

REIMAGINING ASYLUM: RELIGIOUS NARRATIVES AND THE MORAL OBLIGATION TO THE ASYLUM SEEKER

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Abstract

The narrative that grounds the asylum policy of the United States portrays asylum seekers as passive objects of external forces. This narrative emerges from the complex interplay of exceptionality and victimization that characterizes the legal status and popular perception of the refugee. It is then read back onto the asylum seeker through a supererogatory asylum policy that is unable to recognize the moral demand made by the asylum seeker. The project this essay is drawn from seeks to challenge the policy of asylum as charity by interrogating alternative narratives grounded in the Hebrew Bible story of the Exodus and the Qu'ranic story of the Hijra. In these narratives, flight from oppression is portrayed as an act of moral agency, and the asylum seeker's capacity as Other to make a moral demand on the Self emerges. Thus, I argue that an asylum policy informed by these alternative narratives needs must question its supererogatory assumptions.

Résumé

Le discours à la base de la politique d'asile des États-Unis représente les demandeurs d'asile comme des objets passifs subissant des forces extérieures. Cette représentation émerge de l'interaction complexe entre l'exception et la victimisation qui caractérise le statut légal et la perception populaire du réfugié. Ce discours est renvoyé au demandeur d'asile à travers une politique d'asile surrogatoire qui ne reconnaît pas les exigences morales du demandeur d'asile. Cet article vise à remettre en question la politique de l'asile en tant que charité en faisant appel à des discours différents prenant leur source dans le récit biblique de l'Exode

et dans le récit coranique de l'Hégire. Dans ces récits, la fuite de l'oppression est représentée comme l'exercice d'une capacité morale, et émerge alors la capacité du demandeur d'asile dans son altérité de faire une demande morale en tant que soi-même. En conséquence, on soutient qu'une politique d'asile basée sur ces alternatives doit remettre en question les présomptions surrogatoires.

The world found nothing sacred in the abstract nakedness of being human.

—Hannah Arendt, *The Origins of Totalitarianism*¹

Arendt's critique of the international community's response to the statelessness crisis of the Second World War is well-known and well-worn in the field of refugee studies, but it remains a pointed and poignant critique of the limits imposed on refugee subjectivity. Solely human—without political affiliation—the refugee subject is an exception to the logic of state-centric legal systems, which, in turn, recognize no obligation to the refugee. This exceptional subjectivity is further entrenched through narratives about refugees that locate refugee identity in portrayals of passive victims upon whom the larger force of persecution works. Refugee identity as passive objectivity is then reified through supererogatory policies of protection; the refugee is again the object of an outside force.

The central question of this essay is whether and how it is possible to reimagine asylum-seeker subjectivity in a way that recognizes the moral demand asylum seekers make on receiving states. What follows is an adumbration of and introduction to a larger project that aims to challenge the

idea of asylum as charity and disrupt the cycle of narrative and policy that perpetuates the figurative, and consequentially literal, exclusion of asylum seekers.² In particular, I want to examine the ways in which current conceptions of asylum-seeker subjectivity obscure the asylum seeker's moral demand and to suggest that alternative narratives exist—I draw on the Hebrew Bible story of the Exodus and the Qur'anic story of the *Hijra*—in which flight from oppression is conceived as an act of moral agency.

This article is inspired and informed by the possibility inherent in the work of Emmanuel Lévinas and by thinkers, in particular Judith Butler, who have taken up the possibilities inherent in Lévinas while struggling with the philosophical abstraction that distances the Lévinasian ethic from personal and social experience. It is Lévinas who provides the theoretical substructure that points to the critique of current US asylum policy and suggests the route to a real ethics of asylum. For this reason, I start with a brief discussion of Lévinas and the ethical demand of the asylum seeker as Other.

Lévinas and the Demand of the Other

From Arendt on, authors discussing refugee subjectivity have often made recourse to concepts of bare humanity to capture the social and political dislocation that occurs in the flight from persecution, as well as the consequences of such dislocation.³ To be a refugee is to have lost the vestiges of social belonging, group affiliation, and associative identity, resulting in a profound vulnerability and dependence. This bare humanity would, seemingly, beget the central moment envisioned by Lévinas's ethics of the face.⁴ Exposed in her bare humanity, the refugee would seem to epitomize the conditions of the Lévinasian face:

Stripped of its form, the face is chilled to the bone in its nakedness. It is a desolation. The nakedness of the face is destitution and already supplication in the rectitude that sights me. But this supplication is an obligation... [T]he face imposes on me and I cannot stay deaf to its appeal, or forget it, what I mean is I cannot stop being responsible for its desolation.⁵

What animates Lévinasian ethics is the moral obligation that the Other makes upon the Self; the Other, in the form of the face and by reason of its nakedness and desolation, interrupts the formation of the Self with a precondition of moral obligation.⁶ Lévinas's argument is a powerful assertion of relationality as the fundamental aspect of human experience. Even before there is a Self, that Self is already in a relation of obligation to the Other. If the moment of impingement, by which the Other makes its demand on the Self, occurs through the naked visage of the face—the nothing-but-humanness

of the Other—shouldn't the refugee's bare humanity be the very occasion of that impingement?

