



## Between Hospitality and Hostility: A Derridean Reflection on “the Refugee”

---

*Norman K. Swazo*

*Journal of French and Francophone Philosophy - Revue de la philosophie française et de langue française, Vol XXX, No 1 (2022) pp 17-38.*

Vol XXX, No 1 (2022)  
ISSN 1936-6280 (print)  
ISSN 2155-1162 (online)  
DOI 10.5195/jffp.2022.1007  
[www.jffp.org](http://www.jffp.org)



This work is licensed under a Creative Commons Attribution-Noncommercial-No Derivative Works 3.0 United States License.



This journal is operated by the University Library System of the University of Pittsburgh as part of its D-Scribe Digital Publishing Program, and is co-sponsored by the University of Pittsburgh Press

# Between Hospitality and Hostility

---

## A Derridean Reflection on “the Refugee”

Norman K. Swazo

North South University

... for a decision to be just and responsible, it must, in its proper moment if there is one, be both regulated and without regulation: it must conserve the law and also destroy it or suspend it enough to have to reinvent it in each case, rejustify it, at least reinvent it in the reaffirmation and the new and free confirmation of its principle. Each case is other, each decision is different and requires an absolutely unique interpretation, which no existing, coded rule can or ought to guarantee absolutely.

Derrida, “The Force of Law”

### A Prefatory Note

Every philosopher who is concerned with *practical* rationality and the public import of philosophy assumes a politico-philosophical responsibility for his or her words, thoughts, and deeds. More often than not, this is a function of his or her place and time in history as well as the press of current events that claim the philosopher’s solicitude so as to intervene at least with the force of thought and words, if not with deeds. Yet, as philosophers such as Martin Heidegger and Albert Camus have argued, *thinking* is itself always *the essential action* that is needed in times of momentous decision, despite the seeming absurdity of events.<sup>1</sup>

Those who live in public domains more or less undisturbed by armed conflict do not often apprehend the profound sense of upheaval, crisis, and insecurity that arises when such conflict leads to the displacement and forced migration of peoples. That sense of crisis is all the more disquieting when a people such as the Rohingya, displaced from their historical home in Burma/Myanmar, are declared “forcibly displaced Myanmar nationals” (FDMN) rather than recognized as “refugees” in *sensu stricto*. Such a novel

juridical designation—defective for exceeding “the borders of truth” (as Jacques Derrida might say)<sup>2</sup>—allows “the State” on the receiving end of forced migration to insist before the world community of nations that it is not to be held either morally or legally responsible under international refugee law, thus to minimize (if not to eliminate) its “responsibility to protect”<sup>3</sup> those who, through no fault of their own, have been rendered “State-less” against their will and, worse, declared to have no claim to citizenship whatsoever, hence no right to repatriation.<sup>4</sup>

But, a philosopher with his or her politico-philosophical responsibility —a *philosopher such as I am*—must reject and set aside such State-serving discourse in the interest of declaring the moral-legal-political truth and the requisites of justice such as laws may approximate, despite philosophical and political contestation of the concept of justice.<sup>5</sup> Hence, with the set of words that follow, I set forth my own essential deed in my time and place to speak of the plight of the Rohingya. This is not a theoretical reflection or exposition. It is instead quite decidedly an exercise in “applied” philosophy, an act of writing that, in and through that writing, manifests a “practical conscience (ethical, legal, political)”<sup>6</sup> in the sense Derrida intended when he himself engaged the task of deconstruction as one involving both a critique and an appropriation of ethical-legal-political responsibility before “the other” who is a human being, a responsibility that is at once “singular” and “inalienable.” My exercise in practical rationality shares Derrida’s entirely pertinent concern for “the force of law” and specifically for “the law of hospitality” in our postmodern world—a concern that moves in the direction of exhortation. That *law* of hospitality, as is argued here, speaks against the *laws* of State which legitimate a sense of political identity and constitutional-statutory claims to citizenship for some, while at the same time creating a non-state of exception, such as is manifest in the lived experience of those like the Rohingya, who suffer the scandal of a “State-less” existence.

## The Life-world (*Lebenswelt*) as Place of Meaning

In his essay, “The Concept of Time,” Heidegger wrote: “The lived world is present not as a thing or object, but as meaningfulness.”<sup>7</sup> Heidegger here speaks of the lived world, *Lebenswelt*, as the “place” (*topos*) and the “home” (*Heimat*) where we live our lives, and dwell. The lived-world manifests its meaning in and as a “referential context of significance,” through our thoughts, words, and deeds. It is through this meaningful lived world that we identify who we are and what we choose to become. In doing so we navigate between the quasi-deterministic past of our history and the open future as it discloses our individual and collective potentialities for being. Heidegger thus makes an important conceptual distinction that is central to our self-affirmation as individuals and as members of any particular society.

We can think of this as well in terms of Derrida's reflections on "The Ends of Man." In that essay, Derrida<sup>8</sup> linked the philosophical and the political as having an *a priori* connection, asserting that, "contrary to the essence of philosophy—such as it has always represented itself at least—philosophical nationalities have been formed." Where there are philosophical nationalities there is at once a philosophical and a political identity expressed in multifarious ways, even to the point of disclosing an intra-national contestation of that identity. Communal groups inevitably engage each other in the evolving dynamic of an undetermined national political culture, such that, unavoidably, this political culture represents itself in relations of identity and difference.

Further, Derrida observed in 1968,<sup>9</sup> it is presumed that the philosophical colloquia gathered at the international level in relation to some theme "aim to repair, to surmount, or simply to relate national philosophical differences one to another." Half a century later, in 2020, such has been the international concern for the unresolved "Rohingya Crisis"<sup>10</sup> in South Asia. It is a humanitarian crisis that calls the international community of nations, in view of a real and not merely possible *jus gentium*,<sup>11</sup> to account for itself. It is to do so in relating (a) the philosophical and the political in a tradition of political philosophy, (b) the political and international law in the laws of nation-states, and (c) the latter in an intentionally efficacious concern for justice in the face of injustice that rises to the level of crimes against humanity and genocide.<sup>12</sup> Such repair, surmounting, and relation are taken to be both "possible and necessary." In many instances, such colloquia aim to articulate a *universality* of Western political-philosophical discourse, most often "deriving from politico-ideological jurisdiction," e.g., from a "form of democracy," or at least from the presumption that it is from this institutional-constitutional frame of reference that the problem of justice can be confronted squarely. However, such politico-ideological jurisdiction can be instead a *deformation* of democracy, especially when the question of the relation of state and religion is prominent, e.g., when religion itself "identifies" a nation-state—as in the case of Myanmar's majoritarian identification with Buddhism and Bangladesh's majoritarian identification with Islam. As a result, individuals and societies—national-states—find their lives meaningful in a context of relations that manifest a political culture of both identity and difference, thus formation and deformation of the supposed "constitutional" order.

