

Editorial

Migration wars: refuge or refusal?

States have long constructed migrants as vectors of insecurity and terror, particularly at border crossings. To address this ‘problem’, states have created ‘spaces of exception’ to their own laws:

The stadium in Bari into which the Italian police in 1991 provisionally herded all illegal Albanian immigrants before sending them back to their country, the winter cycle-racing track in which the Vichy authorities gathered Jews before consigning them to the Germans... or the *zones d’attentes* in French international airports in which foreigners asking for refugee status are detained will then all equally be camps (Agamben, 1998: 174).

At the Copenhagen airport recently a newspaper headline caught my eye: “EU to study transit sites in Libya for immigrants” (Dempsey, 2004). The article outlined a proposal by Italy and Germany to assess the claims of asylum seekers outside the European Union before they arrived *in* Europe. This proposal is but one expression of what has been referred to as ‘regional solutions’ for asylum processing, whereby refugee claims are dealt with ‘close to home’, *outside* the destination countries. Sweden, France, the Netherlands, Germany’s Green Party and the UN refugee agency meanwhile voiced concerns not that Libya was until recently a human rights pariah in the international community, but that the country was not even a signatory to the 1951 Refugee Convention nor its subsequent 1967 Protocol—the bare legal framework that provides minimum protection to those fleeing violence and persecution.

Despite objections, a week later details of the proposed ‘pilot project’ were publicized at a meeting of EU interior and justice ministers: five processing centres are to be set up in Libya, Tunisia, Algeria, Morocco, and Mauritania. The uninterrupted stretch of North African shoreline from the border of Côte d’Ivoire and Mauritania in the West to the eastern border of Libya where it meets Egypt provides a convenient catchment

area for processing asylum seekers before they arrive in the EU. The proposed geography of asylum processing would enable off-shore processing directly south of the EU.

This is not a new strategy. In 2002 Britain proposed transit sites—or processing centres—in Albania, Ukraine, and Croatia for asylum seekers. The United States has long used Guantánamo Bay—a US naval base leased from Cuba—as an offshore site for asylum processing, and now for interrogating alleged terrorists, known as ‘enemy combatants.’ Such terminology conveniently avoids calling detainees ‘prisoners of war’ under humanitarian law, which would furnish minimal legal safeguards.

This double function of processing asylum seekers and detaining enemy combatants in Guantánamo Bay highlights the spatial integration of and increasingly blurred distinction between suspected criminals, terrorists, and refugee claimants. Since 9/11, but starting well before, migrants have come to stand in for all that threatens state security and welfare, particularly in the industrialized countries of the OECD. This dominant discourse that criminalizes migrants—both asylum seekers and economic migrants—allows governments to popularize and maintain more restrictive asylum processing measures. The number of asylum seekers in the EU in July 2004 reached its lowest level since 1997 (Dempsey, 2004).

Laws, policies and practices of migrant exclusion in the EU, North America, and Australia are highly geographical in the invisible and not-so-invisible walls they erect. Mountz (Forthcoming) has noted the rise of ‘stateless spaces’ for people legally and literally rendered out of place through such practices of exclusion, including carrier sanctions, visa restrictions, and interception measures before people arrive at a port of entry. She argues that the exercise of sovereignty is changed through the emergence of a global constellation of formal and informal enforcement practices for migrants.

These might all be considered part of the ‘architecture of enmity’ articulated by Michael Shapiro (1996) and

more recently Derek Gregory (2004, 20): “Architectures of enmity are not halls of mirrors reflecting the world—they enter into its very constitution. . . . They inhabit dispositions and practices, investing them with meaning and legitimation, and so sharpen the spurs of action.” All of these represent invisible barriers that make movement more difficult and clandestine manoeuvres involving smuggling channels more likely.

1. Another brick in the wall

While critics and proponents debate the politics and meanings of ‘security’ in relation to the physical wall being erected in the Israel/Palestine territories, a number of less visible but nonetheless exclusionary walls are being erected in Europe, North America, and Australia. This multiplication of fortresses is disquieting in light of unprecedented political and economic integration, particularly at the extra-state scale of the EU, NAFTA, and Mercosur.

1.1. North America

Perhaps the newest ‘wall’ is the Safe Third Country Agreement, soon to be implemented between Canada and the US. The Agreement like many others in Europe requires that asylum seekers file a refugee claim in the ‘country of first presence’. If they arrive at the land border, they will be turned back to the country from which they have come, with exceptions for minors and those with family in the destination country. Canada receives far more asylum seekers ‘going north’ from the US than the US does ‘going south’, but the US was willing to concede to Canada this request for an agreement as a small part of the 30 point ‘Smart Border’ accord signed in the wake of 9/11.

In Canada, the Agreement is likely to cut the *number* of refugee claims (the number has already fallen dramatically *without* the Agreement in place), but it will do little if anything to improve the *integrity* of claims assessed, that is to assist those in genuine need of political protection. Administratively, it is a rational plan by government to control costs associated with processing refugee claims. Politically, it seems palatable at first glance as a seemingly fair-minded policy that promises to enhance national security. Geographically, however, the Agreement is likely to divert legal flows of asylum seekers to Canada into more criminal underground channels of cross-border traffic, as prospective claimants in the US will now need a smuggler to get them into Canada.

