The Exclusion of Asylum Seekers in Europe

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Abstract

This paper discusses certain mechanisms of exclusion practiced by a number of European states and the costs associated with them, before posing a question that is being raised more and more across Europe – what price are we prepared to pay to maintain our borders? The mechanisms of exclusion addressed are deportation, detention and dispersal. Although deportation, detention and dispersal have formed an occasional part of the migration regimes of European countries throughout the twentieth century, they tended to be used in response to particular events or 'crises'. However, they have now become 'normalised', 'essential' instruments in the ongoing attempt to control or manage immigration in European states. The shift from 'exceptional' to 'normal' occurred in response to a series of events at the end of the 1980s and 1990s, which created a sense of crisis. In the intervening years, this has been translated into a crisis of control, and since controlling the mobility of people across national boundaries is seen as an essential task of the state, this is presented as a danger to society and to the state itself. In this paper, it is suggested that it is the pursuit of control that is itself the problem for contemporary societies.

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Introduction and Context

In discussing the exclusion of asylum seekers today, I will focus on certain mechanisms of exclusion practised by a number of European states and the costs associated with them, before posing a question that is being raised more and more across Europe – a question to which I hope we can return in the discussion that follows – what price are we prepared to pay to maintain our borders? The mechanisms of exclusion that I particularly want to address are deportation, detention and dispersal. Deportation, detention and dispersal formed an occasional part of the migration regimes of European countries throughout the twentieth century, though they tended to be used in response to particular events or 'crises' such as war-time concerns over alien 'spies' or the arrival a significant number of refugees fleeing conflict or political upheavals, such as the Vietnamese refugees in the 1970s.

By the end of the twentieth century, however, deportation, detention and most recently dispersal became 'normalised', 'essential' instruments in the ongoing attempt to control or manage immigration in European states. The shift from 'exceptional' to 'normal' occurred in response to a series of events at the end of the 1980s and 1990s with which you are all familiar, perhaps most directly in response to the war in Yugoslavia. The large numbers of asylum seekers fleeing North and West created a sense of crisis. In the intervening years, this has been translated into a crisis of control. Since controlling the mobility of people across national boundaries is seen an essential task of the state, the increasing difficulty facing states wanting to prevent or channel this mobility was presented as a danger to society and to the state itself.

In 1992, for example, in order to push through the Bundestag limitations on the constitutional right to asylum, the German Chancellor Helmut Kohl threatened to declare a state of emergency. Although the German situation was exceptional in terms of numbers and the domestic political context of reunification, other European states also reacted strongly. In seeking to assert control over borders, whose openness had only recently been celebrated, governments put in place a regime, which once would have only been possible in wartime, but which today is considered

'normal', part of the everyday experience of hundreds of thousands of people across Europe. This drive to control has not abated in line with the numbers of people applying for asylum in Europe, as we can see from Figure One. Although in the last 10 years the numbers have never reached the levels of the early 1990s, the measures introduced have not been eased, but have been added to.

