.

175 Fassin, *Humanitarian Reason*, 70.

176 See the self-characterisation of staff noted in S. Hopgood, *Keepers of the Flame: Understanding Amnesty International*, Ithaca, NY, Cornell University Press, 2013. Amnesty’s online presence maintains this self-image. See, for instance, Amnesty International: *Bearing Witness: My Life in Crisis Response*, 23 Mar. 2016, available at: <https://www.amnesty.org.au/bearing-witness-life-crisis-response>.

177 See, for instance, “Refugees International: Bearing Witness to Crimes against Humanity: The Forced Expulsion of the Rohingya from Myanmar”, Oct. 2017.

178 See, for instance, Paul Farmer and Amartya Sen, *Pathologies of Power: Health, Human Rights, and the New War on the Poor*, Berkeley, University of California Press, 2003. The first part of the book is entitled “Bearing Witness”.

Fassin has explored a “transformation of the status of the witness in light of the emergence of humanitarianism”,<sup>179</sup> noting that “the humanitarian workers take on the role of witness for those they assist [...] setting themselves up as spokespeople for the oppressed in order to make their suffering public”.<sup>180</sup> As with evangelicalism’s approach to martyrdom, the humanitarian as “testis” (i.e. third-party witness) relies on the affective impact of the narrative they tell. Fassin describes the dynamic at work: “In the testimony that is brought to the world’s awareness, affect is present both as that which bears witness (people’s suffering) and as that which is produced by the testimony (the compassion of the public).”<sup>181</sup>

This touches on the fourth observation that at the affective heart of the dynamic at play in the political leveraging of martyrdom in both the evangelical and humanitarian causes lies the notion of suffering, and in particular physical, bodily pain. Realising and reprocessing the body’s cultural power is central to the effectiveness of the narratives of suffering:

The body itself is a tool that serves as a marker of nationalism, religiosity, and cultural traditions that reflect deeper claims about social worlds. [...] The body gives physical form to a cause, value, or belief system, serving as a concrete reputational symbol for the suffering faced by its supporters.<sup>182</sup>

In her overview of the evangelical movement’s contemporary political awakening in the US, Melani McAlister notes how the display of images and the vivid description of violence “engages both the history of human rights activism and a deeply rooted Christian imagery about the body”. In doing so, she notes, “‘the persecuted body’ – the body or church of Christ, and the literal bodies of believers – became an icon of faith and a map for politics”.<sup>183</sup> That these bodies of martyrs could be mapped onto the 10/40 Window where “original” Christians live (speaking the language of Jesus), provides a powerful historical and scriptural continuity which is drawn upon by politicians and lobbyists in the US and Australia to justify their prioritisation, appealing implicitly to a “fellowship” with the “living martyrs”.<sup>184</sup> As McAlister points out, “[t]he Christians [in Syria] were the synecdoche of modern, suffering faith.”<sup>185</sup>

Fifthly, the appeal to communion through suffering has manifested most starkly in the use of crucifixion as a form of capital punishment. This in turn resonates with the crucicentrism of evangelical theology<sup>186</sup> whereby witnessing vicarious suffering

179 Fassin, *Humanitarian Reason*, 202.

180 *Ibid.*, 206.

181 *Ibid.*, 208.

182 DeSoucey et al., “Memory and Sacrifice”, 100, 102 (drawing upon E. Castelli, *Martyrdom and Memory*, New York, Columbia University Press, 2004). At 102 – “the rule of the corporeal body as a reputational resource” – they add to Scott and Morgan’s symbolic roles of the body a fifth role – reputation. Other four are reproduction, representation, regulation and restraint.

183 McAlister, “The Persecuted Body”, 134.

184 Elisha, “Saved by a Martyr”.

185 McAlister, “The Persecuted Body”, 145.

186 The widely accepted “Bebbington Quadrilateral” is conversionism, activism, biblicism, and crucicentrism. See D. Bebbington, *Evangelicalism in Modern Britain: A History from the 1730s to the 1980s*

provides the vehicle for the “unity of the members of Christ in one body”.<sup>187</sup> As the Voice of the Martyrs puts it, persecuted Christians are “not heroes or statistics; they are ‘family’”.<sup>188</sup> This sense of unification in suffering also sets up a fascinating tension between the particularity of the Christian experience and the universalism of human dignity – a tension that can be seen playing out within the diverse evangelical movement between those who fully adopt humanitarianism’s cosmopolitanism, and those focusing exclusively on the trials of the persecuted church.<sup>189</sup> Indeed, surveys indicate that the Muslim Ban itself alienated the humanitarian arms of the evangelical movement that have long been involved in refugee resettlement.<sup>190</sup>

What unites all arms of the evangelical humanitarian movement, however, is the concern with religious freedom as the first and foremost right in the pantheon.<sup>191</sup> This, in turn, has historically had a distinctly nationalist redemptive tinge. As noted above, the original campaign to use resettlement for persecuted religious communities overseas resulted in the International Religious Freedom Act of 1998, legislation which opens, as Talal Asad has observed, by defining American national identity in terms of the narrative of redemption.<sup>192</sup> And the theologically-tinted geopolitical divide between “free/redeemed” and “enslaved/fallen” nations is literally mapped onto the evangelical consciousness through the ubiquity of the 10/40 Window.