The intelligibility of the life-world depends largely on how individuals *project meaning* upon things and objects, even upon the significance of human beings as political subjects, as citizens or non-citizens. The latter all too often includes those who are forcibly displaced as refugees, thus to become "stateless" persons. The Rohingya Crisis, which has been a matter of international politico-philosophical colloquium, calls for a confrontation with the status of "the refugee"—assuming that is a juridically appropriate

denomination of the people who are self-identified as Rohingya. Consider thus what political scientist Michael Dillon has called “the scandal of the refugee.”<sup>13</sup> In many places in the world, Dillon argues, we find both philosophy and politics *implicated* in the scandal of the refugee, thereby requiring our interrogation in the interest of the refugee as a human being. How so? Dillon answers:

The refugee is a scandal for philosophy in that the refugee recalls the radical *instability of meaning* and *the incalculability of the human*. The refugee is a scandal for politics also, however, in that the advent of the refugee is always a *reproach* to the formation of the political order or subjectivity which necessarily gives rise to the refugee. The scandal is intensified for any politics of identity which presupposes that the goal of politics is the realization of *sovereign identity*.<sup>14</sup>

This is an important insight we do not often take into account: that we live our lives with a *radical instability of meaning* — an instability that is so “from the roots.” It is an instability that is inextricably linked to the *incalculability* of the human (in the incalculability of how we think and what we do severally and jointly). Further, we also do not take into account that *the very fact of the refugee* is a reproach and an indictment of the presumed legitimacy of the *constituted form* of the political. That is, the modern nation-state system itself that territorializes “the nation” is indicted insofar as it manifests both instability and incalculability so as to give rise to the refugee. Importantly, it gives rise to the refugee despite the juridical goal of political modernity to secure life and livelihood and the so-called “rights of man,” whether one speaks of the Declaration of the Rights of Man (1789) or the Universal Declaration of Human Rights (1948). The realization of sovereign identity in the modern “State” is itself a goal that has had and retains the deformative consequence of displacing those who, through the violence of forced displacement, then become stateless and, hence, refugees. But, why this word, ‘incalculability’?

The answer to that question was given by the Greek tragedian Sophocles when, in his *Antigone*, he said that, of all that is to be known upon this earth, there is nothing stranger, nothing more “uncanny,” than the human being: “Many things cause terror and wonder, yet nothing is more terrifying and wonderful than man” (*Antigone*, line 332).<sup>15</sup> The concept of incalculability speaks to this essential estrangement — in Heidegger’s sense, estrangement as “homelessness” (*Unheimlichkeit*); in Derrida’s sense, a problem of “hospitality” (*l’hospitalité*). Scott Campbell captures Heidegger’s meaning when he says that, “for Heidegger, the human being is essentially tragic, a catastrophe or, if we follow the Greek term, a turning down away from oneself. ... Sophoclean tragedy provided Heidegger with a new way to think about this tragic human essence, namely as an intrinsic propensity toward rise and fall residing within the human being.”<sup>16</sup> Thus, Heidegger spoke of how human existence is “uncanny” (*unheimlich*).

Derrida understood this as well, insofar as, in his “On Hospitality” (*De l’hospitalité*) Derrida “put the human condition and especially the modern state sovereignty under question,”<sup>17</sup> maintaining that “it is from the shelter of home that we exercise our sovereignty as host by filtering and selecting” — even such that, “the host employs the power of hospitality to limit openness to the world.”<sup>18</sup> Who counts as “citizen,” as a “State national,” as a member of the body-politic, and who has a share in the sovereignty “the State” represented as *res publica*, who thus is included or excluded—all this determines who finds the territorial State a place of dwelling, and who finds him/herself excluded into the category of the homeless, the estranged, the refugee, or worse as with the Rohingya, as “FDMN.”

Katherine Withy provides an excellent overview when she summarizes the concept of homelessness to say that we sometimes “feel ... as if there is something wrong with being human,” that we find meaningfulness in life “haunted by meaninglessness,” so that “We feel that there is a dimension of human existence out of step with itself — unstable, out of joint, *unheimlich*.”<sup>19</sup> To be human, in short, is to live a life that is estranged as the human being discovers him/herself fundamentally estranged, in a situation of estrangement (*Unheimlichkeit*) that is partly of his/her own doing. Withy’s point is not about humans merely *feeling* uncanny, in the psychological sense of anxiety or dread. She interprets Heidegger to mean that, “If we do not just feel uncanny but *are* uncanny [in our way to be] then uncanniness is not just a window onto human life but itself belongs to the human essence.” If so, we can appreciate even better Dillon’s point of radical instability, which resonates with Withy’s point of how “the feeling of uncanniness has been said to reveal the ‘radical rootlessness’ or ungroundedness of human practices ...”<sup>20</sup> Thus, our ways of thinking, our ways of knowing, and our ways of doing manifest this instability of meaning, all the more so for those who suffer the indignity of becoming refugees.

As humans, we project meaning upon the things and objects we encounter in our interaction with nature and society. It is in the latter case that we find ourselves in situations where estrangement becomes especially visible. Consider the instability of meaning discernible in what is at once a situation of political order and disorder, and in which the status of human being alternates between being rooted (at home) and uprooted (home-less):

- A Burmese Theravadan Buddhist monk in Myanmar, who identifies himself as “Burmese,” encounters someone in his country who self-identifies as “Rohingya.”<sup>21</sup> The monk projects his meaning upon that person, expressed in his Burmese language to say that this Rohingya man is: (1) a “Muslim” who makes Buddhists “victim[s] of rampaging Islam;” (2) a “Bengali” from across the border, thus “not Burmese;” (3) an “existential threat” to Theravada Buddhism, because a Muslim’s polygamy (up to four wives permissible by Islamic law) and procreative excess (too many children) leads

inexorably to the prospect of a Muslim “demographic majority” in Myanmar; (4) a deranged “terrorist” (since “all Muslims are prone to violence,” consequent to their “absolute monotheism” that entails destruction of idols and temples of worship, therefore destruction of images of the Buddha and Buddhist temples); (5) a “rebel” against “the State,” seeking the political autonomy of Rakhine state within Myanmar, a political tactic that is but “pretext” for eventual secession from Myanmar, thus to create a new Muslim state (as Derrida would say, “a State to come”), the Rohingya therefore in fact wishing *to be* a “foreigner,” and so on and so forth. In the whole of these pronouncements the Burmese Buddhist monk indicts the Rohingya person as *not properly a national* within the sovereign identity of “Buddhist Myanmar;” for, *he* excludes himself from the dominant national-religious identity and *makes himself* a stranger, a foreigner in language, in culture, in religion.

- By contrast, a Bangladeshi Muslim (border guard; government official; resident citizen) within Bangladesh encounters the same person who self-identifies as Rohingya and likewise speaks in his own language (Bengali) to project his meaning to characterize the Rohingya as: (1) a “Muslim,” but *not* a “Bengali;” (2) a “forcibly displaced Myanmar national,” thus *not* a “refugee” (as defined in international humanitarian law<sup>22</sup>); (3) one who has transgressed the Bangladesh national border (even if because of forced migration), the Rohingya thus violating Bangladesh’s territorial sovereignty; (4) one who *must* be “repatriated” to his and her “country of origin,”<sup>23</sup> even if Myanmar does not recognize the Rohingya to be a “citizen;” thus (5) one who is not to be permitted either civil or economic rights, in which case there can be neither assimilation nor integration in Bangladesh either as a permanent resident or as a citizen; (6) who must, therefore, be “kept at the border” in border camps,<sup>24</sup> awaiting his and her return to the place that, due to a lack of security of person, is nevertheless no longer his or her “home.”

The language above speaks volumes about both the local and international contestation of political identity, about the juridico-ideological bases of both hospitality (inclusion) and hostility (exclusion). The self-identifying Rohingya has a “meaningful presence” that varies according to the *perception*, according to the *measure* used, whether by the Burmese Buddhist monk, by the Bangladeshi citizen, by the international community that watches from afar and may even assist the Bangladesh government to manage a “humanitarian crisis” of more than a million Rohingya that migrated illegally into the southeast of the country in flight from the hostilities of the Myanmar military. The perception varies even by the Rohingya himself, according to the way he articulates and expresses that self-identification in his own language, the language that “identifies” him as neither Burmese nor Bengali and solely as

Rohingya. He speaks a different language, not the same language which, as Derrida puts it, “is not only a linguistic operation” but “a matter of *ethos* generally” – thus, language indicative of the person’s abode, his/her dwelling place, calling to the fore a confrontation with the ethics that is given in and for an abode.<sup>25</sup>

What does the foregoing disclose? This tells us that there is no “certainly true” or “objective” presence of the Rohingya *qua* Rohingya apart from the varied projections of meaning we (the Burmese Buddhist monk; the Bangladeshi citizen; the international humanitarian donor agent; the political philosopher) place at our disposal for sundry purposes, be they political, social, economic, cultural, or moral. Nonetheless, all of our relations of identity and difference have structured meaning; and, it is this projected *qua* structured meaning that is prejudiced in the direction of being either (a) caring and solicitous, such as *hospitality* expects, or (b) indifferent or dismissive, even to the point of violent *hostility* that goes beyond the violence of the word to the violence of scorched homes, wanton rape, and collective murder that amounts to genocide.

