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REFUGEES AND THE BORDERS OF EUROPE: A MINOR CONTRIBUTION

Introduction

ELENA LOIZIDOU

School of Law

Birkbeck, University of London

Malet Street

London WC1E 7HX

Email: e.loizidou@bbk.ac.uk

In 1942 Stephan Zweig published in German *The World of Yesterday* (Zweig 2011) where he offers us a pretty unique testament of the changes that were taking place in Europe between the two World Wars. The book ends in London where he was himself in exile. Zweig writes:

On reaching the border they had to beg at consulates for shelter in their lands, usually in vain, because what country wanted to take in destitute beggars who had lost everything? I will never forget the sight I saw one day in a London travel agency. It was full of refugees, nearly all of them Jewish, and they all wanted to go somewhere, anywhere. It didn't matter what country, they would have gone to the ice of the North Pole or the blazing sands of the Sahara just to get away, move on, because their permits to stay where they were had run out and they had to move on with their wives and children, under strange stars, in a world where foreign languages were spoken, among people whom they didn't know and who didn't want to know them. I came upon a man there who had once been a very rich Viennese industrialist and also one of our most intelligent art collectors. I didn't recognise him at first, he looked so old, grey and tired as he clung faintly to a table with both hands. I asked where he wanted to go. "I don't know," he said. "Who bothers about

what we want these days? You go wherever they'll still let you. Someone told me it might be possible to get a visa for Haiti or San Domingo here." It wrung my heart – an old, exhausted man with children and grandchildren, trembling with the hope of moving to a country ... just so that he could go on begging his way there, a stranger without any real aim left in life! Near us, someone else was asking with desperate eagerness how you got to Shanghai. He had heard that the Chinese would still let refugees in. They were all crowded together there, former university professors, bankers, businessmen, property owners, musicians, all of them prepared to go anywhere, over land and sea, with the pitiful ruins of their lives, to do anything and put up with anything just to get away from Europe. They were like a company of ghosts. But what shook me most was the thought that these fifty tormented people represented only a tiny advance guard of the vast, scattered army of five, eight, perhaps as many as ten million Jews already setting out in their wake, millions of people who had been robbed and then crushed in the war, waiting for donations from charities, for permission from the authorities, for money to travel, a gigantic crowd, cruelly expelled and fleeing in panic from the forest fire started by Hitler, thronging the railway stations of all European borders, an entire disenfranchised nation forbidden to be a nation, but a nation all the same, wanting nothing much, after two thousand years, as not to be made to go on wandering, to find quiet, peaceful ground on which they could venture to rest their feet. (p. 452-3)

In *We Refugees* (Arendt 2007) published in 1943 Hannah Arendt talks of the difficulties despite the legal recognition of refugees that Jewish refugees found in host countries within and outside Europe. The most hopeful of refugees, as she writes, committed suicide. This essay prompted Agamben in his fragment 'Beyond Human Rights' (Agamben 2000) to talk of the necessity of starting political philosophy not from the figure of the citizen but from the figure of the refugee.

Zweig and Arendt capture in their writings the cruelty facing displaced populations in the midst of World War II: '[L]ike a company of ghosts' (Zweig 2011, p. 452) trying to escape from Europe, trying to find a place to be and live in peace. Today we are witnessing the biggest displacement of refugees fleeing wars from Afghanistan,

Syria, Somalia and soon Yemen, whose rights are guaranteed by the Refugee Convention of 1951 and its Protocol of 1967, asking for Asylum in European countries.¹ Europe, and specifically Germany, UK and Austria, are imagined as safe heavens, where the thunder of war and cruelty cannot reach them. It is important to note though that the biggest number of refugees are from Syria, fleeing the civil war that started in 2011 and aimed at ending the Assad dictatorship and the ISIL bombardments. A great number of refugees from Syria are hosted in Turkey, 1.59 million (The UN Refugee Agency 2015a), with 1.3 million in Lebanon (The UN Refugee Agency 2015b), and some 6.9 million internally displaced within Syria itself (Vox Explainers 2015a). Statistics show that more than 40,000 refugees, not a devastatingly large number, arrived this summer in Europe (Vox Explainers 2015b). Statistics may vary from sources; nevertheless it is pertinent not to fall into the trap of statistics and just note that what we are witnessing today is an unprecedented number of people being displaced.

