

Immigration Detention in Canada: C'est arrivé près de chez vous

Film review by a human rights lawyer¹ and a refugee lawyer.²



The now cult 1992 Belgian film, *Man Bites Dog*³, is an unabashedly violent yet comical faux documentary. It tells the story of Ben (Benoît Poelvoorde), a serial killer whose likeability, sharp wit, and intellect shine even as he describes his 'craft' of killing in intricate detail.

A small film crew follows Ben through his daily routines, giving him a platform (and reason) to spout amateur philosophy and explain the rules by which he selects victims. Through this process, film crew and viewer alike are seduced by Ben's charm and become indifferent to his violence. Ben evokes Hannah Arendt's description of Nazi war criminal Adolf Eichmann: his "deeds are monstrous, but the doer...is quite ordinary, commonplace, and neither demonic nor monstrous."⁴

As with the border between reality and fiction, the line between observer and participant is blurred and, as a result, our initial shock at the violence is followed by a perverse rationalisation for Ben's behaviour.

Looking at *Man Bites Dog* through a legal lens

In the course of her work, Danish artist Stine Marie Jacobsen spoke with many Belgian citizens for whom the film symbolizes "how it can collectively go wrong" in society.

1 S. Priya Morley.

2 The refugee lawyer wishes to remain anonymous.

3 Original French: *C'est arrivé près de chez vous* (It Happened in Your Neighbourhood).

4 Hannah Arendt, *The Life of Mind* (New York; London: Ed. Harvest/HJB Book, 1978), 4.

Man Bites Dog reminds them of an administrative law in Belgium that enables communities to hire ordinary citizens to fine other citizens for disrupting the peace.⁵ In light of this comparison, the artist asked us to watch *Man Bites Dog* and to consider how it relates to the Canadian legal system.

The film's plot, although exaggerated, is not that far from reality. Watching the film, we thought about what happens when fallible individuals like Ben have power to enforce the law. We agreed with the Belgian citizens, with whom the artist spoke, that the *Man Bites Dog* film plot provides a compelling framework for us to demonstrate the potential absurdity of administrative justice.

From our perspective, as a human rights lawyer and a refugee lawyer, we believe the film can be used to show the injustice of Canada's immigration detention system. Lower-level administrative decision-makers in that system often lack any legal training and there is very little oversight for their decisions. Like Ben, they operate under rules which, in our opinion, are arbitrary either in substance or in application. Yet, these decision-makers are given the discretionary power to evaluate individuals and decide who should be detained. Whereas Ben arbitrarily decides who lives or dies, these decision-makers decide who is left to rot for years in Canada's immigration detention centres and provincial jails, without criminal charges or hope for release. As the Canadian public is becoming aware, a detainee may even face the same fate as Ben's victims.⁶

Understanding Ben as decision-maker

The film opens with Ben pulling a woman into a train compartment and strangling her to death. Ben then leans on her corpse, next to a river, and matter-of-factly explains how to weigh it down for effective disposal. We accompany Ben to his family's corner store and meet his charming mother and grandparents who describe what a "darling" Ben is (little do they know...). This jarring opening sequence sets the stage for the rest of the film, in which the camera captures Ben's violence and charisma concurrently.



In *Man Bites Dog*, the viewer is encouraged to see the world through Ben's eyes. It is clear that Ben takes pride in his work as a killer, which he lovingly describes as an art form. His killings are based on guidelines that he created. In part, Ben is motivated by convenience and by his own odd set of ethics. One of his main rules is that he only kills people with money, so he begins each month by killing a postman to better locate wealthy old folks. Ben does not usually kill children, as there is no money to gain.

⁵ Gemeentelijke Administratieve Sancties/Sanctions Administratives Communales (Communal Administrative Sanctions).

⁶ See "Deaths in CBSA custody renew calls for immigration detention reform," *CBC Online* (March 2016), <http://www.cbc.ca/radio/thecurrent/the-current-for-march-21-2016-1.3500358/deaths-in-cbsa-custody-renew-calls-for-immigration-detention-reform-1.3500441>.

As well, the killer operates within the confines of his own conception of morality. He expresses disgust with real estate developers and politicians whose involvement in gentrification forces hardworking people out of their neighbourhoods. In one scene, Ben alludes to one of his murders by noting that one such developer is no longer around.

At the same time, the film makes it obvious how internally inconsistent and ridiculous Ben's rationale really is. Despite lauding the working class, and loathing the rich, Ben preys on the powerless. He too is conditioned by existing power structures: "If you kill a whale, you get Greenpeace and Jacques Cousteau on your back! But wipe out sardines and you get a canning subsidy! I go for the small fry."

In one particularly callous scene, Ben makes crass jokes at the expense of a young, immigrant man he has just shot. Instead of recognizing this man's innate vulnerability, Ben leers at his genitals and refuses to touch him "because of AIDS." We cringe at Ben's casual racism and yet are complicit: after all, having an audience is what encourages Ben to commit increasingly violent acts.