Thus, we may say that the word ‘Rohingya’ is a “formally indicative” term that is plurivocal in its meaning(s); and, *when* and *how* we (the Burmese Buddhist monk; the Bangladeshi citizen; the international humanitarian donor agent; the political philosopher) use that word we give it content. We find it to be intelligible through the meaning we project therein for good or for bad, for better or for worse, depending on the interest(s) being pursued. It is then that one finds oneself in a moment of agreement or disagreement, of consensus or dissent, of possibilities of political existence that are convergent and coalescent in a political culture or, failing that, alienating to the point of rejecting even the possibility of co-existence (Burmese Buddhist/Rohingya Muslim). When the failure of co-existence is actualized, one is faced with a person who stands before someone as “stranger,” thus one who engenders a hostility that is, more often than not, consequent to an irrational xenophobia, fear of the stranger in all his/her manifestations.

To settle this dichotomy that places us between hospitality and hostility, we need to turn away from all of the projections that emanate from the side of the Burmese and Myanmar government and also those that issue from the side of the Bangladeshi and Bangladesh government. Thereby we are free to consider the salient intervening question: *What is the origin of the self-identifying Rohingya?* This question, too, provides pertinent meaning to the presence of the Rohingya who remain in camps in Rakhine state in Myanmar as well as the Rohingya who, having fled the hostilities in Myanmar, are ascribed the status of refugees in the places to which they have fled or, alternatively because it suits the Bangladeshi appeal to sovereign interest, are ascribed the status of “FDMN.”

For some, the very idea of “Rohingya” is a misplaced “historical construct” that has no legitimate basis in a recognized ethnicity (as in the case of the Myanmar government’s assessment, which declares the Rohingya to be originally and permanently “Bengali” or “Pakistanis from Chittagong”).<sup>26</sup> In another’s judgment (as presented here), however, there can be no sustainable solution to the currently incessant Rohingya refugee crisis unless all defer as a matter of principle and practice to the *Rohingya*’s self-identification and self-affirmation—hence, not to the politico-ideological jurisdiction asserted by either the Myanmar nation-state or the Bangladesh nation-state. This requires that we understand we may defer to this self-identification/affirmation because: (1) there is reasonably compelling historical justification to do so;<sup>27</sup> and (2) we are not faced with a self-identification that issues from some psychological deficit or delusional imagination, despite disputations about the veracity of historical constructs and associated historical narratives. So long as meaning is projected according to sundry socio-political interests grounded in both asserted ethnicity and nationality, the fact is that we have no mutually satisfying—no univocally certain—answer to the question, ‘Who are the Rohingya?’

This question, nonetheless, has philosophical-political priority over either the “Buddhist” *communitarian* political ethic articulated by the Myanmar government, wherein ethnicity, nationality, and religion are privileged according to its “constitution” and national laws, recently said to be that of an emergent democracy, thus to have “the form of democracy”<sup>28</sup> (notwithstanding ongoing military usurpation of power); or the *universalist* political ethic championed by the international community, wherein fundamentally inviolable human rights are privileged according to international humanitarian law.<sup>29</sup> If one is communitarian in one’s political ethic, then one’s hospitality is limited to “the citizen,” to the “nation-state” with its own identification in positive law, thus in a “constitution,” making all others aliens, strangers, to whom there is no juridical “duty” of hospitality according to the laws of State.<sup>30</sup> The stranger, the foreigner, is automatically excluded, even feared as hostile actually and potentially, hence the conceptually delimited real opposition of the comportments and deeds associated with hospitality and hostility.

If one’s political ethic is universalist, then one’s “duty” of hospitality is more expansive, transcending the “imaginary geography” of extant national-state borders that include some into recognized ethnicity and citizenship and exclude others, thus an imagination of boundary that at once both *identifies* (as a matter of ideological-juridical political identity) and *differentiates* (as a matter of ideological-juridical political difference). The Rohingya have the misfortune of suffering for decades “the scandal of the refugee” and, *as refugees* (as one should say, and not to say merely as FDMN), being thereby rendered stateless and homeless even within the legal territorial boundaries of the State of Myanmar where they declare their home to be. Through no

doing of their own, it may be argued, they are situated somewhere ambiguously between the humane reception readily granted in hospitality – yet to come (*démocratie à venir*, as Derrida would say) – and the inhumane rebuff overtly expressed in hostility that is experienced daily in ethnic cleansing, crimes against humanity, and even genocide.

### Imaginary Geography of ‘State’—of Proximity and Estrangement

Our contemporary world has meaning in the historical constructs that, since political modernity (normally associated with the post-‘Thirty Years War’ Treaty of Westphalia of 1648) installed the imaginary geography of the modern nation-state system.<sup>31</sup> This imaginary geography has been systematic in the organization of peoples, yet it is fragile in the continuous re-assignment of shifting territorial borders.<sup>32</sup> The modern “State” is perceived to be monolithic in its gathering of diverse ethnic groups into an artificially constructed national solidarity, but also unvarying in its acts of exclusion. For those whom it gathers as juridically “legitimate” ethnic groups and as citizens, the State is perceived to be benevolent, benign and beneficent in its imperatives of law and order and in the installation of policies providing for the domestic welfare and national security. For those whom it excludes, the State is perceived to be capricious if not malicious, hostile in the same set of imperatives the accepted citizen perceives to be benevolent, benign, and beneficent. The imaginary geography of the modern State is thus at once a geography of *proximity* (that structures opportunities for hospitality) and a geography of *estrangement* (structuring institutions and associated practices of hostility).

It is in view of this relation of hospitality to hostility that Derrida’s thought is pertinent in thinking about the Rohingya crisis. Why Derrida for a politico-philosophical confrontation on the crisis of the Rohingya? Because, I answer, Derrida himself appreciates that “law and politico-institutional problems, are today, from the point of view of a certain deconstruction, among the most fertile and the most necessary” – problems that are to be engaged “without being enclosed in purely speculative, theoretical, and academic discourses,” thus critical discourses that “aspire to something more consequential, to *change* things and to intervene in an efficient and responsible, though always, of course, very mediated way, not only in the profession but in what one calls the *cité*, the *polis* and more generally the world.”<sup>33</sup>

Derrida clarified this institutional-ethical duality as a *problematique* of concern when he pondered the stranger’s appeal for hospitality; for, the stranger claims a right (*droit*) to asylum in the very moment s/he involuntarily transgresses a border. Yet here, in an act that claims a right to asylum, the stranger encounters an act of violence—for, as Derrida reminds us, the stranger must do so in a language not his own. Derrida considers the relation

of language to idiom in his essay, "The Force of Law."<sup>34</sup> In view of what he says therein, one asks: How does the Rohingya *speak for* him/herself? S/he does so, of course, first and foremost in the Rohingya idiom, not in the official languages of the law (*droit*) of Myanmar or Bangladesh. The law, these laws, however, confront the Rohingya in the official languages of the two States, in which case, as Derrida puts it, "A sort of *polemos* already concerns the appropriation of language..."<sup>35</sup> Obviously, one can expect, even demand, that the Rohingya speak in a language that is not their own; since (it may be assumed, as a matter of the law that is "laid down," that has "force," that is "enforceable") "it is more just to speak the language of the majority, especially when, through hospitality, it grants a foreigner the right to speak."<sup>36</sup> Yet Derrida cautions, because: "It's hard to say if the law we're referring to here is that of decorum, of politeness, the law of the strongest, or the equitable law of democracy. And whether it depends on justice or law (*droit*)."