That the Lévinasian moral demand of the Other is pre-conscious, preliteral, and, in the end, preontological—even before being there is relation—is the great promise of Lévinas's work, but it also points to the difficulty of realizing such a vision. In the conscious, concrete world, social norms function to obscure the demand of the face.⁷ As Judith Butler writes regarding Lévinas: “The ‘inauguration’ of the subject takes place through the impingement by which an infinite ethical demand is communicated. But this scene cannot be narrated in time; it recurs throughout time and belongs to an order other than that of time.”⁸ As soon as the “infinite ethical demand” is confined to the genre of narrative, it is inscribed in a context conditioned by normativity and power. Thus, Butler, for whom the constricting nature of normativity and power is central, poses the problem of the encounter with the Other this way:

In asking the ethical question “How ought I to treat another?” I am immediately caught up in a realm of social normativity, since the other only appears to me, only functions as an other for me, if there is a frame within which I can see and apprehend the other in her separateness and exteriority. So, though I might think of the ethical relation as dyadic or, indeed, as presocial, I am caught up not only in the sphere of normativity but in the problematic of power when I pose the ethical question in its directness and simplicity: “How ought I to treat you?”⁹

Counter-intuitively, the actual state of bare humanity frustrates the Lévinasian ethic by obscuring or obfuscating the Other's face. In Butler's terms, the frame for understanding the asylum seeker as Other is conditioned by the narrative of the passive victim. The Lévinasian face disrupts the Self with its demand, but the asylum seeker's subjectivity is understood as passive, without demand. As Arendt wrote, “It seems that a man who is nothing but a man has lost the very qualities which make it possible for other people to treat him as a fellow-man.”¹⁰ Or, as Peter Nyers has written in a more contemporary context:

Refugee identity is a limit-concept of modern accounts of the political and is constituted through an exceptional logic: whatever qualities are present for the citizen are notably absent for the refugee. The visibility, agency, and rational speech of the citizen is lacking in the prevailing representations of the refugee. Instead, qualities of invisibility, voicelessness, and victimage are allocated with the effect of effacing the political subjectivity of the refugee.¹¹

Instead of treating asylum seekers as complex, multifaceted fellow humans, their subjectivity is flattened,

reduced to a singular dimension. The consequence of this reduction is that receiving states recognize no moral obligation, but conceive of asylum as a form of charity. It is offered unilaterally and at the discretion of the state. As Carol Bohmer and Amy Shuman write:

[W]e have a category [of asylum], but we are frightened to use it except in the most obvious and sympathetic cases. We fear that if we use it too enthusiastically, we will open the floodgates to all the miserable, needy, people fleeing war or crisis, so common in our current world. . . . The whole process is riddled with fallout from this fear. . . . Asylum seekers are guilty until proven innocent.¹²

This response is not driven simply by the fear of a flood of human misery washing upon our shores; rather, the characterization of asylum seekers as miserable, needy victims and asylum as charitable relief makes rejecting refugees a cognizable option. The asylum seeker's extreme vulnerability is an opportunity for state action; because asylum seekers are vulnerable and in a position of dependence they are seen by the receiving state as objects carried on the tides of greater forces, namely persecution and protection.

At first glance, the vulnerability and dependence of the asylum seeker would seem to be the conditions for a Lévinasian encounter. Confronted with actual asylum seekers, however, the question of how we, as receiving states, ought to treat them is framed by the passive victim narrative. Contextualized in this way, the asylum seeker's vulnerability and dependence—the bare humanity that should be a demand—serve to obscure the face and quiet the demand.

It is not the case, of course, that no one who requests asylum receives it; moreover, the analysis to this point would seem to beg the question: Isn't asylum—an application-based procedure—a demand at its heart? This next section briefly examines asylum law, in this case US asylum law, in order to discuss how the asylum law and procedure reifies the construction of refugee subjects as passive victims and nullifies any moral demand present in the act of seeking asylum by requiring that the asylum seeker perform that preconceived identity.

The Interplay of Asylum Narratives and Asylum Law

Whether and how a person meets the definition of a refugee, and is therefore eligible for asylum and admitted to the United States, is the focus of Section 208 of the Immigration and Nationality Act (INA):

The Secretary of Homeland Security or the Attorney General *may* grant asylum to an alien who has applied for asylum in

accordance with the requirements and procedures established by the Secretary of Homeland Security or the Attorney General under this section *if* the Secretary of Homeland Security or the Attorney General *determines* that such alien is a refugee within the meaning of section 1101(a)(42)(A) of this title.¹³

It is important to note two aspects of the text quoted above. First, the grant of asylum is entirely discretionary. The Secretary of Homeland Security or the Attorney General *may* grant asylum, but there is no positive obligation upon them to do so. Second, eligibility is determined by either the Secretary or the Attorney General, which means that an asylum seeker must narrate an identity consistent with what these officials (or their proxies) consider a refugee's story.