The Canadian Council for Refugees (2003) documents narratives from asylum seekers who actively chose Canada over the US as a place of refuge. Their stories suggest a range of legitimate reasons for their choice. Muslim claimants spoke of the heightened dis-

crimination against Muslim people in the United States following September 11th and increases in racial profiling. A Guatemalan family said that American restrictions on asylum seekers’ right to work was not something they could afford. As Rob Lidstone (2004) notes, these testimonials illustrate the differential impact that American asylum practices, and hence the Agreement, will have along lines of class and race.

He also adds that the jurisprudence and daily hearings of refugee claims based on gender-related persecution and sexual minority status vary widely between the US and Canada. Molly Short, a legal advisor for Vive la Casa refugee shelter in Buffalo, NY, makes the case that there is a broader interpretation of persecution in Canada where claims based on homosexuality and domestic violence are better received.

This agreement, created as one piece of a security agenda, is likely to generate greater insecurity along the US–Canada border as transnational snakeheads and other travel agents capitalize on passengers wishing to reach Canada by whatever means possible. While its full impact has yet to be assessed (it has passed into law in both countries, but regulations are still being finalized), the number of refugee claimants to Canada has already dropped more than 25% since 2001. If its administrative rationale was to reduce numbers, the Safe Third Country Agreement is no longer justified. Part of this decline in claims can be attributed to stricter border controls in Canada in line with the ‘Smart Border’ accord, and part to increased US restrictions on travel to that country. Another large part is the imposition of tighter visa regulations on citizens of countries that produce large numbers of claimants. All of these extra-territorial measures exclude migrants before they land in Canada or the US.

2. Australia

The Australian Government has led the way in what may be the most original yet retrograde means of repelling and excluding asylum seekers from its shores. Detention in remote camps in the Australian outback has been a major deterrent for those seeking refugee status, many of whom protested against the conditions of captivity at centres like Woomera by stitching their lips closed. Additionally in 2001 the Australian Government began enacting what has come to be known as ‘the Pacific Solution.’ At that time, Prime Minister John Howard’s government won an election on the issue of ‘border protection’ after he refused to let the Norwegian ship, *The Tampa*, dock in Australia after its crew had rescued 433 asylum seekers from a sinking transit ship off Western Australia.

The Iraqi and Afghan asylum seekers on board *The Tampa* were instead diverted to New Zealand and relatively poor South Pacific islands, such as Nauru. Nauru

was promised significant Australian foreign aid in return for accepting asylum seekers. This offer raises the issue of whether one's refugee protection obligations codified in international and domestic legislation can be 'traded' with other nations in exchange for aid, loans, or promises of foreign investment, just as governments trade carbon dioxide emissions.

In November 2003, the arrival of 14 Kurds in an unsafe Indonesian fishing boat seeking asylum on Melville Island, part of Australia's north coast, drew an unprecedented response. The Howard Government voted quickly to separate Melville Island—and 4000 other islands—from Australia for migration purposes. Furthermore, the new law was *retroactive*, excluding the Kurds from claiming refugee status. This legislation is contrary to Australia's obligations under international law, specifically the 1951 Refugee Convention. Refugee protection under international law is being undermined by the national legislation of signatories like Australia.

2.1. Geopolitical failures: containing human displacement

Containment as a strategy of managing forced migration does not work. Throughout the 1990s, donor governments and their UN counterparts tried a number of experiments to assist people displaced by conflict 'at home', keeping them literally within the conflict zones that dispossessed them of their livelihoods. This set of tactics was neatly packaged by the UN refugee agency as a refrain on the 'right to return' [home] through 'preventive protection.' Preventive protection and pre-emptive measures to protect the state, such as those espoused by the US after 9/11, are not so different. Both are part of a realist geopolitical framework that needs to be systematically analyzed for their logical and political shortcomings.

The record of 'safe havens' as safe spaces for people who are in their home countries but displaced by conflict, violence, and/or persecution is mixed. While UN Operation Salaam into Northern Iraq after the first Gulf War was arguably a success, it was succeeded by a number of less effective 'zones of protection' in Somalia, Rwanda, and of course Bosnia-Herzegovina. The establishment of safe cities inside the borders of Bosnia between 1992–95 was at best a crisis measure that precipitated more harm than good when the countryside was ethnically cleansed. In July 1995 the lesson of slaughter in Srebrenica was both tragic and instructive: despite the presence of Dutch peacekeepers under UN auspices, more than seven thousand boys and men were killed.

The current euphemism, 'protection in the region,' is little more than an extension of this containment strategy. To protect people forced to flee their homes inside conflict zones or in camps situated in poor adjacent countries is simply convenient, conventional geopolitical practice.