Hence, Derrida asks: "must we ask the foreigner to understand us, to speak our language, in all the senses of this term, in all its possible extensions, before being able and so as to be able to welcome him into our country? If he was already speaking our language, with all that implies, if we already shared everything that is shared with a language, would the foreigner still be a foreigner and could we speak of asylum or hospitality in regard to him?"<sup>37</sup> We do not sufficiently account for this immediate act of violence done to the foreigner simply on the basis of difference in idioms and language, even before there is any action taken that assaults him or her with brute force or arrests and remands this "stranger" into the custody of "the State" whose territorial sovereignty s/he has violated by transgressing its borders. Such, undeniably, is the first act of "violence" (*die Gewalt, la violence*) done the Rohingya when they cross the border into Bangladesh or elsewhere "illegally" –when they face the border guards who enforce the laws of exclusion as any modern State does, when the border guards identify and differentiate "who is (lawfully) Bangladeshi" and "who is (unlawfully) a Myanmar national," the latter a foreigner, a stranger, "illegally present" contrary to declarations of law.

The Rohingya, one and all, are declared Myanmar nationals and, therefore, as foreigners, as strangers, not welcome *as a matter of law*, having no (legal) "right" to Bangladeshi hospitality. As posited, as positive law, the laws of State insist on an unavoidable degree of hostility because, built into the constitutional order, they demand enforcement. The Rohingya have wittingly or unwittingly "violated" the law by crossing the border illicitly, even if their crossing is "forced." The Rohingya are assumed from the outset to be *hostis*, hostile, to the national interest that begins at the border. The automatic constabulary practice of the border guard is grounded in the legal dictum that the Rohingya has no right to hospitality, whatever his or her own individual claim of right to asylum in the dual sense of a temporary place of sanctuary and protection from extradition.

Whether stated or not, the Rohingya is *xenos*, a stranger and a foreigner, engaged first of all as one to be feared for having acted illicitly, hence the onset of *xeno-phobia* (in *sensu stricto*). But, it is the misfortune of the Rohingya to be *doubly* a stranger—(1) a foreigner on the land from which s/he flees even as s/he claims it as his or her own homeland, in Myanmar, and (2) a foreigner on the land to which s/he crosses as s/he flees in hope of safety against losses of life, limb, and property that s/he has already experienced or witnessed. The latter speak not only of ethnic cleansing but, more grievously, of crimes against humanity and, worse, genocide.<sup>38</sup>

However, Derrida would likely ask: How is the Rohingya man or woman received, when s/he arrives in the moment of transgression of the border? By asking for his or her name? By asking him and her the place of their citizenship? By ordering him and her to stop, not to transgress the border, and even to return promptly from whence s/he has come? Other questions follow. Derrida therefore asks quite pointedly: “Does hospitality consist in interrogating the new arrival?”<sup>39</sup> Does hospitality begin with a question? *Should* it begin so? Derrida asks further: “Does one give hospitality to a subject? to an identifiable subject? to a subject identifiable by name? to a legal subject? Or, is hospitality *rendered*, is it *given* to the other before they are identified, even before they are (posited as or supposed to be) a subject, legal subject and subject nameable by their family name, etc.?”<sup>40</sup>

Manifestly, the one who flees *as refugee* seeks shelter, seeks the hospitality that might be “rendered.” But, instead, in the immediacy of the border encounter, s/he is declared an ‘outlaw’ (*anomon*). S/he is declared to be outside the laws of Myanmar that expectedly *should* protect him and her as a matter of the State’s ordering of the political space. But, also, s/he is declared to be outside the laws of Bangladesh that condition his/her arrival and disposition at the border crossing, on the basis of legislated constabulary procedures of arrest and remand. If so denominated on both sides of the border, then the Rohingya is not a *legal* subject at all. That is to say, s/he has no rights under the laws of State, neither those of Myanmar nor of Bangladesh. And thus, s/he is treated as a *hostis*, as one who is *actually*—and not merely potentially—“hostile,” even as one may duly acknowledge the humanitarian responsiveness of the Bangladesh government to the forced displacement. The Rohingya—as refugees, as stateless persons—are not in a position to defend their cause (one may say, their “just” cause) except in their own idiom. What, then, does *justice*, as distinct from *law(s)*, require when the law of a given “language” speaks while rejecting the “idiom” of the refugee?

Justice requires first that the laws acknowledge the *polemos* that is present in the appropriation of language and, in particular, in the insistence that matters of law be adjudicated in the language of “the majority.” Such is the *obligation* of the governments of Myanmar and Bangladesh—and not as a matter of mere decorum or politeness (*qua* expressions of etiquette), but as a matter of *the equitable law of democracy*, if indeed one is to believe that both

governments *bona fide* advocate the form and the norms of democracy, despite religious majoritarian predispositions (Buddhism in Myanmar, Islam in Bangladesh). Thus, one is confronted here with a supposed obligation grounded in the equitable law of democracy and, in contraposition, what Derrida (referencing the German word) would recognize as “spiritual power” (*geistliche Gewalt*). Thus, Derrida identifies the “differential character” of force, the laws of State having their violence (*die Gewalt, la violence*) even as the spiritual power of both Buddhism in Myanmar and Islam in Bangladesh have their violence in shaping the discourse of the two political cultures.

Hence, here we have, as Derrida would declare, a moment of conceptual violence done to the refugee, denominated outlaw in the moment s/he seeks shelter and hospitality. This is the violence done by a communitarian ethic of the government of Myanmar in the moment it excludes those who are not *ethnically* recognized nationals and not part of the religious majority, who are therefore not legally certifiable citizens of the State.<sup>41</sup> As outlaw the refugee is expected to plead his and her case, to declare him/herself guilty of transgression of the State’s sovereignty. Yet, s/he is also expected to seek vindication as refugee, if it is clear from the outset that the refugee as such is *not an outlaw* but instead lays claim legitimately to Bangladeshi hospitality, such being part of the right (*droit*) to asylum (again, right to a place of sanctuary and protection against extradition) and the international humanitarian law that stipulates the “principle” of *non-refoulement*.<sup>42</sup> Following *this* principle of law as guide to official policy and actions of the Bangladeshi government, the decision is clear: The Rohingya must not be returned to his or her place of origin so long as his or her personal welfare and security cannot be guaranteed.

From the Rohingya’s perspective, which is essential to the political determination and disposition of the matter, the Rohingya is not an outlaw. S/he intends no violence to the Bangladeshi whom s/he regards from the outset without hostility and with hope of friendly reception. But, it is the laws of Bangladesh similarly grounded in a communitarian ethic (including here interests demographic and economic) as well as the laws of Myanmar – both imposed from the outmoded political principle of territorial sovereignty – that make the Rohingya outlaws on arrival: To transgress the border is to transgress a “sovereign right” of “the State.” That is the inevitable *legal* fact belonging inexorably to the imaginary geography according to which the States (nation-states) of Bangladesh and Myanmar co-exist. They gather those who are citizens and exclude those who are foreigners, strangers rendered hostile in that juridical act of exclusion, no matter their individual intent or the circumstances of forced migration. Hence, there is disclosed, in Dillon’s sense stated at the outset, the radical instability of the Rohingya existence and the incalculability of those who, on the one hand, mistreat them with hostile acts, and those who, on the other hand, arrest and remand while uncertain what to do with them even as they are refused the legal status of refugee.