While we have witnessed support for and welcoming of refugees by the people of Europe, we are simultaneously witnessing levels of hostility and cruelty analogous to those that the Jewish refugees were witnessing in the midst of World War II. Hungary, Macedonia, Albania and Serbia are not hesitant in using military force to stop this flow of people from reaching the shores of non-Mediterranean Europe. The European Union itself is currently exhibiting more sophisticated forms of cruelty and panic; for example, Jean-Claude Juncker, President of the European Commission, instituted a quota system

¹ According to the United Nations Secretary-General Ban Ki-moon today we have 60 million of people being displaced due to wars, breakdowns in governance, economic despair and other factors such as environmental and man-made disasters. This is the biggest displacement of people since World War II. See UN News Centre 2015.

for member states receiving refugees, and Germany on 13 September 2015 almost unilaterally suspended the Schengen agreement, which guaranteed the movement of people within the European Union, citing as the reason for doing so its inability to deal with the intensity of flow of refugees. Moreover there is a European Union suggestion for the creation of new internment camps (to be built by refugees themselves) in Greece and Italy to host refugees. Etienne Balibar suggests that this panic manifests itself in tripartite set of arguments: ‘Their arguments oscillate between utilitarianism (“we don’t have the space”), ideological identity (an influx of Muslims threatens to denature “Christian Europe” or “Secular Europe”, depending on the country), and the invoking of security threats (there are jihadists hiding amongst the migrants)’ (Balibar 2015). This panic is also registered in the European media with refugees being referred to as migrants (see Taylor 2015).

There are a lot of similarities between what we are witnessing today and the reactions against predominantly Jewish refugees after World War II. We are witnessing the same xenophobia and racism that they faced back then; recall for example how Hannah Arendt describes in *We Refugees* (Arendt 2007) the social rejection that Jewish refugees faced in their hosting countries within and outside Europe, a result one could say of hosting nations’ xenophobia and assimilationist agendas. We are witnessing refugees being reduced to what Foucault terms a *biopolitical* (Foucault, 2008) matter or to what Stephan Zweig refers as a ‘company of ghosts’ (p. 452).

In this climate of political irresponsibility and inhumanity we are also witnessing the institution of law playing second fiddle to the politics of cruelty and panic. We are witnessing a rapid rise of the fear of the Other. As critical legal academic, lawyer, thinker

and human being, I felt we had a responsibility to reflect on this anaemic legal participation in the catastrophe that is facing us; not for the sake of the law, not for saving the face of the law, but '[f]or love of the world' (Young-Bruehl 1982). As a result I proposed to four critical legal academics that we rethink the role of law and the myth of Europe in the creation of the category of the refugee, a figure without a name. I posed a series of three guiding but not mandating questions to experts in the field of Refugee law (Patricia Tuitt), European Union law (Michelle Everson), Migration law (Nadine El-Enany) and Constitutional law (Stewart Motha). The questions asked them to address the diminishing role of the law in making decisions regarding refugees; the cultural, social, media and economic reactions of Europe towards refugees; and the possibility of seeing contemporary refugee policies as a trace of Europe's colonial history. Their answers provide us with a start in refiguring our role as world citizens and law academics in this ongoing man-made crisis, and in recognising the refugee beyond being a legal category. I am tremendously thankful to their contributions; a minor contribution to the long way of realising that we do not own this earth but rather, to paraphrase Arendt, we merely share it (Arendt 1994, p. 279).

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