Skepticism permeates this process. The manifest concern is that only the "truly needy" should be assisted; therefore, the asylum process must be vigilantly policed for fraud and merit.¹⁴ As Bohmer and Shuman note, "[W]e quiz asylum applicants endlessly, to convince ourselves that they are really fleeing persecution and not lying to us so they can slip into a safer country in search of a better life."¹⁵ This concern results in a presumption against the asylum seeker; the asylum seeker is presumed not to be a refugee. The presumption against refugee status is evident when looking at who is allocated the burden of proof during an asylum determination: the asylum seeker must bear the burden of proving that she meets the definition of a refugee.¹⁶ In other words, the asylum seeker is presumed not to be a refugee unless and until she can prove otherwise. The asylum seeker's testimony alone may be sufficient *if* "the applicant satisfies the trier of fact that the applicant's testimony is credible, is persuasive, and refers to specific facts sufficient to demonstrate that the applicant is a refugee."¹⁷ Thus, the asylum seeker's burden of proof has three components: a burden of credibility, a burden of persuasion, and a burden of fact.¹⁸ Unless the asylum seeker can meet the burdens of credibility, persuasion, and fact her asylum claim will be denied.

Most problematically for the asylum seeker, she does not receive a presumption of credibility; rather, the trier of fact is free to determine that an asylum seeker is not credible based on any indication of inconsistency.¹⁹ Any lapse in an asylum seeker's narrative, "without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim," can be the basis for an adverse credibility determination.²⁰ The trier of fact may also demand any evidence that the trier of fact determines is necessary to corroborate otherwise credible testimony, which evidence *must* be provided "unless the applicant does not have the evidence and cannot reasonably obtain the evidence."²¹ In an asylum determination, so much turns on the asylum

seeker's ability to make her case (both figuratively and literally given that she bears the burden of proof), that the statutorily inscribed fragility of her credibility is particularly damning. It both reflects and reinforces the idea that the asylum seeker has no power in the relationship.

It is the most clear-cut, sympathetic cases of unambiguous persecution that will be both the most persuasive, most credible, and easiest to prove.²² In other words, the story one expects to hear is the most compelling. The asylum process becomes a series of stages for the performance of a pre-scripted refugee identity. In this context, the Self overdetermines the Other that is narrating. The Other must meet a set of a priori expectations as to form, content, consistency, and veracity. The result for asylum seekers is that the asylum seeker's personal story is often and increasingly likely to narrate an insufficient account.²³

In this way, the asylum application falls short of a Lévinasian demand because it compels or obliges nothing in terms of response from the receiving state. Instead, a demand runs from the receiving state to the asylum seeker for the asylum seeker to narrate a prefabricated identity. By setting the definition of their identity, the conditions of their performance, and placing upon them the burden of proof, the receiving state takes no risks in the encounter and is unchanged by the asylum seeker. The refugee as "mere, bare, naked, or minimal humanity"²⁴ is a subject to whom no duty is owed, but whose plight may warrant a gratuitous favour if the story of persecution meets expectations. This is not the face that interrupts, and it fails to interrupt because the face of asylum is a construction created by the receiving state.

What would it mean to reconceive asylum seekers as agents fulfilling a moral responsibility? What if, instead of simply victims subject to the powers of persecution and protection, asylum seekers were understood as engaged in a deliberate act of safeguarding their own dignity and humanity? In what follows I argue that asylum seekers are, in fact, more than bare humanity and when recognized as such the cycle of passive victim and charitable state is disrupted. First, I turn to what I believe are compelling alternative narratives of what it means to flee persecution drawn from two religious narrative traditions: the Exodus and the *Hijra*.

A Theological Ethics of Flight

What if, instead of faceless bare humanity and passive object of sympathy, the asylum seeker was understood as a moral agent fulfilling an ethical imperative to flee persecution? This is the nature of the moral subjects who fled Egypt under Moses' guidance and those early Muslims who, with the Prophet Muhammad, fled the persecution of Mecca for

the oasis of Medina. An ethic of flight holds that persecution is an affront to our anthropology, and the flight from persecution is a righteous act to preserve the integrity of what Christians might refer to as the *imago dei*, the image of God, or what one scholar of Islamic Studies, Muddathir 'Abd al-Rahim, has called, "human dignity . . . graciously conferred by God . . ." ²⁵ Because humanity is tasked to protect its dignity, flight from persecution is an act of moral agency. As 'Abd al-Rahim notes, "One of the greatest blessings that God has graciously conferred on humanity in addition, and one that is certainly more germane [*sic*] to the dignity which He conferred on the children of Adam entire, is that of moral autonomy or freedom of choice and conscience."²⁶

The Exodus

The Exodus story is usually read as an account of God's delivery of Israel from slavery in Egypt. Accepting that liberation motif, it is worth examining the flight aspect and what it reveals about the moral agency of the Israelites.²⁷ The second chapter of Exodus closes with God taking notice of the suffering of the Israelites in Egypt.