Clearly, the political fact of the refugee raises the question of both hostility and hospitality as a matter of *practical rationality* that is at once political and philosophical. This fact calls for a jointure of philosophical-political responsibility;<sup>43</sup> for, the refugee crosses the sovereign border seeking hospitality only to find him/herself denominated an outlaw on arrival, thus faced with the hostility of the border guard who acts as protector of the sovereign border, implementing the laws that at once gather those who are Bangladeshi and exclude those who are foreigners or, in the case of Myanmar, laws that gather the Rohingya into detention camps that deny them their basic freedoms.<sup>44</sup> The irony is that, in the judgment of the Myanmar government and of its majority Buddhist citizens, the refugee Rohingya *is* “Bengali” having historical ties to the Bangladeshi “Chittagongian” ethnic groups long before then “East Pakistan” became independent Bangladesh.<sup>45</sup>

As such, the Myanmar nationals assert, the refugee *may* be, even *should* be, *welcomed back home* by the Bangladesh government, given due hospitality, for the Bengali/Bangladeshi that the refugee properly, *identifiably*, is. And so, thereby, Myanmar tacitly inculpates Bangladesh for the legal violence it does against the Rohingya who, so they say, merely returns to his and her proper place, the place where s/he has a *right* to citizenship even before s/he sets forth a plea for asylum. In the territory of Myanmar, so it is said, the Rohingya *really* are strangers; but in the territory of Bangladesh, the Rohingya *really* are not strangers, for they return home, to what *territorially* is their home of origin, even if *by laws* they are declared outside the law, denominated outlaws for having crossed the imaginary border that makes them strangers, one and all foreigners. Thus, as Derrida would perhaps put it, we have the Bangladeshi authorities at once in the ambivalent and ambiguous position of being involuntarily *hostis*—“hostile” *by law* while expected to be “host” *by ethnic familiarity*. The Rohingya refugee is thereby placed by the laws in a “no-man’s land” between hospitality and hostility.

## Wherefore Hospitality? Thinking Beyond Communitarianism

The foregoing commentary exposes the problem of an essential defect in the communitarian ethic that is championed by all nation-states as the moral ground of their legal sovereignty. As Derrida said, “...*étranger* is understood on the basis of the circumscribed field of *ethos* or ethics, of habitat or time spent as *ethos*, of *Sittlichkeit*, or objective morality...”<sup>46</sup> Under the communitarian ethic the border guard acts on the basis of and in defense of *raison de’Etat*. It is “the State” (*l’État*) that is the judge of the status of the refugee, no matter the personal or familial perception of the border guard. He merely does as the laws of State compel, in which case he is compelled to act first to denominate the foreigner a stranger and not as one who is kin, not as one who is familiar, not as one who is familial in the ways in which one who

is familial automatically belongs to the place that is his or her “home,” where hospitality is rendered “without question.”

According to the communitarian ethic, a person may be gathered into a familial space, the space of the home, *if and only if* s/he is first determined by the laws of the State to be one *belonging* to “the public space,” the “territorial” State that thereby lays out its *dominium*. *Ethnos* and *ethos* are interlinked in this way: That which is “ethnic” (in the ordinary sense of the word), as well as that which is “ethical” (in the philosophical sense of the word) are given determination by the State’s laws. And so, the refugee, excluded *ethically* vis-à-vis a communitarian ethic, is automatically excluded *ethnically*. The Rohingya are in this way excluded from both Myanmar and Bangladesh, excluded ethnically because excluded ethically—it is said: they do not “belong;” neither territory is their “home” where hospitality is properly to be rendered. Hence, the communitarian ethic *dis-places* the Rohingya *qua* refugee to become “State-less,” without *right-ful* (*juste, légitime*) place, and so without home. S/he is, in manifest fact, in Heidegger’s ontological and existential sense, *unheimlich*, un-homely, and thus having an existence manifestly uncanny, estranged, all the more so because designated FDMN rather than as *bona fide* refugee.

The communitarian ethic is problematic at its core for having the very idea of place determined first as a matter of *a place in the State* and only secondarily as a place one may call the “home” (*die Heimat*). The sovereign of the State, of the domain that is “public” in the sense of *res publica*, is sovereign over the domain that is “private,” the home (in the sense of *das Zuhause*). Absent the imaginary geography that constitutes the State, the individual is free to act according to his or her conception of home—as Derrida says—such that: “My ‘at home’ [is a place where] ... I can give my time, my word, my friendship, my love, my help, to whomever I wish, and so invite whomever I wish to come into my home ... when I wish, at any time of the day or night, whether the other is my across-the-fence neighbor, a fellow citizen, or any other friend or person I don’t know at the other end of the world.”<sup>47</sup> “I” *can* because “I” am sovereign *of* the home (think here the Greek *despotés*, “master”) and thus master *in* my home. So the domain, the *dominium*, of the private is conceived and understood by the individual who *could be, would be*, and even believes s/he *should be* welcoming of the stranger, the foreigner.

However, since it is the State that determines the bond of *ethos* and *ethnos*, the State restrains and constrains the otherwise free invitation that might be rendered the stranger across a border. Where, then, is the “home” in the sense of what Derrida calls the place of “inviolable immunity” that is to be expected if hospitality is to be rendered the one who is one’s “across-the-fence” neighbor, one’s “across-the-border” neighbor, who may be invited into one’s home, to be given hospitality rather than met with hostility? The communitarian ethic gathers some into the State to form its “civil” society, where citizens may interact freely with hospitality. But, the State also dis-

places the citizen from his/her own home in making it clear, as a matter of the laws of State, that the home does not have the inviolable immunity that is essential to the free exercise of hospitality. The paradox then is clear: “hospitality, reception, the welcome offered have to be submitted to a basic and limiting jurisdiction.”<sup>48</sup> The “guest” is welcomed by the State into the home. But, one who has no right to be a guest, no right of asylum, is not truly a guest but a “parasite” — “a guest who is wrong, illegitimate, clandestine, liable to expulsion or arrest.”<sup>49</sup> That is the unhappy but actual juridical situation of the Rohingya refugee who crosses the border into Bangladesh. Doing so, whether openly under the oppressive force of military violence or clandestinely under cover of night, s/he is subject to expulsion or arrest. S/he is not one to whom one may render one’s hospitality and a share of one’s home without suffering the *interdiction* of the State. The State as public sovereign declares the refugee a parasite — hostile for coming to “feed off” his and her “host” who could, but *must not*, permit a rendering of hospitality when the State instead authorizes a hostility to one who is wrongly, illegitimately, illegally “alien” though present.

The law of hospitality (note the singular ‘law’ here), understood in itself and not with reference to the State, Derrida says, “would command that the ‘new arrival’ be offered an unconditional welcome.”<sup>50</sup> But this *law* is immediately contravened by the *laws* of the State, by the State in its communitarian ethic, in the ethic that recognizes “legitimate” ethnicity and citizenship and excludes the foreigner, and thus privileges its laws over the one law that offers an unconditional welcome. The law of hospitality, Derrida says, distributes its “anthropological geography” *that is without border* differently from the way the State distributes according to its “imaginary geography” that insists on a border that keeps out and keeps in. Following Derrida, one may posit that the “law” of hospitality in its unconditionality is, as a matter of justice, above the “laws” in their conditionality; for, whereas the unconditional law is constituted as a *jus gentium* prior to the installation and constitution of any State as *res publica*, the laws in their plurality are instituted only in the very constitution of the State that territorializes the reality of the border as such.