Figure 1. Total number of asylum applications received in EU 1992-2003
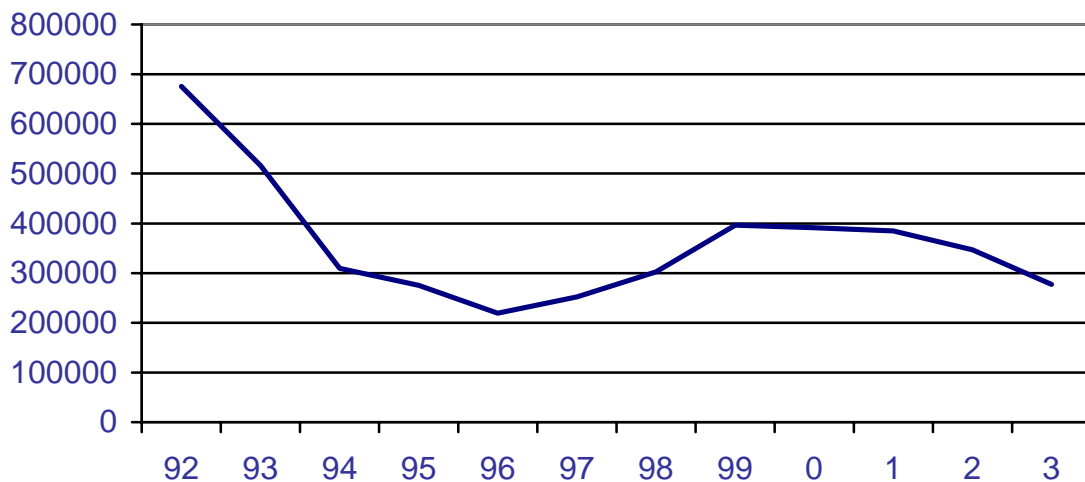
Adapted from Asylum Applications in 35 industrialised countries, 1982-2002,
ECRE http://www.ecre.org/statistics/stats%20for%20Thess%20summit.pdf

But first an explanation for the very specific focus of the paper – why asylum seekers rather than refugees or any other kind of migrant? In referring to asylum-seekers, I am speaking about those people who have applied for asylum, but who have either not yet had a decision on their case or who have been rejected.

I have chosen to focus on this group mostly because, together with undocumented migrants, they really are at the extremes of exclusion. Once granted refugee status, people can access a range of services, and they are no longer liable to deportation, detention or dispersal. They may suffer from other forms of exclusion, including destitution – but not these extremes. And while deportation and detention are not reserved for asylum seekers alone – they are also used against migrants who attempt to enter without documentation or who overstay or breach the conditions of entry and residence imposed on them – it may be argued that if one

has entered without documentation or overstayed, one is less subject to scrutiny than an asylum seeker and therefore less likely to be picked up (although of course, in many European countries, a *San Papiers* may be detained and deported very quickly if stopped and questioned by police or immigration officials).

But to proceed to the substance of the paper the three measures to be addressed are exclusionary because:

- **Deportation** is an explicit form of physical exclusion from the territory of the state...

- ...while **detention** is both 'enclosure' within a camp or prison, and exclusion from the receiving society

- **Dispersal**, perhaps counter-intuitively, is also a form of exclusion, at least when it is coercive, one that at the moment applies only to asylum seekers, though in the past (especially in the Netherlands) (Arnoldus et al. 2003) there have been attempts to disperse non-white people away from particular areas. Dispersal takes away asylum seekers' freedom to choose where they settle in the receiving state and in so doing it removes them from kinship and other social networks as well as community organisations that are known to be crucial in the early stages of settlement. As a result, it can leave asylum seekers marginalized and socially excluded.

Deportation

Why do governments deport?

Starting with the clearest and most extreme form of exclusion – deportation: Why do governments deport? Once one accepts that governments have a right to control the entry and residence of non-residents, then one must, logically, concede a right to deport. Over the last few years, the inability of governments to deport all, or even most, of those who are present within the state's territory without the explicit permission of the government of that state has been a source of concern to ministries of the interior, many on the right of the political spectrum and sections of the public. In relation to asylum seekers specifically, organizations such as Amnesty International, the British Refugee Council and progressive scholars concede that asylum applicants whose claims are refused should also be deported, albeit as humanely as possible, seeing this as an important element of managed migration and of allaying public fears (Robinson 2003, 173-3).