The Israelites groaned under their slavery, and cried out. Out of the slavery their cry for help rose up to God. God heard their groaning, and God remembered his covenant with Abraham, Isaac, and Jacob. God looked upon the Israelites, and God took notice of them. (Exod. 2:23–25)²⁸

Chapter 3 then narrates God's first intercession with Moses. It is here that God announces God's plan for the Israelites: justice for Israel and freedom from persecution will come by way of a migration. God commands Moses: "[C]ome, I will send you to Pharaoh to bring my people, the Israelites, out of Egypt" (Exod. 3:10). God's delivery from Egypt is fulfillment of the covenant as was already foretold to Abraham many generations before²⁹ (Gen. 15:12–21), but it is a fulfillment of the covenant that comes in response to Israel's cries under the persecution of Pharaoh and relies upon the Israelites' action in concert with God. God creates the conditions that allow the Israelites to flee, but it is up to the Israelites to make that moral choice. The Israelites' capacity for moral agency is reflected in their initial rejection of Moses: "Moses told [what God had said] to the Israelites; but they would not listen to Moses, because of their broken spirit and their cruel slavery" (Exod. 6:9).³⁰ God does not usurp the Israelites' agency; rather, God creates a possibility, which the Israelites must realize through their own action.

The moral agency of the Israelites' flight is exemplified in Moses and Aaron, who are God's agents before Pharaoh. As leaders of the community and moral exemplars, Moses

and Aaron's charge to Pharaoh is reflective of the narrative's moral commitment. When God sends Moses and Aaron before Pharaoh, their edict is clear: Let the Israelites go from the land of Egypt (Exod. 7:1–7). God enjoins Pharaoh through his agents, Moses and Aaron, to allow the Israelites to do their moral duty and flee the slavery and persecution of Egypt.

The Exodus narrative is profoundly influential in both the Jewish and Christian traditions. Though there are numerous examples of the importance of this narrative, perhaps one of the simplest and yet most explicit can be seen in the Jewish ritual calendar; the flight from persecution inaugurates a new era. "The Lord said to Moses and Aaron in the land of Egypt: This month shall mark for you the beginning of months; it shall be the first month of the year for you" (Exod. 12:1–2). The instruction for the new priestly calendar is given as part of the instructions for the Passover, and so it is that the Passover celebration marks the new year in the ritual calendar of Judaism. The purpose, the teleology, of the Passover is the Exodus: "At the end of four hundred thirty years, on that very day [Passover], all the companies of the Lord went out from the land of Egypt" (Exod. 12:41). By fleeing the persecution in Egypt, the Israelites safeguard their dignity, but they also inaugurate a new history; the power of this act is not minimal, it is expansive.

The Hijra

An act of flight also marks the beginning of the Islamic calendar. As 'Abd al-Rahim notes,

the day of the Prophet's *hijrah* to Medina—neither his birthday, nor the commencement of the revelation of the Quran, nor his entry in due course into Mecca as the magnanimous conqueror—was adopted, only a few years after his departure from this world in 632 C.E., as the beginning of the Muslim calendar and the Islamic way of reckoning of time across the ages.³¹

Thus, as in Judaism, a foundational event that comes to orient the tradition temporally and theologically is an act of flight from persecution.

The Islamic tradition first emerged in the Arabian city of Mecca as the Prophet Muhammad spread his message and recruited followers. However, perceiving the new religion as a threat to its power and influence, the *Quraysh*, the tribes that controlled Mecca and, in particular the holy shrine known as the Kaabah, began to persecute the Muslim community. Sharifah Nazneen Agha describes the persecution that early Muslims faced in Mecca:

Muslims of low social status were freely tortured by the *Quraysh* to force a renunciation of the new faith, whilst other persecutory

measures were imposed to effect a complete marginalization of the entire Muslim community. The prohibition of trade in essential goods and provisions was particularly oppressive, and resulted in a 3-year period of starvation, acute deprivation [sic] and certain death.³²

In the face of such persecution, the Prophet Muhammad initially sent seventy Muslims to seek asylum in the territory of King Negus, an Abyssinian Christian, who welcomed the band of Muslims and offered them protection in the face of diplomatic and political pressure from the Meccans.³³ However, the persecution of Muslims in Mecca continued. In the interim, the oasis of Medina to the north had grown increasingly sympathetic to Islam and had begun to accept Muslim refugees from Mecca. Finally, in 622 CE, the Prophet Muhammad embarked on what 'Abd al-Rahim describes as the epoch-making migration to Medina that is known as the *Hijra*.³⁴

This new era is inaugurated through the early Muslim community's decision to flee persecution. Agha puts it well when she says: "The *hijrah* event is extraordinary for Muslims as it marks the birth of the Islamic age, the onset of which was made possible only by *decisive action* of the *muhajirun* to mobilize and seek refuge in foreign territory."³⁵ The *muhajirun*, meaning "emigrants" in Arabic and used to describe those early Muslims who undertook the *Hijra* to Medina,³⁶ are moral agents both in their flight from persecution and in their action to create the conditions to preserve their new religion. It is also worth noting the importance of the Prophet Muhammad's identity as a *muhajirun* and participation in the *Hijra*. The teachings and example of the Prophet (*sunnah*) emerged early in Islamic history as second only to the Qur'an in terms of authority.³⁷ Thus, the Prophet's decision to flee the persecution of Mecca and to establish his new religious community through asylum lends further credence to the moral agency of fleeing persecution.