However, as Derrida acknowledges, “...even while keeping itself above the laws of hospitality, *the* unconditional law of hospitality needs the laws, it *requires* them.”<sup>51</sup> Why so? Because, Derrida answers, the law “wouldn’t be effectively unconditional, the law, if it didn’t *have to become* effective, concrete, determined...It would risk being abstract, utopian, illusory and so turning over into its opposite.” Laws in their plurality impose a *duty* that the citizen is expected to appropriate as his or her own. Nonetheless, Derrida reminds, the irony here is that “hospitality must not pay a debt, or be governed by duty: it is gracious, and ‘must’ not open itself to the guest [invited or visitor], either ‘conforming to duty’ or even...‘out of duty.’” (With these words here, of course, Derrida dismisses the place of deontology, such as that of Immanuel

Kant.) This unconditional law of hospitality – if such a thing is thinkable and to be thought – would then be “a law without imperative, without order and without duty.”<sup>52</sup> Obviously, one who invites the stranger into his or her home does not do so conforming to a duty or out of (i.e., motivated by) duty; for, “the host” comports him/herself as one who exercises *grace* towards the foreigner. *Graciously offering* him/herself as friend, as familial, and according (offering) the stranger the welcome of the home, the host *lets* him or her *be* “at home” (*daheim; à la maison*). In this moment of “grace” (*la grâce*) – not “duty” (*devoir*) that is performed in the face of a “right” (*droit*) – the foreigner enters freely into a relational freedom without transgression, without aggression, thus as one who is him/herself hospitable, respectful of the “host” who is likewise not hostile, and who practices the law of hospitality.

So, how does one engage with the stranger, such as the Rohingya, who is involuntarily displaced between hospitality and hostility? Derrida cautions: “We will always be threatened by this dilemma between, on the one hand, unconditional hospitality that dispenses with law, duty, or even politics, and, on the other, hospitality circumscribed by law and duty.”<sup>53</sup> And, this dilemma is a *moral* dilemma long before it is a legal dilemma; for, “ethics,” Derrida clarifies, is “in fact straddling the two, depending on whether the living environment” – one thinks here *Lebenswelt* – “is governed wholly by fixed principles of respect and donation, or by exchange, proportion, a norm, etc.”<sup>54</sup> The Rohingya, who are encountered at the border straddling two State territories, are declared “Myanmar nationals” on the one side but “not Myanmar citizens,” “not a legally recognized *ethnos*,” on the other side from which s/he “originates,” no matter the contested historical narrative as to origins. Straddling in the between of statelessness, the Rohingya reveal that, as Derrida says, “the problem of hospitality [is] coextensive with the ethical problem. It is always about answering for a dwelling place, for one’s identity, one’s space, one’s limits, for the *ethos* as abode, habitation, house, hearth, family, home.”<sup>55</sup> The Rohingya are expected to answer for their identity even as they *qua* refugees have no dwelling place, as those who, against their will, have been rendered “homeless” by the persecuting violence of the Myanmar army and the Burmese Buddhist majority, a homelessness that is sustained by the Bangladesh government’s calculated decision to denominate them FDMN.

But, the Rohingya will answer for themselves not in the language of Myanmar or the language of Bangladesh. They will answer in the language, the idiom, that identifies them as Rohingya and *not* Bengali even as it identifies them as *not* Burmese. And, that fact is entirely salient in deciding whether they are to be received with hospitality or rebuffed with hostility – “they” being generally the man as husband, father and provider, the woman as wife and mother, but also the extended family that includes the elderly and infirm grandparents, and always, always, the children who, in all their innocence, suffer their homelessness (*Unheimlichkeit*) most of all without

fathoming the depth or scope of their plight.<sup>56</sup> All are rendered homeless by the Myanmar army's hostility—the killing, the raping, the kidnapping, the scorching of house and field—and so the Rohingya have become refugees appealing not for asylum in the legal sense of the word, but simply for the humanely rendered sympathy and empathy that belongs to hospitality, that gives them “refuge” (*sauvegarde*) against the hostilities they have fled.

And so, in view of the foregoing exercise in practical rationality, I assert that the Bangladeshi government and Bangladeshis especially are presented with a moral dilemma that is fundamentally different from that of the government of Myanmar and the Burmese: whether (a) to act according to the unconditional “law” of hospitality or (b) to act according to the national “laws” that *limit* hospitality and *condition* it as a temporally limited care and concern, to be given “temporarily,” it being expected that all Rohingya—the sooner the better—be “voluntarily repatriated,” *even though* they have no legally established *patria*, no *father-land*, no *home-land*, so long as the majority Burmese Buddhists judge otherwise by the national laws that privilege their own ethnic and religious interests. In this case, is it not a kind of “false consciousness” (*mauvaise fois*), then, to speak of “voluntary” repatriation? It is indeed so; for, the Burmese render no hospitality to the Rohingya, insisting only on the perpetual hostility that underscores the juridico-political reality that the Rohingya have no country (*das Heimat*) to call their own.

The government of Bangladesh and the international community, therefore, have the more difficult moral choice to make in a prospective resolution of the Rohingya crisis. That decision can be taken only according to the unconditional law of hospitality: The Rohingya *must* be granted, as *grace* insists, permanent residence and citizenship outside Myanmar—*anywhere* they are *graciously* welcomed, thus to throw off the incubus of the long-disputed history of their identity, and so to become, legitimately, “citizens” *wherever* they wish to make their “home”—including in Bangladesh. After all, as Linnel Secomb reminds with reference to Derrida, “justice cannot be endlessly deferred, as this itself would create an injustice. It is impossible to garner complete and sufficient knowledge and information and even if this were possible the consequences of actions and decisions are indeterminate and unpredictable. So justice requires action even though this risks, always, an injustice.”<sup>57</sup>

In taking this moral decision of unconditional hospitality, of course, the government of Bangladesh and the international community need not ignore or set aside the criminality (the crimes against the humanity of the Rohingya, the crime of genocide) that displaced the Rohingya from the land on which they have lived for generations despite the shifting imaginary geography in the post-colonial history of South Asia. It is fully in accord with justice that, even as the Rohingya become a diaspora by being granted citizenship in a plurality of places among extant nation-states, the government of Myanmar and their military forces are to be held accountable under international law

for atrocity crimes. This is a matter properly for the International Court of Justice in an adjudication that seeks to resolve the political disputation of the two governments, and also for the International Criminal Court that, according to the Rome Statute, enables a defense of the fundamental human rights of the Rohingya, despite the Myanmar government privileging its defective communitarian ethic. To the extent that a philosopher speaks to this issue of justice, *s/he speaks in his/her own name*, as does Derrida, appropriating the law of unconditional hospitality that is his/her own, irrespective of his or her membership in the body politic of a given nation-state, and in recognition of the struggle for democracy in Myanmar, even if it is “*à venir*.” And so, here too, in writing these words, I speak in my own name to declare and to call forth a political-philosophical responsibility that is ever in the interest of disabusing both politics and philosophy of “the scandal of the refugee.”

---

<sup>1</sup> See here Heidegger’s “Letter on Humanism” (1946), in M. Heidegger, *Pathmarks*, ed. William McNeill (Cambridge: Cambridge University Press, 1998); also see N. K. Swazo, “To Remake Man and the World...*comme si?* Camus’s ‘Ethics’ contra Nihilism,” *Philosophical Readings* 13(1), 2022, 44-53.

<sup>2</sup> J. Derrida, *Aporias*, trans. Thomas Dutoit (Stanford: Stanford University Press, 1993). Derrida says (p. 1): “... the limits of truth are borders that must not be exceeded.”

<sup>3</sup> For a background review, see United Nations, Office on Genocide Prevention and the Responsibility to Protect, “Responsibility to Protect”

<https://www.un.org/en/genocideprevention/about-responsibility-to-protect.shtml>

Accessed 14 March 2022.