But is it possible to deport humanely if someone doesn't want to go? Deportations are difficult to carry out and many fail, which is why states increasingly resort to the other measures to be discussed. So why continue the practice? Gibney and Hansen have argued that 'deportation is, from the state's point of view, both ineffectual and essential' (Gibney and Hansen 2003, 2). They suggest, nonetheless that the 'noble lie'—that states can remove from their territory those without any right to remain—is necessary for three reasons: first, it 'assuage[s] public opinion, which would not view the state's incapacity in this area with equanimity'; second, deportation acts as a disincentive to other potential migrants; and finally it allows the state to apply pressure: return voluntarily or you will be deported (*ibid.*: 15). Certainly this seemed to be the logic at work behind the British government's highly visible deportation of twenty-one people to Afghanistan in April 2003. The government does not usually publicly announce such deportations, and such a small number will not significantly improve the government's deportation record. Instead it was intended as a signal to Britons that 'something is being done' and to

others who might try to come to Britain that they will be deported if they succeed.

The threat of deportation creates fear and may persuade some to return 'voluntarily', but this is speculation. It is difficult to gauge its efficacy as a means of applying pressure or indeed as a disincentive to those in the sending countries. As for the claim that it is useful in assuaging public opinion, the impact is more likely to be the reverse. When governments insist on the necessity of deportation, but are clearly failing to deport, it can only lead to cynicism or a heightened sense of insecurity.

It is difficult to deport someone who is unwilling to leave, especially if they do not have travel or identity documents, or if their country of origin is unknown or unwilling to cooperate, if friends, family, colleagues or lawyers fight the deportation or if the person to be deported is unwell. Nonetheless, in spite of these difficulties, expulsions are increasing annually across Europe, although there are occasional reversals (see below House of Lords 2004: para. 119).

Scale - Statistics

A statistical comparison is extremely difficult. Statistics on deportation are not compiled systematically, are frequently incomplete and often it is difficult to work out exactly what or who is being counted. Writing this section and trying to understand what exactly was meant by the different terms, and who counted, I had to phone and email colleagues in a number of countries and ask them to talk me through the various categories! The statistics cited below refer to actual removals – deportations – rather than a refusal of entry, or the issuing of removal orders. The deportation figures in France, Germany and Italy are not disaggregated according to migration category, so I can't tell you the number of asylum seekers deported from each country, but I would still like to give you an idea of how many people are deported from a selection of countries.

Deportation statistics are not published at all in **Germany**, and so one has to depend on friendly Bundestagsabgeordneten (MPs) to ask questions in the Bundestag. At the prompting of a representative of the Berlin Refugee

Council, Petra Pau, an independent MP asked how many people had been deported by air from German airports in 2003 – the answer was 23,944, while in 2002 it was 26,286. We don't know how many were removed by bus, for example to Germany's neighbouring states, but the Berlin Refugee Council estimates that total annual deportations are about 30,000 (personal communication) – I should point out that last year, asylum applications to Germany fell to just over 50,000.

In the first 10 months of 2003, deportations from **France** amounted to 28,566 (Communiqués Officiels Ministère de l'Intérieur 11/12/2003), at which point M. Sarkhozy, the French Minister of the Interior, announced his intention to double that figure for 2004 (Journal Officiel de l'Assemblée Nationale 29 october 2003). Deportations during the first two months of 2004 showed an increase of 38% over the same period in 2003. Nonetheless, since these were matched by an almost identical rise in the number of removal orders issued, it would seem that the proportion of removals actually executed has remained roughly the same at about 17% (Journal Officiel de l'Assemblée Nationale 29 October 2003). In **Italy,** once again the most recent figures available are for 2002, the total number of removals executed was 42,245 (mostly to Morocco and Albania). 16,702 asylum applications were received that year, so it seems safe to assume that in Italy at least, the overwhelming majority of deportations were not of asylum seekers (Caritas 2003).

It is worth noting that the Interior ministries of France and Italy have both argued for prolongations of the period for which people may be detained so that they can deport more people, and yet while Britain has the longest, and Germany the second longest permitted detention periods, they have the lowest deportation rates respectively.

