Europe and Refugees: A Sparrow's Eye View

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EUROPE AND REFUGEES: A SPARROW'S EYE VIEW

Alastair Davidson

This chapter contrasts Australian and European policies and attitudes towards refugees and asylum seekers, and suggests that underlying European attitudes there is a stronger sense of social decency, based on a longer and deeper historical perspective. A detailed examination of European treatment of refugees and asylum seekers would be more critical of European treatment, but compared with Australia's, European refugee policy does not appear so bad. While it is easy to point at figures like Le Pen or the late Pym Forteyn as examples of European failure, the difference between Australia and Europe is summed up in the Human Rights Watch words: 'Australia is the first nation to put the concept of deterring secondary movement [of asylum seekers] into practice in...a unilateral and uncompromising way'. Many more refugees proportionate to population are accepted into Continental Europe than Australia. Germany, for example, has a ratio of 1 refugee to 456 head of population; while Australia has 1 to 1138. An applicant still has a much greater chance of getting accepted into Europe than Australia precisely because it is easier to cross the threshold and gain asylum.

Australia's less accommodating stance is a vestige of British colonization in the nineteenth century. The notion of Australia as a separate and isolated place surrounded by hostile 'others' quickly became central to the settlers' imagination. Border control remains central to the context for empowerment in Australia. Any immigrants who wished to be empowered knew that they should assimilate or become as Anglo-Celt as possible. The bulk of the world could see that this was not an option they could exercise. Unfortunately a citizenry that could only empower itself by excluding other races from its tiny paradise necessarily endorsed discriminatory rules inside as well. Despite the pretension to economic and social egalitarianism expressed in the idea of a 'fair go', a rights-based culture remained limited to insiders.

The European Rights Framework

Historically the European experience has been quite different to Australia's. It has left European states with much better refugee policies. Since the


Dublin, Amsterdam and Tampere Agreements of the 1990s there have begun to evolve common policies for the European Union as a whole. Let me concentrate on the formal European rules derived from these policies. They depend on states signing up to agreements and then actually honouring them in practice. Most European states agreed to implement these rules.

The European Union is paramount over its member nations in another regard: Articles 3 and 8 of the European Convention of Human Rights (ECHR) allow appeal from a state decision to the European Court (ECJ) in a number of significant ways discussed below. Article 3 of the European Convention of Human Rights established that neither expulsion nor extradition is permitted towards a country if the person concerned is likely to be subject to a serious violation of his human rights. Article 8 states that a person's private and family life shall be respected.

Under European rules, the Refugee Convention (1951) and its Protocol (1967) are applied as a starting point for establishing refugee status and rights. There is longstanding support in the European Parliament for extending its definition of refugee and its coverage even further than those agreements envisage to cover the new realities of massed forced migration. It should be rewritten to take account of the social realities of displacements today, which are far less a consequence of individualised persecution than of generalised violence.

The minimum European standards after the Tampere agreements of 1999 with regard to a person who presents at a European frontier immediately differ from those of Australia. This is so despite the fact that Australia claims to follow the Refugee Convention and its Protocol. The reason is that 'the competent authorities will presume that all applications for international protection are applications for asylum unless the applicant explicitly requests another form of protection.' Within the European Union freedom of movement is guaranteed so the standard applicable at the frontier has little application elsewhere.

So, with the exception discussed below, non-refoulement is the rule. European applicants for asylum are given a document that notes their status as asylum seekers and which is automatically renewed while their application is being considered. They cannot be detained for more than a short period (which the convention necessarily allows for processing) and during that period they have access to all outsiders. Then they are at liberty to move around the territory of the state; to find work after six months and have their children attend ordinary schools. The state furthermore must provide adequate housing, food and medical attention. Signatory states must ensure harmonious relations between the accommodation centres.

and the local community. This is all far better than recent Australian policy. What must be noted is the limit placed on the basic principle of non-refoulement. The state has the option to return a person to a ‘safe third country’ through which that person passed on the way to the country in which he or she applied for asylum.