<sup>4</sup> For an introduction to the international legal framework protecting refugees, see here, e.g., Inter-Parliamentary Union and United Nations High Commissioner for Refugees (UNHCR), “A guide to international refugee protection and building state asylum systems: Handbook for Parliamentarians No. 27, 2017,” <https://www.unhcr.org/3d4aba564.pdf>, accessed 13 March 2022.

<sup>5</sup> For a separate treatment on the issue of justice due the Rohingya, see my “The Rohingya Crisis: A Moral-Philosophical Assessment,” in N.K. Swazo, S.T. Haque, M.M. Haque, T. Nower, *The Rohingya Crisis: A Moral, Ethnographic, and Policy Assessment* (New York: Routledge, 2021).

<sup>6</sup> See, e.g., Derrida’s *The Gift of Death*, trans. David Wills (Chicago: University of Chicago Press, 1995), 25 & 46.

<sup>7</sup> T. Sheehan, “What, after all, was Heidegger about?” 2014, <https://blogs.helsinki.fi/nosp-2014/files/2014/042014-WHAT-AFTER-ALL-WAS-HEIDEGGER-ABOUT-HELSINKI.pdf>, 10. Accessed 04 June 2019

<sup>8</sup> J. Derrida, “The Ends of Man,” in *Margins of Philosophy*, trans. A. Bass. (Chicago: University of Chicago Press, 1972), 111.

<sup>9</sup> Derrida, “The Ends of Man,” 112.

- <sup>10</sup> See here, e.g., M.A. Bari, *The Rohingya Crisis: A People Facing Extinction* (Kube Publishing Ltd. 2018); J.C. Holt, *Myanmar's Buddhist-Muslim Crisis: Rohingya, Arakanese, and Burmese Narratives of Siege and Fear* (Honolulu: University of Hawaii Press, 2019); K. Ahmed and H. Mohiuddin, *The Rohingya Crisis: Analyses, Responses, and Peacebuilding Avenues* (Lanham MD: Lexington Books, 2019); N.K. Swazo, S.T. Haque, M.M. Haque, T. Nower, 2020. *The Rohingya Crisis: A Moral, Ethnographic, and Policy Assessment* (New York: Routledge, 2020).
- <sup>11</sup> See A. Trindade, *International Law for Mankind: Towards a New Jus Gentium*, 3<sup>rd</sup> Edition Revised. (Leiden: Brill/Nijhoff, 2020).
- <sup>12</sup> Consider, e.g., recent colloquia such as: 2<sup>nd</sup> International Conference on the Rohingya Crisis in Comparative Perspective (03-04 December 2020, University College London, UK); International Rohingya Donor Conference, European Commission, 22 October; International Conference on the Rohingya Crisis in Bangladesh: Challenges and Sustainable Solutions (27-28 July 2020, North South University, Dhaka Bangladesh).
- <sup>13</sup> M. Dillon, "Epilogue, The Scandal of the Refugee: Some Reflections on the 'Inter' of International Relations," *Refuge* 17, no. 6 (1998): 30-39.
- <sup>14</sup> Dillon, "Epilogue," 30; italics added.
- <sup>15</sup> Sophocles, *Antigone*, <https://msu.edu/~tyrrell/antigone.pdf>, Accessed 09 June 2019.
- <sup>16</sup> S.M. Campbell, "The Catastrophic Essence of the Human Being in Heidegger's Readings of *Antigone*," *Gatherings: The Heidegger Circle Annual* 7 (2017): 84-102, 85.
- <sup>17</sup> S. Makris, "Politics, Ethics and Strangers in the 21<sup>st</sup> Century: Fifteen critical reflections on Jacques Derrida's concept of hos(t)i(p)ality," *Theoria and Praxis*, 5, no. 1 (2017): 8.
- <sup>18</sup> B. Lewis, 2012. "Not At-Home: Rethinking Hospitality and Homelessness," *The Other Journal: An Intersection of Theology and Culture*, 2012  
<https://theotherjournal.com/2012/01/07/not-at-home-rethinking-hospitality-and-homelessness-3/>  
Accessed 20 December 2020; citing Derrida, "On Hospitality."
- <sup>19</sup> K. Withy, *Heidegger on Being Uncanny* (Cambridge: Harvard University Press, 2015), 1.
- <sup>20</sup> Withy, *Heidegger on Being Uncanny*, 4.
- <sup>21</sup> See F. Keane, "The Rohingya crisis: Why won't Aung San Suu Khy act? *BBC News*, 08 September 2017, <https://www.bbc.com/news/world-asia-41187517>. Accessed 27 December 2020.
- <sup>22</sup> To declare the Rohingya accordingly is to decide, contrary to refugee law, that they are not refugees. Yet, according to the 1951 Convention relating to the Status of Refugees, the fact is that, "A person is a refugee within the meaning of the 1951 Convention as soon as he fulfills the criteria contained in the definition. This would necessarily occur prior to the time at which his refugee status is formally determined. Recognition of his refugee status does not therefore make him a refugee but declares him to be one. He does not become a refugee because of recognition, but is recognized because he is a refugee." The import of this is, as J.C. Hathaway and M. Foster, *The Law of Refugee Status*, 2<sup>nd</sup> Edition (Cambridge: Cambridge University Press, 2014) remind: "A person who is a refugee at international law is thus entitled in any of the nearly 150 state parties to the refugee regime to claim a powerful catalog of internationally binding rights—including not only critical civil rights, but also socio-economic rights and rights that enable pursuit of a solution to refugeehood." See here also, S.K. Kehoe, E. Alisic, J.-C. Heilinger, *Responsibility for Refugee and Migrant Integration* (Berlin: DeGruyter, 2020).
- <sup>23</sup> The Director-General of the Border Guard Bangladesh insists, "The Rohingya Muslim refugee problem would be solved when they would go back to their country, Myanmar, at the earliest

otherwise the problem would remain for India and other countries...Both BSF [Bangladesh Security Forces] and BGB are committed to stop their infiltration and exfiltration..." See "Rohingyas return to Myanmar: BGB DG," *Prothom Alo*, 26 December 2020, <https://en.prothomalo.com/bangladesh/problems-will-remain-till-rohingyas-return-to-myanmar-bgb-dg>. Accessed 27 December 2020.