An example from Europe

But I'd like to go beyond the statistics, which while giving some *inadequate* idea of the scale of the issue, also serve to hide the reality of deportation for the individuals concerned. The example below relates to deportations from Germany to Turkey, but campaign groups are becoming

better at tracking individuals after deportations and these stories are not unique or exceptional. Article 33 of the 1951 Geneva Convention includes the following provision:

> 'No Contracting state shall expel or return (refouler) a refugee . . . to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.'

EU governments would argue that since deportation only occurs after the courts have satisfied themselves that the life or freedom of the applicant is not in fact in danger, they are not in contravention of their obligations. Because of pressure on campaigning groups it is very difficult to follow up individuals who are deported to check that they are in fact safe and it is rare that supporters of deportees hear from them after expulsion.

However, Pro Asyl, a German umbrella organization, carried out a study of Turkish Kurds whose claims for asylum in Germany were rejected and who were returned to Turkey (Pro Asyl 2002b). In all of the cases documented (approximately forty), the men and women had arrived in Germany and had claimed asylum on the basis of alleged detention and torture by the Turkish authorities. Their claims were rejected because the German authorities argued that safe internal flight alternatives were available (to other parts of Turkey) or because their stories were not found to be credible. In each case, on return to Turkey, the people involved were arrested, detained and in some cases again tortured before managing to return to Germany, this time bringing with them sufficient documentary evidence of detention and/or torture. As a result, they were granted, not refugee status, but leave to remain on humanitarian grounds.

This was just one project following one group of asylum-seekers. It seems reasonable to assume that deportations throughout Europe lead to similar injustices, and it seems that cases like these are considered a price worth paying in the battle to control borders.

Aside from the dangers that are faced on arrival in the country of origin, the conditions under which people are deported are inhumane and degrading, and have led to a number of deaths in recent years. It is not

uncommon for people to be restrained with handcuffs, to have their mouths taped shut, to be tied to their seats; people being deported from Germany and from Finland have also been sedated. These people, it must be stressed, have committed no crime; they are not a danger to others, except in so far as they may resist the deportation itself. Although there have been some cases in which campaign groups or fellow passengers have intervened to prevent an airline assisting in the forcible deportation of an individual, governments are increasingly avoiding public confrontations by chartering aircraft to deport people collectively, contrary to Article 4 of Protocol 4 to the European Convention on Human Rights which states: "Collective expulsion of aliens is prohibited."

Collective Expulsions

These collective expulsions began about a year ago, and developed outside the structures of the EU. The European Parliament has since been consulted, but the Council of Ministers preferred not to wait for approval before signing an accord at the end of January 2004 allocating €30million to facilitate joint deportations. The first of the joint charter flights took place two weeks ago, on the 9 March. An Airbus from the Belgian Air Force left Melsbroek airfield carrying 40 asylum seekers and undocumented migrants – 36 from Belgium, 3 from the Netherlands and 1 from Luxemburg – for Pristina (Kosovo) and Tirana (Albania).[2]

French and Belgian human rights groups in particular have been campaigning against collective expulsions, but concern is also growing in Germany, in particular because the deportations are being constructed so as to avoid a number of different difficulties, but in ways that disregard the rights of the individuals involved. Perhaps this is best illustrated by using an example.

At the end of last year, the city of Hamburg initiated a concerted effort to deport African asylum seekers, who were refusing to disclose their identities, or for whom some African countries refused to issue identity or travel documents.[3] In the light of the non-cooperation of sending countries, it was decided, based on phone numbers, addresses or photos

carried by the people concerned, to issue 'EU standard travel documents'[4] in this case to Benin.[5] However, there does not seem to be any information on African countries that accept these documents.

In order to get round this difficulty, the flights from Germany or France transit another African country so that, should the proposed destination country refuse to (re)admit, the individual in question can be left in the transit country. However, in the case of this 19 year-old boy, quick action from his supporters prevented the deportation on the grounds that he had not completed the asylum procedure.