Even relatively progressive regimes like those established by the European Union at Dublin and Tampere in the 1990s, backed by the best human rights regime in the world, that of the ECHR, have introduced rules with the object of managing the flow, not of protecting individuals. Signatory states seek to get around the European Union rules by using the right to send back to a safe third country through which a refugee has transited. Since these include dubious destinations like Albania, which cannot be relied upon not to send the refugee to the borders whence they fled, there has been much debate about the need for a single reliable list of such ‘safe’ places.4

These are the formalities of the European refugee framework. The states that constitute Europe have had different rules and regimes and various attempts have been made by politicians and administrators to circumvent European rules. This has been particularly significant with the success of right-wing parties in national elections in the late 1990s. They have been successful. In fact, between 1992 and 1995 the number of refugees seeking asylum has already fallen from 720,000 to 290,000, with the most marked fall occurring in Germany after it ended its open door policy in 1993.

We can describe a number of mechanisms designed to circumvent the European framework—they are not unlike those adopted in Australia. Germany and France have established holding areas at airports, which are no longer deemed ‘national territory’ so that rights arising under the Geneva Convention cannot be asserted. Italy and Greece, which are points of first destinations for many asylum seekers trying to get further north, have come up with the proposed ‘Ageist solution’, sending hapless people to Albania while their claims are being processed. The accommodation provided in Drancy, Strasbourg, Frankfurt and other holding centres for people whose papers are not in order, is not vastly different from that provided at Woomera. There have certainly been suicides and killings in such places.

In sum, European states have not been keeping to the European rules. Methods have been found to bend or circumvent the agreement. Refugees know about the techniques and systems set up and increasingly try to avoid the sophisticated state officials armed with regulations designed to keep them out. For example, they avoid arrival in metropolises and in known transit points like Calais and head for provincial towns like those of Burgundy.

The most alarming proposed innovation is that detention camps be set up in Albania where UNHCR or European Union officials would process applications. Such innovations were encouraged by the political right in order to send people back to countries through which they had transited, an exception to the rule of non-refoulement which is the essence of rights for refugees. Human Rights Watch recently pointed out, even before enlargement of the European Union, that the real problem was that people could be sent back to, say, Eastern European countries where there would be no scruples about returning them to the borders of the tyrannies they had fled. Some have pointed to the disturbing case of the Kurdish leader Ocalan who was returned from Italy to Turkey, as evidence that even the most open of European states are ready to connive at such acts.5 One effect of the ‘third safe country’ exception, if extended to places that are not really safe (and who could venture to judge which is safe after recent events in Bali?), is that it could shift state actions outside the ECHR and ECJ jurisdictions. Then the crucial overriding power of European human rights—appeal from national decisions to the supranational court—is closed down. Authorities use the ‘third safe country’ rule with great success to keep asylum seekers outside their territories, where asylum seekers cannot take advantage of Article 3 or the Convention. So remaining within the ECJ’s jurisdiction is fundamentally important to applicants.

This has been a very important power protecting people being sent back to inappropriate states. For example, in the case of Soering, the European Court mobilised articles of the Convention that ‘prohibited cruel and degrading punishment’ (the torture provision) to stop the extradition of Mr Soering to the USA where he might face the death penalty. If a person were within European jurisdiction at the time his or her application were turned down and before he or she could be returned forcibly to Afghanistan, Iraq, Mali, Nigeria or some other destination deemed safe, that person could appeal to the ECJ which could overrule any decision by a national court.

As we have pointed out, it is this right of appeal to the ECHR which in the past has identified the European Union as the superior jurisdiction in matters of human rights. The point is not that there is a Convention of Human Rights to entrench rights and impose sanctions under Article 50, but that an appellant faces a Commission and a Court which is not made up of the co-nationals of those intent on excluding him or denying his rights. There is no parallel in Australia—no right of appeal to a non-national forum. As Crock and Saul have shown most internal avenues of appeal have been closed down in Australia by legislation.6

If such proposals as the Ageist solution become general practice—and the reaction to Australia’s ‘Pacific solution’ by many European countries

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4 ELDR President Address on Asylum, Refugee Policy, available at www.europa.eu.int/en/agenda/igc-home/eu-doc/parlment/eldr1.htm, accessed 1/12/02
5 T. Lluch ‘Hacia una politica comun de asilo para la Union Europea’, available at www.cidob.org/CarlesLluch/Pubchannels/Articles/53Lluch, accessed 1/12/02
hints that this might be the case (Britain, the Netherlands, Austria and Italy were claimed by then Minister for Immigration Phillip Ruddock to have approved of Australian policies)—then Europe will have caught up with Australia in its failure to meet legal, ethical and moral obligations to those who flee oppression.