The Islamic tradition of recognizing moral agency in flight is also reflected in the Qur'an. As Khadija Elmadmad notes, "In a sense, seeking asylum is a duty. Muslims are not obliged to live in places where there is injustice and persecution and they are urged by Islam to leave these places and seek protection elsewhere."³⁸ The directive to flee in the face of persecution appears in the Qur'anic text both as an injunction and as an act worthy of reward. Surah 4:97 contains the genesis of the command to flee:

When angels take the souls of those who die in sin against their souls, they say: "In what (plight) were ye?" They reply: "Weak and oppressed were we in the earth." They say: "Was not the earth

of God spacious enough for you to move yourselves away (from evil)?” (Qur’an 4:97)³⁹

‘Abd al-Rahim, in his discussion of the duty to seek asylum, notes that the Qur’an places a heavy importance on the believer’s obligation to struggle against evil—including tyranny, oppression, and persecution.⁴⁰ However, when the struggle is futile, the believer should not submit to evil and persecution. Thus, ‘Abd al-Rahim comments on Surah 4:100:

[T]he Quran then describes those who resign themselves to passive acceptance of oppression and humiliation as people “who have wronged themselves”. For, the argument continues, if they happened to be too weak to put up effective resistance to tyranny and injustice, they should leave those lands (or homes) in which they would otherwise be deprived of the dignity and freedom which define their very existence as humans.⁴¹

The Qur’an makes the point rather strongly here that persons are responsible for guarding their God-given dignity, and if flight is the way to do so, then one has a duty to seek asylum.

The Qur’an also speaks of seeking asylum as an action worthy of reward. In Surah IV, verse 100, the Qur’an says:

He who forsakes his home in the cause of God, finds in the earth many a refuge, wide and spacious: Should he die as a refugee from home for God and His Apostle, his reward becomes due and sure with God: and God is Oft-giving, Most Merciful. (Qur’an 4:100)

There is a notion of creation inherent in this verse that dovetails with the notion of human dignity given by God. The creation is a place where the dignity of persons should be able to flourish. It is God’s intention, ‘Abd al-Rahim notes, that

all those who strive in conscious devotion to God and with intent to abide by divine guidance will be able to find other lands (or homes) in which they can then live in dignity and freedom—as they were meant to do by their Creator and Sustainer from the very beginning.⁴²

It is good to find in the creation a place where one’s dignity can flourish; to do so is an action worthy of reward.

Both the Exodus and the *Hijra* narratives tell stories of persons becoming the guardians of their own dignity through the act of flight. Theologically speaking, the children of God, endowed by their creator with inherent dignity, have an obligation to protect that dignity; God has provided for a bountiful creation that enables the possibility of flight;

therefore, the act of fleeing persecution is an act of moral consequence. In these narratives, flight is not a condition driven by the context of persecution; rather, it is a decision, an act, and a defining moment. It is not the persecution that defines the communities in these stories so much as their liberation, and that liberation comes through flight. I believe that, even outside their theological significance, these stories can inform receiving state approaches to asylum by helping to reframe the actions of asylum seekers as the moral choice of an agent to flee persecution.

Conclusion: The Demand of a Moral Agent

What can receiving states learn, or more aptly, how can receiving states and the people of those states begin to reimagine asylum in light of these alternative narratives? Asylum seekers are not thrown or washed upon the shores of receiving states; asylum seekers are making a moral demand in the very act of their flight. If it is every person’s duty to avoid persecution—even if it is only a person’s right to be free from persecution—and the world is a place where the opportunity to escape persecution exists, then seizing that opportunity is a demand in the Lévinasian sense. By starting from this perspective, it may be possible to rethink receiving-state asylum policy, which is the broader goal of this project.

This is particularly true because asylum is intrinsically an interrelational process. The world that God made so large, in the Qur’anic formulation, has been shrunk by humanity’s insistence on drawing political boundaries. It is not enough to physically move away from persecution; in a world of states, effective protection requires being admitted or permitted to cross a border. Thus, in order for an asylum seeker to take advantage of the vast earth’s possibility for freedom from persecution, borders must be able to give way. Put differently, the asylum seeker commits a moral act by fleeing persecution, but the efficacy of that act requires a relationship with the receiving state where she seeks asylum. Flight is a relationship, a priori, and the receiving state is not an independent self that can act towards the asylum seeker outside of that relationship or overdetermine the asylum seeker’s narrative. Receiving states should allow themselves, as Butler says, “to be addressed, claimed, bound to what is not me, but also to be moved, to be prompted to act ...”⁴³ If the asylum seeker is the guardian of her own dignity, she disrupts the continuum of agency that runs from persecutor to protector. For the receiving state, this means that the state is not the lone actor when it comes to protection. Understanding the asylum seeker as the guardian of her own dignity, whose moral act of flight becomes complete in the relationship of asylum, challenges the notion of asylum as charity. Asylum is not simply something that receiving

states grant at their pleasure but a moral response to the moral demand of the Other.