Costs/Consequences

Elsewhere, I have argued that deportation is an expensive and inefficient practice (Schuster 2003), but here, in the specific context of asylum seekers I want to focus on the potentially fatal consequences of deportation. The Pro Asyl study of the deportation of individuals whose asylum applications have not been determined point to the grave risks that deportations will lead to people being returned to face torture, detention and death.[6] This happens. The question raised is therefore – how many of these deaths and abuses are acceptable in the pursuit of 'managed migration'?

Detention

On what grounds?

Detention is now used by most European countries to facilitate removals. Detention is opposed either because it is arbitrary or because it is wrong in principle. But its use is defended by governments on the grounds that deportation without detention would be almost impossible, and that those detained are subject to removal, so it is not arbitrary. However, those detained are not just those subject to removal, but those who **may** be subject to removal – and hence, those who **may not**. The majority of those held in detention centres or 'removal centres' are eventually released, either because they cannot be removed because of conditions in

the country of origin, because travel documents for the persons to be removed cannot be issued, because they are allowed to appeal, because they are granted leave to remain on compassionate grounds or - because their claim for asylum is allowed. Governments detain people who are at different stages of the asylum process, including people whose appeals have not yet been heard, and those who have just arrived and claimed asylum. This means that some people who are subsequently recognized as refugees, who may have been subject to imprisonment, torture and degrading treatment in their countries of origin are held in detention centres.

For how long and under what conditions?

Unlike in the UK, all other EU countries have limits on the amount of time people can be detained, but these limits vary widely. In France, it has recently been increased to 32 days, in Italy it is 60, while in Germany it is up to 6 months, and in very exceptional cases as much as 18 months.

The detention of asylum-seekers and other migrants is now widespread across Europe and, though conditions vary a great deal, there are some common concerns: people who have not committed crimes (entering a country without documentation or overstaying a visa is a migration offence, not a crime) are deprived of their liberty, usually for an unspecified period of time, without charges being pressed, without trial, without a right to an automatic bail hearing, usually without adequate legal representation, without being informed of their rights or even of what is happening to them in a language they understand.

Although France has the strictest limits on the length of time a person may be held in detention, conditions there, especially in the *zones d'attente* (holding centres) are among the worst in Europe, with people being held in overcrowded conditions, without access to sanitation or adequate food.[7] In addition, the Association Nationale d'Assistance aux Frontières pour les étrangers (Anafé) has documented hundreds of acts of violence perpetrated by the border police against asylum-seekers in the *zones d'attente*, particularly at Roissy Charles de Gaulle airport where the

overwhelming majority of people who spend time in *zones d'attente* are held (95 per cent) and where 96–8 per cent of asylum claims are lodged. Although these claims were rejected initially (personal interview with head of Police aux Frontieres (PAF) 27 June 2003), a recent report by the Commission de déontologie de la sécurité, the body charged with protecting the rights of citizens, instigated charges against the PAF for excessive use of force during deportations and in detention centres (*Le Monde* 6 May 2004). Among concerns listed in a second report by Anafé are the repeated and manifest refusals to register claims for asylum, the failure to provide information to those detained of their rights, particularly to non-Francophones, the refusal to permit the disembarkation of undocumented passengers from boats when they reach port, the *refoulement* of people to countries considered safe without allowing them to apply for asylum, and the restriction and obstruction of access to concerned NGOs to the centres.[8] Authorized associations may visit each centre a maximum of eight times in any one year.

In Germany, chaplains from the Jesuit Refugee Service have access to all parts of the centres, but they are overwhelmed by the numbers in their care and deeply concerned by conditions in the detention centres. Dieter Müller, a chaplain visiting Köpernick detention centre, noted that those who were held longest were the African detainees, in part because of difficulties establishing identity.[9] The Köpernick centre is a former prison, and the structure itself reflects this. In the cells, there are metal bars approximately 2 feet from the outer wall that make it very difficult to open or close windows and very often guards have to be called and permission requested. The noise levels 24 hours a day are very high, a complaint common in detention centres across Europe. This is also a problem when visiting. Visitors are separated from detainees by thick Perspex, which means that communication necessitates shouting – rendering privacy impossible.