Which way will Europe and Europeans will go? Here our discussion must shift from the legal to the political will. Whether the Blair's Forteys have their way, or the call of the progressives for more openness is successful, depends on popular pressure one way or the other. At first sight the figures are not reassuring. Europeans, like Australians, as a majority support the policies of their governments directed to turning back refugees. But I want to suggest that Phillip Ruddock—who noticed the popular support whenever he could—had miscalculated what the 'sparrow's eye' view of the European population adds up to or could become.

To anticipate what might happen in Europe we have to understand much more than just the figures which undeniably show a support for the increasing tendency towards the exclusion of refugees—and consider the historical and cultural experiences separating Europeans from Australians. The problem is where to start. There are so many Europeans. When Mr Ruddock claimed endorsement for his policies among Europeans he may have been right where some or even many policy makers are concerned. The issue is how representative they are. There were certainly also opponents of his policies in Europe. Overall, I do not see much interest in Europe and its press in what happens in Australia—so the impact of Australian experience and solutions remains marginal to European thinking.

The Pariah

I can only make my projections about the 'European experience' on the basis of that Europe I know closely, that is, the France profonde of the Morvan. It shows some interesting signs that cast doubt on the assumption that soon Europe will adopt Australian-style policies. To approach the matter from the Morvan is to adopt the view of the sparrow, not the eagle that sees all in some Olympian overview. At least such an approach presents what is 'true' for this segment of Europeans.

Theories that the sparrow's eye view or else the view of the pariah, is most important in figuring out what will happen have many sources. Their long theoretical lineage goes back to Arendt, Kafka, Heine and Kant and to Bobbio, Kelsen, Salvemini and Cattaneo. Basically, they follow the old Puritan principle that the wearer knows where the shoe pinches. Arendt twisted this into the proposition that in the modern world it is refugees who are the symptom of its ills and understand best what is wrong. Similarly, it is the 'little people' whose reactions are most likely to be relevant to outcomes of policy decisions. In a democratic polity it is the way such individuals put together the facts which will be most important. Are these people hostile to the 'pariahs' or not?

The millions of forced migrants today on the move remind us of the proverbial wandering Jew. Eric Hobsbawm shows us in his recent autobiography the world of the latter: 'the Hobsbawm household lived, not in Berlin, but in a transnational world, where people like us still—though the 1930s were to make it more difficult—moved from country to country in search of a living.' These are words which could have been written by the Jewish paint makers, Itala Svevo and Primo Levi, or by Franz Kafka, who made it his community service to find residency papers for Eastern European Jewish refugees in the unwelcoming nationalist remnants of what had been the multi-ethnic Austro-Hungarian Empire.

Hanna Arendt fastened on the figure of Franz Kafka to suggest that such 'pariahs', the heimatlos, had grown into much more than the 0.25 per cent of the world's population who are Jewish, but extended to millions of all ethnicities, classes, and genders, who had lost that sense of a single home in the modern age. She wrote that in The Castle, K (note the anonymity of K) 'is a foreigner who is difficult to classify since he does not belong to either the ruling class or to the people: "you are not from the Castle and not from the village, so you are nothing." It is true that he has something in common with the rulers... however, it is also true that he has no right to a residency permit. For the minions of State (piccoli impiegati) his bourgeois existence risked being buried under piles of documents. He is certainly reprimed for being superfluous 'a supernumerary, always a bother (intralcio) who as a foreigner should be happy with what is granted him and who is tolerated only as an act of charity (grazia).' Such pariahs—the disempowered millions of forced migrants—cannot and do not ground their claims to justice in some hope of charity. They are witnesses to its denial. As Franz Kafka, Arendt's chosen expression of the universality of pariah-hood for all refugees, states in The Castle: "I don't want any favours from the Castle, but my rights."

So pariahs are not convinced by humanitarian schemes and policies. They must think and act for themselves from their unique and novel transitory place.

The Sparrow's Eye View

A good starting point in seeing how contemporary Europeans react to the pariah is to acknowledge that in the last Presidential elections twenty per cent of my local village in the Morvan supported the neo-fascist extreme nationalist Jean Marie le Pen—slightly more than the national average. Le Pen's proposed policies for refugees were roughly the same as

8 H. Arendt Lectures on Kant's Political Philosophy, University of Chicago Press, Chicago, 1982
9 Ibid p. 73
10 H. Ardènt, Il futuro alle spalle, Mulfino, Milan, 1981 p. 76
both government and opposition were promoting in Australia. His racist attitudes, particularly regarding Muslims, are frequently repeated in the bar even though there are no Muslims for miles around. The views are as bad as if not worse than those of ‘rabid Hansonism’. Overall the villagers fit Primo Levi’s generalization—newcomers are the least liked as they do not understand ‘how things are done around here’.