I am not arguing that only flight fulfills the duty of protecting one's dignity or that every instance of persecution necessitates flight. Nor am I arguing that those who do not flee are not moral agents. There are clearly other ways of vindicating one's dignity;⁴⁴ if we take seriously the stories of the martyrs, some vindications of dignity may appear antonymous to flight. I must also note that acknowledging the moral agency of flight neither excuses persecution nor effaces the need to end persecution. As Edward Said goes to pains to point out, exile is devastating even when it is necessary.⁴⁵

Furthermore, to seek asylum requires the capacity to negotiate a host of power dynamics (economic, political, and social) that I have not raised here. Particularly when we are discussing asylum in a place like the United States, those who are able to reach US shores to apply for asylum often, though not always, have some social, economic, or political capital in their country of origin. To suggest that the failure to seek asylum is a moral failing or lack of moral agency when circumstances circumvent such an opportunity would be uncritical.⁴⁶ Persons who do not flee persecution are also moral agents, and what it means to recognize them as such is the subject of another study. For my purposes, I emphasize that among the ways an individual may protect her dignity, the decision to flee persecution should be seen as the choice of a moral agent—a choice that should be recognized for the moral demand it is.

By way of concluding, let me suggest how this project may intersect with other developments in the field of refugee studies. Several authors have argued for a critical turn to the refugee as a way of thinking through the modern political landscape.⁴⁷ It may be that only by reorienting away from state-centredness to exile-centredness can we hope to address the refugee reality, both in terms of the persons who present themselves and the conditions that make refugees a permanent fixture of the modern landscape.⁴⁸ To the latter Giorgio Agamben counsels, “inasmuch as the refugee unhinges the old trinity of state/nation/territory—this apparently marginal figure deserves rather to be considered the central figure of our political history.”⁴⁹ This exile-centredness, however, is a process. It is a process that may challenge but cannot forego the current state-centric reality. It is a process, however, that may begin by recognizing the moral agency of refugees and asylum seekers. Furthermore, if there is a turn to exile-centeredness, it is important to recognize that such a perspective has multiple valences.⁵⁰ As a critical category, the refugee or asylum seeker is a limit-account of the modern political subject,⁵¹ but, it also can

be, as this project argues, an account of the moral demand of the Other.

NOTES

1. Hannah Arendt, *Imperialism: Part Two of The Origins of Totalitarianism* (San Diego: Harcourt Brace Jovanovich, 1968), 179.
2. I focus on asylum policy in the United States because, as a US resident and researcher, it is the context that I know best. I believe, however, that the critique I develop in this article has implications beyond the borders of the United States, in many of the so-called “receiving” states.
3. I borrow the particular term “bare humanity” from the work of Liisa Malkki. Liisa H. Malkki, “Speechless Emissaries: Refugees, Humanitarianism, and Dehistoricization,” *Cultural Anthropology* 11, no. 3 (1996): 388–90. See also Giorgio Agamben, “We Refugees,” trans. Michael Roche, *Symposium* 49, no. 2 (1995): 114–19. The version of Agamben's article referenced for this essay is found on the website of the European Graduate School, accessed July 12, 2013, <http://www.egs.edu/faculty/giorgio-agamben/articles/we-refugees/>. Bare humanity in the work of Arendt and Agamben reflects the socio-political position of the refugee who is marginalized in the global order of politics and power oriented around states and citizens. For Malkki, bare humanity has a different valence; the concept describes the identity that is projected onto refugees rather than an intrinsic element of the refugee's positionality vis-à-vis the larger political order. The two are not, however, mutually exclusive, and Malkki may capture the vast scope of what it means to be rendered as bare humanity best when she describes it as “a merely biological or demographic presence.” Malkki, “Speechless Emissaries,” 390.
4. Emmanuel Lévinas, *Humanism of the Other*, trans. Nidra Poller (Urbana, IL: University of Illinois Press, 2006).
5. *Ibid.*, 32.
6. *Ibid.*, 32–33.
7. *Ibid.*, 32–33, 62; Richard A. Cohen, “Introduction: Humanism and Anti-humanism—Lévinas, Cassirer, and Heidegger,” in *Humanism of the Other*, by Emmanuel Lévinas, trans. Nidra Poller (Urbana, IL: University of Illinois Press, 2006), xxx–xxxii. This is the great promise of Lévinas and the foundation for his claim of “ethics as first philosophy.” The Lévinasian project is nothing less than reorienting philosophical discourse. The possibilities and barriers to such reorientation reaching out beyond the bounds of academic philosophy is an aspect of this project.
8. Judith Butler, *Giving an Account of Oneself* (New York: Fordham University Press, 2005), 96.
9. *Ibid.*, 25.
10. Arendt, *Imperialism*, 180.
11. Peter Nyers, *Rethinking Refugees: Beyond States of Emergency* (New York: Routledge, 2006), xiv–xv. See also