Detainees have also complained about lights being left on 24 hours a day in rooms, or switched on in the early hours of the morning so that the guards can carry out a head count.

Costs/Consequences

Aside from the enormous financial cost associated with maintaining the detention estate, borne by the receiving society, there are collateral costs: directly to those detained and less directly to the receiving society. If the person detained has established themselves – that is, has accommodation, a job, a place at college etc. – all of this may be lost while they are in detention. If not, if they are detained on arrival, then the process of integration is retarded and the damage that is done to an individual's self-confidence etc., will have the same effect. These effects do not just damage those who have been detained, but also have implications for social cohesion more generally. Other indirect costs to the receiving society include the breeding of dehumanizing and racist behaviour among those charged with policing this system.

Dispersal

What is it?

Many new arrivals in a country cluster together, sharing important resources such as accommodation, money and information. Among the first acts of those arriving migrants who have family or friends in Europe is the attempt to contact them, and frequently this takes precedence over claiming asylum. The importance of such networks cannot be overestimated; decisions on where to go are often dictated by these connections (Bloch 2002). This is frequently the basis of community formation and maintenance. However, it also leads to communities becoming visible, and, arguably, to pressure on local resources. One response is to allocate extra resources to meet increased needs. Another is to try and disperse people away from areas of concentration. This has been tried in a number of countries, with varying results.

The rationale behind dispersal is that it offers a means of sharing out the burden imposed by asylum-seekers. When people arrive and claim asylum, they are allocated housing and support away from significant concentrations of other migrants. Almost inevitably, they are sent to areas where low-cost housing is available, although recent studies, in particular

that of Vaughan Robinson on the UK, the Netherlands and Sweden and Christina Boswell on the UK and Germany have highlighted the negative consequences of such policies: creating competition for already scarce resources in economically and socially deprived areas, an increase in racism and racist attacks and the marginalization and isolation of the asylum seekers.

European Examples

Dispersal is most developed in the UK, Germany (Boswell 2003, Schuster 2003), the Netherlands, and Sweden but is also used in the Republic of Ireland. For now I will focus on the mainland!

Germany

Dispersal in Germany has led to people being placed in areas in which there are no community or support networks, in which often they are the only visibly different foreigners and in which they become targets for abuse and violence. Following attacks on asylum and migrant hostels by local mobs, the practice of housing hundreds of people in hostels in socially deprived areas was scaled down in the 1990s, though residents of such hostels continue to face abuse and harassment. [10]

Germany has developed a further variation on dispersal. While it is no longer acceptable to prevent people from moving freely within the country of which they are citizens, Germany imposes a *Residenzpflicht* (a duty to reside in a particular area) on asylum-seekers, who may be fined if they breach its regulations. In one case in Thüringen, the only public telephone from which asylum-seekers can call their solicitors, friends or family is fifty metres from an asylum hostel and across the border between one area and another; consequently, the *Residenzpflicht* is regularly breached, creating the opportunity for the local police, or BGS43, to intimidate the asylum seekers at will.[11] Those caught and charged with breaching this regulation are fined approximately €30 each time they do so, and concerns have been expressed by refugee advocates that such breaches can prejudice adjudicators making decisions on asylum claims.[12] Osarin

Igbinoba of Karawane, who encourages asylum-seekers to draw attention to the *Residenzpflicht* by breaching it, Volker Hügel of Pro Asyl and Georg Classen of the Berlin Refugee Council all confirm that the *Residenzpflicht* offers abundant opportunities for abuse.[13]

Netherlands[14]