On the other hand, in the elections for the national assembly, seventy-five per cent voted against Le Pen and socialist parliamentarians were returned at the first round. This was very rare in the last elections. Moreover, Jacques Chirac, who had made it quite clear that Le Pen’s policies vis-a-vis foreigners were completely unacceptable to democratic French citizens, beat Le Pen resoundingly at the French elections. Thus surfaced a deep resistance to the racist threat from the political right.

We should note that the Australian figures are the reverse of those in France. In Australia seventy five per cent of the electorate favoured the refugee policies that the French electors rejected even in the conservative racist rural heartland. But this is not the point for a theory of the pariah. What needs explaining is why, when ‘push came to shove’, a line against the Australian type solution was articulated and affirmed. A little anecdote may throw some light on the answer. Jean François, a local farmer with an Asterix moustache, and, I suspect, not enormously progressive in politics, called us in to drink a glass when we went by. He asked me where I came from and when I said Australia, did a sort of double take (it was, I think, called us in to drink a glass when we went by. He asked me where I came from and when I said Australia, did a sort of double take (it was, I think, a Woomera type of concentration camp system. In Europe millions have lived through regimes with isolated camps, miradors, barbed wire, numbered inmates and so on—what exists in Nauru and Woomera. Only five miles from the house where Jean François admonished me stands the martyr village of Dun les Places, whose people were victims of the fiercest exclusionary nationalism in history—National Socialism. In too many little European people there is a deep residue of the attitude of the former refugee from oppression, unknown to Britons, American whites and most Australians. Theseus said to Oedipus in one of the most ancient accounts of the oppressed pariah seeking asylum:

"Most ill-starred Oedipus, I fain would know
What is the suit ye urge on me and Athens
Thou and the helpless maiden at thy side
Declare it: dire indeed must be the tale
Whereat I should recoil. I too was reared, like thee, in exile, and in foreign lands
Wrestled with many perils, no man more
Whereof no alien in adversity
Shall seek in vain my succour, nor shalt thou;
I know myself a mortal, and my share
In which the morrow brings no more than thine."

(Sophocles, Oedipus at Colonus Loeb 1946:203)

I speculate that such treatment as that meted out in Australia is not going to be regarded as acceptable in the long run in Europe. Nor are claims that concentration camp systems do not get out of hand and start to operate according to their own awful logic. Western European horror at the photos and reports of camps in former Yugoslavia less than ten years ago is likely to be repeated if photos of ‘Aegean solution’ camps ‘out in the East’ and far from scrutiny creep back to the West. The legacy of the Holocaust establishes the limits of the tolerable.

Of course, without effective political leadership in opposition to such a world anything is possible. But in Europe such leadership does exist and is shamed by its failures, as the resignation of the Dutch Prime Minister over the Srebrenica report showed. Human rights are a real popular currency among the sparrows of Europe. Failure to act decently or to respect ‘human dignity’ is considered culpable.

In Australia there is still a pathetic nationalistic defensive refusal of both UN and European Union condemnation of Australian policies in Hamburg for example, still rates way above Australia on the human rights scale of Humana.

A Conclusion

It is at the level of popular culture shaped by deep historical and cultural forces that we should really try to identify the difference between the future Europe and existing Australian regimes. In policy, they seem to be converging but the issue is whether the European population will accept a Woomera type of concentration camp system. In Europe millions have lived through regimes with isolated camps, miradors, barbed wire, numbered inmates and so on—what exists in Nauru and Woomera. Only five miles from the house where Jean François admonished me stands the martyr village of Dun les Places, whose people were victims of the fiercest exclusionary nationalism in history—National Socialism. In too many little European people there is a deep residue of the attitude of the former refugee from oppression, unknown to Britons, American whites and most Australians. Theseus said to Oedipus in one of the most ancient accounts of the oppressed pariah seeking asylum:

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failing to meet minimum international law standards concerning refugees and other matters. This reaction taps into an Australian assertion of the rights of collectivist community over the individual rights of the refugee and pariah. Such condemnation of a European nation, while it would be resented, would result in an attempt to set its house in order. In Europe a historical understanding of the right of individuals against tyranny provides a different morality and response.