Malkki's work on the refugee image and agency, where she describes the construction of refugee humanity as follows:

- The visual conventions for representing refugees and the language of raw human needs both have the effect of constructing refugees as a bare humanity—even as a merely biological or demographic presence. This mode of humanitarianism acts to trivialize and silence history and politics—a silencing that can legitimately be described as dehumanizing in most contexts. And yet ... one might argue that what these representational practices do is not strictly to dehumanize, but to humanize in a particular mode. A mere, bare, naked, or minimal humanity is set up. This is a vision of humanity that repels elements that fail to fit into the logic of its framework.—Malkki, “Speechless Emissaries,” 390.
12. Carol Bohmer and Amy Shuman, *Rejecting Refugees: Political Asylum in the 21st Century* (London: Routledge, 2008), 11.
 13. Immigration and Nationality Act § 208(b)(1)(A), 8 U.S.C. § 1158(b)(1)(A) (2006) (emphasis added). All subsequent references to Section 208 of the Immigration and Nationality Act will be to the US Code.
 14. Bohmer and Shuman, *Rejecting Refugees*, 264–65.
 15. *Ibid.*, 11.
 16. § 1158(b)(1)(B)(i).
 17. § 1158(b)(1)(B)(ii).
 18. In the US legal system, as a default position, the party that bears the burden of proof must establish these three elements unless the burdens or presumptions are otherwise allocated by law. Depending on the legal context, the burden of proof may be more or less onerous. In a civil case, the plaintiff carries the burden and must generally meet the burden with a preponderance of the evidence. In a criminal case, the state carries the burden and must establish its proofs beyond a reasonable doubt. Though the asylum seeker, like the criminal defendant, is at the mercy of the state, she carries the burden of proof and what constitutes sufficiency is highly discretionary.
 19. § 1158(b)(1)(B)(iii) (“Considering the totality of the circumstances, and all relevant factors, a trier of fact may base a credibility determination on the demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the applicant’s or witness’s account, the consistency between the applicant’s or witness’s written and oral statements (whenever made and whether or not under oath, and considering the circumstances under which the statements were made), the internal consistency of each such statement, the consistency of such statements with other evidence of record (including the reports of the Department of State on country conditions), and any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant’s claim, or any other relevant factor. There is no presumption of credibility, however, if no adverse credibility determination is explicitly made, the applicant or witness shall have a rebuttable presumption of credibility on appeal.”).
 20. *Ibid.*
 21. § 1158(b)(1)(B)(ii).
 22. Bohmer and Shuman’s extensive treatment of which types of claims are recognized and which are excluded lead them to conclude, “Part of the problem with the system for granting asylum is that we’re ambivalent about our moral obligation to the people who make claims. Increasingly we go to greater and greater lengths to strengthen the barriers to entry and to make sure that only a few people slip through the net... We let in people whose experiences are so horrifying that we’re shocked; others don’t get in.” Bohmer and Shuman, *Rejecting Refugees*, 263.
 23. For a detailed account of the various difficulties asylum seekers face in relating their stories to adjudicators see *ibid.*, chaps. 3 & 4.
 24. Malkki, “Speechless Emissaries,” 390.
 25. Muddathir ‘Abd al-Rahim, “Asylum: A Moral and Legal Right in Islam,” *Refugee Survey Quarterly* 27, no. 2 (2008): 16, doi:10.1093/rsq/hdn029.
 26. *Ibid.*, 17.
 27. For another discussion of Exodus as asylum narrative see Jonathan P. Burnside, “Exodus and Asylum: Uncovering the Relationship Between Biblical Law and Narrative,” *Journal for the Study of the Old Testament* 34, no. 3 (2010): 243–66, doi:10.1177/0309089210363028. Burnside reads Exodus as a narrative of asylum but understands asylum to be sanctuary from retribution for persons wrongly accused of homicide, which is how the concept was understood in the ancient Near East. *Ibid.*, 255 n.11.
 28. All biblical citations are to the New Revised Standard Version as published in Michael D. Coogan et al., eds., *The New Oxford Annotated Bible*, 3rd ed. (Oxford: Oxford University Press, 2001).
 29. My thanks to Brian Green for pointing out that, if the flight from Egypt is part of the covenant whereby the Israelites are promised a particular geographical area to reside in, then the Israelite devastation of Canaan and its consequences for the Canaanites are implicated in the flight. I do intend to excuse the devastation of Canaan as morally acceptable because it is the consequence of an act of flight. Although it is beyond my scope to treat the issue here, I note briefly that persons are complex as moral subjects and the commission of a moral act does not preclude subsequent or concurrent immoral acts.
 30. See also the following passage from Exodus 14:10–12: “As Pharaoh drew near, the Israelites looked back, and there were the Egyptians advancing on them. In great fear the Israelites cried out to the Lord. They said to Moses, ‘Was it because there were no graves in Egypt that you have taken us away to die in the wilderness? What have you done to us, bringing us out of Egypt? Is this not the very thing we told you in Egypt, “Let us alone and let us serve the Egyptians”?’