Linguistically unifying these many concerns – religious freedom, enslavement, suffering, and the act of “witnessing” – is the ubiquitous term “persecution”. Indeed, persecution has since the 1990s been the dominant ethical frame through which humanitarian efforts and geopolitical realities would be viewed by the evangelical movement. As Melani McAlister points out, “‘persecution’ now so dominates the representation of the global South that even very traditional Christian programs for feeding the hungry or providing jobs have [...] been reframed in those terms. You

(1989). See also Timothy Larsen, “Defining and Locating Evangelicalism.” in T. Larsen & D. J. Treier (eds.), *The Cambridge Companion to Evangelical Theology*, Cambridge, Cambridge University Press, 2007, pp. 1–14. Scripture commonly cited in support of the unity achieved through the sacrifice and the body of Christ include Romans 12.1 (“give your bodies to God because of all he has done for you. Let them be a living and holy sacrifice”), Corinthians 12 (on unity of the members of Christ in one body), and Ephesians 1 (again on unity in the body of Christ).

187 Larsen, “Defining and Locating Evangelicalism”.

188 McAlister, “The Persecuted Body”, 134; see also quotes in text accompanying n 91.

189 See discussion in D.R. Swartz, “International Evangelicals, Human Rights, and the New Shape of American Social Engagement”, in B. Steensland & P. Goff (eds.), *The New Evangelical Social Engagement*, Oxford, Oxford University Press, 2013. See also Amstutz, *Evangelicals and American Foreign Policy*, 32, on the history of this tension, and (56f) the rise of evangelical humanitarianism. For the phenomenal success of evangelical humanitarianism, see A. Hertzke, *Freeing God’s Children: The Unlikely Alliance for Global Human Rights*, Lanham, MD, Rowman & Littlefield, 2004.

190 K. Shellnut, “Evangelical Experts Oppose Trump’s Refugee Ban”, *Christianity Today*, 27 Jan. 2017.

191 Hertzke, *Freeing God’s Children*, 301f. See also Micklethwait & Wooldridge, *God Is Back*, 226: “The issue that solidified Evangelical interest in ‘the suffering church’ was religious freedom.”

192 Asad, *Formations of the Secular*, 146. The Act opens with the words: “The right to freedom of religion undergirds the very origin and existence of the United States. Many of our Nation’s founders fled religious persecution abroad, cherishing in their hearts and minds the ideal of religious freedom.” It is doubtful, however, that contemporary legislation would call upon international human rights law so expressly. More recent legislative moves, as discussed, have attempted to prioritise the Convention reason of religion above all others in refugee status determination.

no longer sponsor hungry children; you sponsor ‘persecuted children.’<sup>193</sup> And “persecution”, of course, is at the very core of the definition of a refugee.

Finally, there is the “truth” being told through relaying narratives of the persecution of the martyr. For many, this is a traditional theological one – that suffering is evidence of the truth of the Christian message of the redemptive sacrifice and resurrection of Jesus, and that this can be realised through vicarious witnessing. However, for the politicised wings of the white evangelical movement, the testimony of the martyr and the affect it inspires are also meant to act as vehicles for another deeply political truth, one that demands a political response on a global level: that Christians are “the most persecuted religion on earth” – including in the Christian West where Christians are now a discriminated against majority. This in turn allows for identification of an “enemy”. Whereas in the past, narratives of martyrdom were effectively leveraged to identify the Roman, the Jew, the Catholic, or the Communist as the enemy (or even the anti-Christ), today the enemy is to be found in Islam and its followers, facilitated by liberal, elitist forces seduced by the secular ideologies of atheism, feminism and gay activism, and assisted by an activist judiciary that has purged God from the public square.<sup>194</sup> The long-term battle may therefore be with Islam, but the law and its liberal judges stand accused of complicity in the suffering of the Church<sup>195</sup> and represent a direct threat to Christendom in its heartland in the west.