Another phenomenon, refugee warehousing, refers to the long term residence of displaced persons in camps outside their home countries. The issue has become pressing for donors tired of funding such arrangements, but also represents one possible outcome of 'protection in the region.' Such camps are always only 'temporary' solutions in the mandates and policies of UN agencies and their member states, yet camps often persist for a decade or more, particularly in the developing countries close to conflict. Camps do not represent a 'durable solution,' to borrow the UNese that describes three permanent solutions to camp life: (1) repatriation (if political/security circumstances allow); (2) local integration into the country in which the camp is situated (if the host government will oblige); or (3) resettlement to a safe third country, normally to the US, Canada, Australia, New Zealand or one of several European and Nordic states. In the absence of options one and two, option three will remain the highly sought after, if largely illusory, geography for people who otherwise are 'out of place.' Fewer than 1% of all refugees are accepted for resettlement.

3. From geopolitics to more critical geopolitics

Gerard Toal has noted that "[c]ritical geopolitics is one of many cultures of resistance to Geography as imperial truth, state-capitalized knowledge, and military weapon. It is a small part of a much larger rainbow struggle to decolonise our inherited geographical imagination so that other geo-graphings and other worlds might be possible" (Ó Tuathail, 1996, 256). We desperately need such other geopolitical imaginings, but also legal and policy changes that can lift the veil of unspecified threats that seems to galvanize these vitriolic exclusions of migrants. The question remains how to activate this culture of resistance in light of daily developments to wall off Europe, North America, and Australia from migrant 'invasions.'

Politicians follow public opinion, so to change the direction of draconian laws and policies, one must first convince the citizen-on-the-street of its merits. Critical of my armchair analysis, one colleague pointed me to this statement: "We know from opinion poll after opinion poll that the residents of First World countries would prefer fewer immigrants and asylum seekers, not more. I have no sympathy for anti-immigration/refugee politics, but at the same time respect the right of a nation state to democratically decide rules of entry into the imagined community" (Hiebert, *Forthcoming*). Setting aside the plausibility that elections may not be democratic, where and with whom does one engage when 'the state' misbehaves? Such efforts might begin in the classroom, continue as submissions to the op-ed editors who control the prime real estate in the newspapers we read (and

those we do not), and culminate in more direct action through community media and social movements that challenge the xenophobic discourse that generates fear among those same citizens. In any case, one aim must be to protest unfounded assumptions, prove that migration is not synonymous with terrorism and insecurity, and persuade the public and people around us of this.

Nevins (2002) illustrates vividly how Operation Gatekeeper and its crackdown on undocumented migrants to California came, paradoxically, at a time when borders were becoming increasingly irrelevant. Even as the border was being fortified, economic and social traffic across it grew enormously. Proponents of the Operation Gatekeeper, however, successfully presented the migrant not only as a lawbreaker, but as a threat to national sovereignty and American society. Nevins highlights how this imagery resonated in a place with a history of racist anti-immigrant sentiment. Fortification of the border is often a strategy to shape and express public opinion, especially in a context of fear or perceived threat.

In a recent editorial on the operation of power, Felix Driver (2003) notes “what is really striking about our present predicament is not the deployment of knowledge in the service of power, but quite the reverse: the strategic uses of ignorance as a weapon of warfare” (131). The criminalization of migrants, specifically the category of ‘asylum seeker’, is a case in point. There is no question that such claimants represent mixed flows, that is, a mix of both *bona fide* and not-so-genuine refugees. Nonetheless, the rendering of the asylum seeker as dangerous to society or a threat to state security has become commonplace in dominant media and government discourses on migration.

Jan Karlsson, co-chair of the Global Commission on International Migration, recently highlighted a radical reality: Europe needs between 50–70 million migrants for labour market purposes over the next twenty years. He laments that politicians rarely discuss such demands or support higher levels of immigration for fear of losing political support. Demetrious Papendemetriou, President of the Migration Policy Institute, a Washington DC think tank, added that the US has 10 million undocumented migrants working in its midst without whom American prosperity would suffer. Can’t live with ‘em, can’t live without ‘em.

The pilot processing camps proposed by the EU are acute expressions of defensive sovereignties on the part of several member states. They constitute quasi-legal spaces of interception premised on extraterritorial practices of interception. The North American Safe Third Country Agreement represents another space of exception, not only to the principles of integration outlined in NAFTA, but also as a convenient practice of reciprocity that threatens to undermine the refugee protection measures under international law that each country has ratified and implemented in national legisla-

tion. There is no legal requirement that asylum seekers claim refugee status in the first country in which they land. Australia, by excising its 4000 islands for the purposes of migration, has created the most obvious exceptions to the rule of law, forcing Nauru, New Zealand, and Indonesia pick up the flotsam and jetsam.

Zygmunt Bauman (2002, 84) notes that the defensive posture of refusing entry “signals no new strategy regarding the refugee phenomenon—but the *absence of strategy*. . . they are prime targets on which the anguish generated by the suddenly revealed ‘personal safety’ aspect of existential insecurity can be condensed, unloaded and dispersed.” Such patterns and politics of exclusion will continue to produce images of the menacing other and the migrant-as-security-breach, and embolden efforts to wall off wealthy countries from poorer ones. “[T]ransit camps are just a place to hide the problem” (New York Times, 2004).

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