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In Praise of the Strange Virtue of People Smuggling

Chandran Kukathas

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And although Herr Schindler's merit is well documented, it is a feature of his ambiguity that he worked within or, at least, on the strength of, a corrupt and savage scheme; one which filled Europe with camps of varying but consistent inhumanity and created a submerged, unspoken-of nation of prisoners. The best thing, therefore, may be to begin with a tentative instance of Herr Schindler's strange virtue ... (Thomas Kennealy, *Schindler's List*)

Almost everyone is against people-smuggling. The refugee advocate excoriating the Government for its mistreatment of asylum-seekers, no less than the Departmental official bemoaning the numbers of boat-people landing on Australian shores, feels well-justified in insisting that, somehow, something must be done to put an end to this 'evil trade'. On the scale of virtue, the people-smuggler appears barely a notch above (and for many, several notches below) the drug-dealer, the child-molester, or the gangster.

Yet a moment's reflection should tell us that there is something seriously wrong here. For what is it that people-smugglers do? In a nutshell, they smuggle people across borders, beyond the reach of oppressive rulers or political gangs, to safety. Of course, they do it for money and not out of the goodness of their hearts — though some smugglers have defended themselves as humanitarians. But if doing good for profit or reward is bad, we had better think again about the prices many of us charge for the good we do, whether as doctors or teachers or fire-fighters — or politicians. So why have people-smugglers fallen into such disrepute?

One very obvious answer is that they are acting 'illegally'. But this is an exceptionally bad answer. For it is very hard to see what it is that people-smugglers are doing that is actually illegal.

The first thing that smugglers have to do is get people *out*. People-smugglers smuggle people beyond the reach of those threatening them. They get people across borders. Even those who want to get to refugee camps often need the help of smugglers, for even if they wish to reach a place from which they can make a bid to travel further to greater safety they need assistance. There is nothing illegal about charging people for helping them reach safety, any more than there is something illegal about fleeing for your life in the first place. And governments, including Australia, implicitly recognize this when they set up or endorse refugee camps which people can only reach by fleeing unauthorised across borders.

The second thing people smugglers do is help people reach places where they can make application for their cases for asylum to be heard. A good people smuggler would take his customers where they can expect to be heard because the law proclaims that they have a right to be properly considered. He would take them, say, to Australia, since that

country has declared, by signing an international treaty that it will consider without prejudice any application for resettlement as a refugee made by any person arriving on its shores. A bad people-smuggler would be one who dumped his charges in a land whose laws, and customs, did not give them the opportunity to find safety. It cannot be illegal to bring people before the law.

The smugglers have done nothing illegal. It is not illegal to transport people for money. It is not illegal to arrive on someone's shores to seek help.

And here it must be said that it is very hard to make sense of the Government's response to people caught smuggling people. By most estimates, 80% of people brought to Australia by boat have been found by the Government's own procedures to be refugees. Bear in mind here that these are people who meet the standards set down by the 1951 Refugee Convention, which requires that a person have a well-founded fear of persecution on the grounds of race, or religion or group membership to qualify for refugee status. Many of the 20% not recognized as refugees may fail to qualify not because they are not fleeing war or terror or social catastrophe but because not all kinds of refugees count. So if the people smugglers have a strike-rate of 80%, it is puzzling that the Government wants to punish them. Is it because they made mistakes with the other 20%? If so, that seems very harsh. But if it is because they've brought the other 80% to Australia, to punish them seems simply ludicrous. 'Thank you for bringing in several hundred people, most of whom we have decided have a perfectly legal right to be here. Please allow us to treat you to an indefinite stay in one of our prisons.' It sounds like a very bad joke.

As far as I can see, the people-smugglers have broken no international law. Nor have they broken any Australian domestic law. They have brought people before the law, and most of these have been found to have strong legal claims under international laws that Australia has formally endorsed as a sovereign nation.

What makes the popular hostility to people-smugglers even more difficult to fathom is that the people they are bringing to safety are typically those fleeing the most brutal regimes in the modern world: Iraq under Saddam Hussein and Afghanistan under the Taliban. Australian governments have been loud in their condemnations of these regimes for destroying cultural monuments, invading other countries, manufacturing biological weapons, fomenting terrorism, and indeed terrorising their own people. Australia, along with many other nations, has even seen fit to impose economic sanctions on Iraq, so despicable is its ruler in Australian eyes. Yet to those who are trying to get people out of Iraq Australia's response is condemnation. Is the message to Iraqis supposed to be: you are living under a cruel and despotic madman, but under no circumstances should you try to leave — least of all through the efforts of someone who must be paid? If such a message would have been grotesque if sent to Jews in Nazi Germany, what is it that makes this same message any better now?

But perhaps the people-smugglers have threatened Australia's sovereignty, or the security of its borders? That might be a persuasive argument if the nature of the threat was explained. Arriving unarmed by sea with women and children, most of whom will be found to be no threat at all but in fact entitled to help under law, does not seem very threatening. And definitely not illegal. So what is the problem?

The remaining explanation for the hostility toward people-smugglers is that they consort with the wrong sort of people — with criminals. This claim often appears with descriptions of people-smugglers as ‘traffickers in human misery’. How much interaction there is between smugglers and traffickers of other sorts is much debated — and the disputes on this matter have not been settled. But smuggling is not trafficking. And while it is clear that steps should be taken to end the sale of human beings into sexual or other forms of slavery, it is quite obscure why any steps should be taken to stop people from being smuggled into freedom.

It would be foolish to suggest that people-smugglers were all saints. Many of them may well care more about their bank balances than they do about human beings. They may be no better than some bankers in this regard. But then, it is a wicked world. And we cannot wait around for men of perfect virtue if some important jobs are to be done. People-smuggling may be evidence of a strange kind of virtue. But it is surely better than no virtue at all.