From a Schmittian perspective, recognising and identifying the enemy (or at least distinguishing between friend and enemy) is the very essence of the political,<sup>196</sup> and essential to the realisation of a transcendent political theology.<sup>197</sup> Martyrdom works well in identifying and consolidating such binaries. As Elisabeth Castelli points out, long-standing anxieties around the existential threat to the so-called Judeo-Christian worldview “tap directly into the archetype to the Christian martyr story, which endlessly recycles the images of innocent suffering and legalized moral outrages.”<sup>198</sup> Infuriated that Obama refused to do so, Donald Trump’s confirmation that “we” are at “war” with Islam, and that “Islam hates us”, ensured that he was seen by those in the white evangelical community as making the truly authentic political theological decision; that this was to be translated into a decree for the saving of Christian martyrs – notably achieved through “executive order” and thus partaking of sovereign

193 McAlister, “The Persecuted Body”, 151.

194 E.A. Castelli, “Persecution Complexes: Identity Politics and the ‘War on Christians’”, *Differences: A Journal of Feminist Cultural Studies*, 18(3), 2007, 152–180, 156 and 175 (nn 6 and 7). Castelli borrows the term from D. Limbaugh, *Persecution: How Liberals Are Waging War on Christianity*, New York, Perennial, 2004. Who discusses “public attacks on churches and Christians and purging the private sphere”, “state endorsement of non-Christian values,” and “purging Christianity from the government and government property”.

195 For many in North America, Europe remains the source of this dangerous leftist secularism, whereas America, posited as Europe’s other, is the refuge for religiosity and conservatism, as it has been since the arrival of the Pilgrims. See Castelli, “Persecution Complexes”, 158–159.

196 C. Schmitt, *The Concept of the Political: Expanded Edition*, trans. G. Schwab, Chicago, London, University of Chicago Press, 2007, 26.

197 *Ibid.*, 67: “Political thought and political instinct prove themselves theoretically and practically in the ability to distinguish friend and enemy. The high points of politics are simultaneously the moments in which the enemy is, in concrete clarity, recognized as the enemy.”

198 Castelli, “Persecution Complexes”, 159.

decision-making outside the deliberative quagmire of the legislature – only heightened the sense that the President was acting as an instrument of God.<sup>199</sup>

The Australian Government's approach to resettlement is less obviously mired in these visceral and eschatological elements of political theology, although the very act of prioritising vulnerable Christians for resettlement participates indirectly in the clash of civilisation thesis. Even the seemingly pragmatic sounding Australian justification that Christian refugees will not be able to return home after hostilities have ceased plays into the notion that Islam and Christianity are somehow implacable enemies, with Islam and the pluralist lands of the Levant presented in monolithic terms.<sup>200</sup> It also rests on suspect factual foundations about Christian–Muslim relations in Syria.

In the American context, working to save potential martyrs from the persecuted church by bringing them to the land of religious freedom is viewed within the context of God's covenantal promise with America. In this sense, the theological fetishisation and political leveraging of suffering has become wrapped in the language of patriotism. It has also, however, taken a distinctly eschatological turn. Married to the geopolitical and demographic anxieties sweeping Europe and North America, the truth to which martyrdom is seen to attest is increasingly linked to a deep-seated eschatology. It is not just that Jesus promised that true believers would be persecuted, but persecution is also the key to the kingdom of heaven after the battle with the anti-Christ at the end of time. And as many have pointed out, this battle, long depicted as being with the atheist Communist east, is now understood as being with Islam. It is a battle envisaged as being waged not just in the 10/40 Windows with the martyrdom of Christians in their ancient homeland, but also at the borders of Judeo-Christian lands with the arrival of Sharia-carrying refugees, in the courts where traditional Christian freedoms have been curtailed by liberal judges, and in modern day Israel where the battle will have its apotheosis. That Trump's promises covered off each of these interconnected theologically-charged spaces has ensured his enduring support amongst this community.

The faith community in both the US and Australia is a key player in the humanitarian space, and increasingly influential in the development and implementation of refugee resettlement programmes. In both States, it was fundamentally split on the prioritisation of Christians for resettlement. This article challenges that community, torn between particularism and universalism in its engagement with humanitarian enterprises, to recognise the ways in which the martyrology at the heart of their theological outlook might be susceptible to being used as a vehicle for populist, Islamophobic, antinomian ends. It also sounds a note of caution to policy-makers promoting the mechanism of refugee resettlement as one of the safe pathways to address today's manifest refugee problems to recognise, once again, its propensity to be used for ideological, and in this context theological, purposes.

199 This notion has been used frequently by evangelical leaders. See K. Joyce, 'The Christianization of U.S. Foreign Policy', *The New Republic*, 26 Mar. 2019. T.I. Burton, 'The Biblical Story the Christian Right Uses to Defend Trump: Why Evangelicals Are Calling Trump a "modern-day Cyrus,"' *Vox*, 5 Mar. 2018, available at: <https://www.vox.com/identities/2018/3/5/16796892/trump-cyrus-christian-right-bible-cbn-evangelical-propaganda>.

200 See the chapter on "The Great Clash" in Micklethwait & Wooldridge, *God Is Back*.