- For it would have been better for us to serve the Egyptians than to die in the wilderness.”
31. ‘Abd al-Rahim, “Asylum,” 19.
 32. Sharifah Nazneen Agha, “The Ethics of Asylum in Early Muslim Society,” *Refugee Survey Quarterly* 27, no. 2 (2008): 33, doi:10.1093/rsq/hdn031.
 33. ‘Abd al-Rahim, “Asylum,” 19.
 34. Ibid.
 35. Agha, “The Ethics of Asylum in Early Muslim Society,” 30 (emphasis added).
 36. See *ibid.*, 36–37. Khadija Elmadmad also uses the term *muhajirun* as a translation for “forced migrants” in the contemporary sense. Khadija Elmadmad, “Asylum in Islam and in Modern Refugee Law,” *Refugee Survey Quarterly* 27, no. 2 (2008): 57, doi:10.1093/rsq/hdn016.
 37. Wael B. Hallaq, *Shari‘a: Theory, Practice, Transformations* (Cambridge: Cambridge University Press, 2009), 39–41.
 38. Elmadmad, “Asylum in Islam and in Modern Refugee Law,” 54.
 39. All Qur’anic citations are to the translation of Abdullah Yusuf Ali as published in Abdullah Yusuf Ali, *The Holy Qur’an: Text, Translation and Commentary* (Elmhurst, NY: Tahrike Tarsile Qur’an, Inc., 2001). The Ali translation is printed as verse, with each line capitalized. Capitalization has been altered where appropriate to facilitate inclusion of quoted material as prose.
 40. ‘Abd al-Rahim, “Asylum,” 17–18.
 41. Ibid., 18.
 42. Ibid. ‘Abd al-Rahim also quotes two further Qur’anic verses to support this point:

As for those who migrated in God’s cause after being wronged, we shall give them a good home in this world, but the reward of the hereafter will be far greater, if they only knew it. They are the ones who are steadfast and put their trust in their Lord. (Qur’an 16:40)

As for those who migrate (and strive) in God’s sake, and are then killed or die—God will most certainly provide for them a goodly sustenance [in the life to come] for, verily, God—He alone—is the Best Provider. He will most certainly admit them to a state [of being] that will please them well. (Qur’an 22:57–58)

Ibid., 18. For the translations consulted in the preparation of these verses see *ibid.*, 16 n.3.
 43. Butler, *Giving an Account of Oneself*, 136.
 44. This includes a compelling critique by Saba Mahmood of the scholarly emphasis on agency, and, in particular, forms of universalized agency that may elide other ways of being within power structures that cannot be plotted solely along the axes of oppression and resistance. Saba Mahmood, *Politics of Piety* (Princeton: Princeton University Press, 2004).
 45. Edward W. Said, *Reflections on Exile and Other Essays* (Cambridge, MA: Harvard University Press, 2000), 173–75.
 46. The Qur’an makes note of this particular problem with the duty to seek asylum. In Surah 4:98–99, following the command to seek asylum when persecuted in 4:97, the Qur’an says, “Except those who are (really) weak and oppressed—men, women, children—who have no means in their power, nor (a guide-post) to direct their way. For these, there is hope that God will forgive: For God doth blot out (sins) and forgive again and again” (Qur’an 4:98–99). I also note that the conditions for flight in the Exodus narrative are the plagues that God visits upon the Egyptians.
 47. See, e.g., Agamben, “We Refugees,” para. 5; Nyers, *Rethinking Refugees*, xiv–xv.
 48. Such orientation must, however, take as a caution Said’s reminder not to romanticize exile. “Exile is strangely compelling to think about but terrible to experience.” Said, *Reflections on Exile*, 173.
 49. Agamben, “We Refugees,” para. 5.
 50. See, for example, Malkki’s discussion of her work among Burundian Hutu refugees from in Tanzania in the early to middle 1990s and the contested notions of refugee identity that existed between the refugees and the international aid workers. Malkki relates that the refugees saw their refugee identity as a positive, powerful position located in a history of exile and return. To be a refugee was to be part of the community whose story had a teleology of homecoming. The aid workers, in contrast, often perceived the Burundian population as no longer refugees, despite their documented legal status, because they had, to a limited degree, prospered in Tanzania and no longer fit an idealized notion of the refugee as a person in a position of desperate need. For the aid workers, to be a refugee was to be a victim; whereas, the refugees saw their identity in terms of seeking protection in order to return home. Malkki, “Speechless Emissaries,” 379–85.
 51. Nyers, *Rethinking Refugees*, xiv.

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