- <sup>24</sup> For an overview, see Thomson Reuters Foundation News, "Life for the Rohingya in the world's largest refugee camp," <https://news.trust.org/packages/life-for-the-rohingya-in-the-worlds-largest-refugee-camp/>, Accessed 21 December 2020.
- <sup>25</sup> J. Derrida, *On Hospitality* (Stanford: Stanford University Press, 2000), 13.
- <sup>26</sup> J.P. Leider, "Rohingya: The Name, the Movement and the Quest for Identity, Nation Building in Myanmar. Yangon." Myanmar EGRESS/Myanmar Peace Centre, 2013, 241, [https://s3.amazonaws.com/academia.edu.documents/34461018/LEIDER\\_Rohingya\\_Name\\_Move\\_ment\\_Identity\\_14\\_06.pdf?AWSAccessKeyId=AKIAIWOWYYGZ2Y53UL3A&Expires=1538878459&Signature=6CQ16DMKoRgcVc%2Bxjt5%2F0ZEiwaQ%3D&response-content-disposition=inline%3B%20filename%3DRohingya\\_The\\_name\\_the\\_movement\\_the\\_ques.pdf](https://s3.amazonaws.com/academia.edu.documents/34461018/LEIDER_Rohingya_Name_Move_ment_Identity_14_06.pdf?AWSAccessKeyId=AKIAIWOWYYGZ2Y53UL3A&Expires=1538878459&Signature=6CQ16DMKoRgcVc%2Bxjt5%2F0ZEiwaQ%3D&response-content-disposition=inline%3B%20filename%3DRohingya_The_name_the_movement_the_ques.pdf), Accessed 07 October 2018.
- <sup>27</sup> See Ahmed and Mohiuddin, *The Rohingya Crisis*, "Chapter 1: What's in the Name? The Rohingya Question in Historical Perspectives," 1 ff.
- <sup>28</sup> See A. Yusuf, "Myanmar's Election, the Rohingya Crisis, and the Road to Democracy," *The Conversation*, 2020, <https://theconversation.com/myanmars-election-the-rohingya-crisis-and-the-road-to-democracy-143161>, Accessed 20 December 2020; A. Ibrahim, "Myanmar Has Blazed a Path to Democracy Without Rights," *Foreign Policy*, 2020, <https://foreignpolicy.com/2020/01/16/myanmar-democracy-rohingya/>, Accessed 20 December 2020.
- <sup>29</sup> See ICRC: International Committee of the Red Cross. "IHL and Human Rights Law," 2010, <https://www.icrc.org/en/document/ihl-human-rights-law>, Accessed 20 December 2020; L. Hill-Cawthorne, "Rights under International Humanitarian Law," *European Journal of International Law*, 28, no. 4, (2017), 1187-1215, <https://doi.org/10.1093/ejil/chx073>, Accessed 20 December 2020.
- <sup>30</sup> See A. Papazoglou, "The Philosophical Roots of Today's Immigration Debate," *The New Republic*. 2017, Retrieved from <https://newrepublic.com/article/152883/philosophical-roots-todays-immigration-debate>, Accessed 27 January 2019.
- <sup>31</sup> See R. Falk, "Revisiting Westphalia, Discovering Post-Westphalia," *The Journal of Ethics* 6, no. 4 (2002): 311-352.
- <sup>32</sup> Falk, "Revisiting Westphalia," 312, describes "the Westphalian rubric" that is currently under stress as "ambiguous in its usage as it serves both as a shorthand to designate a state-centric, sovereignty-oriented, territorially bounded global order and to identify a hierarchically structured world order shaped and managed by dominant or hegemonic political actors. In effect, the term 'Westphalia' contains an inevitable degree of incoherence by combining the territorial/juridical logic of equality with the geopolitical/hegemonic logic of inequality."
- <sup>33</sup> D. Cornell, M. Rosenfeld, D. G. Carlson, eds. *Deconstruction and the Possibility of Justice* (New York: Routledge 1992), 8-9.
- <sup>34</sup> See Cornell et al., *Deconstruction*.
- <sup>35</sup> Cornell et al., *Deconstruction*, 4.
- <sup>36</sup> Cornell et al. *Deconstruction*, 5.

- <sup>37</sup> Derrida, *On Hospitality*, 15-16.
- <sup>38</sup> See here T. Khin, “Universal Jurisdiction, the International Criminal Court, and the Rohingya Genocide,” *Opinio Juris*, 2020, <https://opiniojuris.org/2020/10/23/universal-jurisdiction-the-international-criminal-court-and-the-rohingya-genocide/>, Accessed 21 December 2020, and International Criminal Court (2019). International Criminal Court, “Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, following judicial authorization to commence an investigation into the Situation in Bangladesh/Myanmar,” <https://www.icc-cpi.int/Pages/item.aspx?name=20191122-otp-statement-bangladesh-myanmar>, 2019, Accessed 21 December 2020.
- <sup>39</sup> Derrida, *On Hospitality*, 27.
- <sup>40</sup> Derrida, *On Hospitality*, 29.
- <sup>41</sup> For an overview with a perspective from Myanmar, see N. Kipgen, 2020. “Myanmar’s Perspective on the Rohingya Crisis,” *International Journal on World Peace*, 36, no. 1 (2020): 43-70 who describes “two contrasting narratives from Myanmar.”
- <sup>42</sup> According to the United Nations Office of the High Commissioner for Human Rights (OHCHR), “Under international human rights law, the principle of non-refoulement guarantees that no one should be returned to a country where they would face torture, cruel, inhuman, or degrading treatment or punishment and other irreparable harm. This principle applies to all migrants at all times, irrespective of migration status...It prohibits States from transferring or removing individuals from their jurisdiction or effective control when there are substantial grounds for believing that the person would be at risk of irreparable harm upon return, including persecution, torture, ill-treatment or other serious human rights violations.” See here United Nations. Office of the High Commissioner for Human Rights (OHCHR). *The Principle of Non-refoulement under International Human Rights Law*. <https://www.ohchr.org/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf>, Accessed 04 June 2019.
- <sup>43</sup> See D. Campbell, “The Deterritorialization of Responsibility: Levinas, Derrida, and Ethics After the End of Philosophy,” *Alternatives: Global, Local, Political*, 19, no. 4 (1994): 455-484; J. Pattison, *Humanitarian Intervention and the Responsibility to Protect* (Oxford: Oxford University Press, 2010). Campbell comments: “The governing codes of subjectivity in International Relations, in assuming pre-given agents with autonomous and settled identities, interpret ethnic and nationalist conflict as manifesting natural and timeless animosities, and are thus impervious to negotiation or contestation. As such they sublimate the importance of identity issues, and occlude the violent performances by which settlements are achieved in various sites.” (457)
- <sup>44</sup> Human Rights Watch, “An Open Prison Without End: Myanmar’s Mass Detention of Rohingya in Rakhine State.” 2020, <https://www.hrw.org/report/2020/10/08/open-prison-without-end/myanmars-mass-detention-rohingya-rakhine-state>, Accessed 20 December 2020.
- <sup>45</sup> H. Mohajan, “History of Rakhine State and the Origins of the Rohingya Muslims,” *IKAT: The Indonesian Journal of Southeast Asian Studies*, 2, no. 1 (2018): 19-46; MPRA Paper No. 88186, <https://mpra.uni-muenchen.de/8186>, Accessed 04 June 2019, writes: “The Rohingya Muslims did not originate from just one single racial stock. They are the mixture of diverse ethnic groups, including Arabs, Moghuls, and Bengalis.” (2) This historical claim relates to the other historical fact that “Buddhist nationalism [in Myanmar] began to emerge in response to British colonial rule, and saw Buddhists identifying with Burmese culture and history,” even as it is admitted that “a large number of Muslims have resided in Arakan [state in Burma] for hundreds of years.” (p. 3) Nonetheless, Myanmar’s Citizenship Law of 1982 “effectively rendered the Rohingya stateless,” as they do not qualify under the three categories stipulated by the law. (p. 6)

<sup>46</sup> Derrida, *On Hospitality*, 45.

<sup>47</sup> Derrida, *On Hospitality*, 51.

<sup>48</sup> Derrida, *On Hospitality*, 59.

<sup>49</sup> Derrida, *On Hospitality*, 61.

<sup>50</sup> Derrida, *On Hospitality*, 77.

<sup>51</sup> Derrida, *On Hospitality*, 79.

<sup>52</sup> Derrida, *On Hospitality*, 83.

<sup>53</sup> Derrida, *On Hospitality*, 136.

<sup>54</sup> Derrida, *On Hospitality*, 137.

<sup>55</sup> Derrida, *On Hospitality*, 149-150.

<sup>56</sup> See UNICEF, "Futures in the Balance: Building Hope for a Generation of Rohingya Children," 2018, [https://www.unicef.org/publications/files/UNICEF\\_Child\\_Alert\\_Rohingya\\_Aug\\_2018.pdf](https://www.unicef.org/publications/files/UNICEF_Child_Alert_Rohingya_Aug_2018.pdf) Accessed 21 December 2020.

<sup>57</sup> L. Secomb, "Derrida's Other Ends of Man," *International Journal for the Semiotics of Law*, 23 (2010): 301.