The violence of immigration detention in Canada

Canada's *Immigration and Refugee Protection Act* empowers civil servants to detain certain non-citizens, such as those who might try to avoid deportation.⁷ Once in custody, these individuals have the right to detention review by an administrative tribunal. However, this purported oversight has been described by Ontario immigration lawyers as nothing more than "a string of lay decision-makers presid[ing] over hearings that last a matter of minutes, lack due process, and presume continued detention absent 'clear and compelling reasons' to depart from past decisions."⁸

The discretionary factors in the *Immigration and Refugee Protection Regulations* enable lower-level decision-makers to determine whether a non-citizen subject to a removal order is a 'flight risk' (i.e. if he or she will avoid deportation).⁹ If Ben were applying these factors, the results would inevitably be as arbitrary and cruel as when he applies his own 'ethical' rules to select victims in the film.

7 See *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

8 Hanna Gros & Paloma van Groll, "We Have No Rights": *Arbitrary imprisonment and cruel treatment of migrants with mental health issues in Canada* (Toronto: International Human Rights Program, University of Toronto Faculty of Law, 2015), 5.

9 Section 245 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 ("Regulations") lists the factors to be considered in assessing whether an individual constitutes a "flight risk," including "the existence of strong ties to a community in Canada."

However, reality is not so far behind. For example, in a real Ontario case, a male refugee from Iran was refused protection by the Canadian state.¹⁰ This man's wife and children live in Canada. He was so fearful of imprisonment and torture in his home country that he tried to kill himself at the airport before his deportation. Instead of being sympathetic to his situation, an administrative decision-maker deemed the man a 'flight risk' and had him imprisoned.¹¹



Imagine someone like Ben as the guardian of Canada's immigration laws. There is no doubt that Ben's cruel prejudices would come into play or that he would interpret the guidelines as broadly as necessary to transfer refugees from an immigration detention centre into a notoriously brutal maximum-security provincial jail meant to house criminal offenders.¹²

As in the film, Ben's decisions would be arbitrary and the way that he applies the law would be informed by his own conceptions of what a 'normal' person would do. By carelessly and maliciously wielding his power to detain refugees, Ben would undoubtedly do violence on the most vulnerable victims.

Yet, these decisions are being made every day with similar (and very real) consequences. There is an arbitrariness to the way that immigration detention decisions are made, even though they are supposedly restricted by laws and guidelines. All of us (including Ben) fail to realize that once this type of discretionary power is unleashed, without sufficient oversight to keep it in check, none of us can control the results.

10 Patrick Cain, "Iranian Refugee's Jail Ordeal: 173 Days and Counting – with No End in Sight," *Global News* (Dec. 2014), <http://globalnews.ca/news/1732366/iranian-refugees-jail-ordeal-173-days-and-counting-with-no-end-in-sight/>.

11 Section 245 of the *Regulations* also asks officers to consider "voluntary compliance with any previous departure order."

12 Patrick Cain, "Cold, Ill-fed, Terrified: Ex-detainee Recalls Lindsay Jail Ordeal," *Global News* (Dec. 2014), <http://globalnews.ca/news/1729439/cold-ill-fed-terrified-ex-detainee-recalls-lindsay-jail-ordeal/>.

This is happening in your neighbourhood

Man Bites Dog warns us that when the rule of law is eroded and a single citizen is given too much power, we all feel the effects. We accompany the documentarians as they move from passive observers to active participants and, finally, to victims. This arc is the “occupational hazard” of being around Ben and no one, not even the viewer, is immune.

From the vantage point of two lawyers, the film is a powerful illustration of the potential violence of administrative justice. Law in its simplest form is a social fact, a set of rules by which society has agreed to be bound. Law is also the means by which those rules are enforced. The rule of law is championed as a universal ‘good,’ and society is complacent when its laws are ‘working’ and the legal system is running smoothly.

It is clear, however, that Canada’s immigration detention system is not working. Canada detains large numbers of migrants each year, often in provincial jails that also house criminal offenders. Immigration detention in Canada “operates in something approaching a legal ‘black hole’... [where] key decisions ... are made without legislative authority” and little oversight. The decisions made by ordinary civil servants and administrative decision-makers – to detain, order continued detention, and move individuals from immigration detention into provincial jails – are at their core indistinguishable from Ben’s violence.

One of the lessons from *Man Bites Dog* is how easily the line between observer and participant – citizen and administrative decision-maker – can be blurred. Until we recognize and address the problem of immigration detention in Canada, recognizing our own complicity as observers (or worse), we are all playing a part in this violence.

Image credit (all): Stine Marie Jacobsen, *Mann beißt Hund*, 2015 (video stills)

***C’est arrivé près de chez vous (Man Bites Dog)*, Belgium: 1992
Directed by Rémy Belvaux, André Bonzel and Benoît Poelvoorde**

Story by Rémy Belvaux

Screenplay by Rémy Belvaux, André Bonzel, Benoît Poelvoorde, Vincent Tavier



Blackwood Gallery
University of Toronto Mississauga