Dispersal has a long history in the Netherlands, dating back at least to the immediate post-war period (Arnoldus, Dukes and Musterd 2003). Then, as now, the impetus for dispersal came from a housing crisis – much of the housing stock had been destroyed during the Second World War. The government tried to accommodate the 250-300,000 'repatriates' who returned to the Netherlands after the loss of the Dutch Indies colony in encampments and boarding houses, which meant that they were spread out initially. Inevitably, however, most tried to find their own accommodation in the first couple of years, although given the scarcity of housing this proved difficult. As a result in 1950 the national government stuck a deal with local authorities, allowing them to build provided they set aside a proportion of the housing for 'repatriates'. This in turn meant that they were dispersed around the country.

However, around the same time, 12,500 Moloccans, who had fought in the Dutch army also arrived in the Netherlands. Unlike the repatriates in was assumed that their stay would be temporary and so no special provisions were made – they were housed in temporary accommodation, including barracks and former concentration camps. When it became clear that they were staying, a compromise between the Moluccans, who wanted concentration, and the government, who wanted dispersal was achieved – what Arnoldus et al. refer to as 'bundled deconcentration'. An important element was the placing of the 'open neighbourhoods' near manufacturing centres, as a way of encouraging them to find work in that sector.

In the decades that followed attempts were also made to disperse the Surinamese, the Antilleans and the Southern European labour migrants, in response to pressure from the municipalities but without a great deal of success. Some of the larger municipalities, Rotterdam and Amsterdam,

introduced dispersal policies at neighbourhood level. In the 1970s, Rotterdam introduced a regulation to prevent the alien population in particular areas exceeding 5 per cent, while in Amsterdam, aliens stood no chance of being housed in particular areas. I should stress that this relates to the allocation of social housing.

By the late '70s, early '80s there was a reaction against the dispersal policy on a number of grounds – some to do with the negative effect it had on integration – Arnoldus et al. (2003: 37) detail the arguments for and against this view – and some on ethical grounds to do with freedom of choice and issues of equality. However, it resurfaced again in response to the arrival of the Tamils in 1984. Initially the re-introduced dispersal policy applied only to the Tamils, but in the light of hefty opposition from the Tamils and their advocates, the entire system for housing asylum seekers was revised, extended and brought under the control of central government.

The policy – referred to in the Dutch government's mission statement as 'austere but humane' – was driven by two concerns: financial burden sharing, and a belief that 'reception' should occur among ordinary citizens and in regular, rather than special social housing. However, events overtook provisions within a few years as the refugees from Yugoslavia began to arrive and had to be housed in tents. In response, the government imposed a requirement that every municipality house two asylum seekers per thousand inhabitants. Even this proved inadequate. New policy goals were formulated, the asylum system overhauled and streamlined and dispersal reorganized. 'Asylum seekers could be dispersed as they were distributed between reception centres and refugees could be dispersed to municipalities on their resettlement'.

This time the concerns driving the new policy related to issues of control and oversight. The reception policies allowed the government to make the asylum seeker available to legal procedures at all times, and to speed up the decision-making process. The provision of accommodation to asylum seekers depends to extent on which stage they have reached in the asylum process – once they have a residence permit for example they have they right to be housed in a regular house. This is the positive side

of Dutch policy – the negative aspect is that the allocation of housing geographically does not take individual circumstances or characteristics in account – aside from the presence of family members or certain medical grounds.

Costs/Consequences

Dispersal disregards the support systems and resources provided by communities. The two examples here are drawn from different ends of the spectrum, with the Germany model being far more repressive than the Dutch. However, what may be surprising to a British audience is the degree of social control that is possible on the mainland. Both German and Dutch societies are strictly regulated societies, in which all citizens carry identity cards and register their place of residence. Once this is understood, then the levels of control exercised over asylum seekers becomes easier to understand. BUT both countries have strong allegiances to liberal principles – allegiances formed in reaction to the horrors of WWII. The founding principle of liberalism is the moral equality of every human being. And yet both states have created and sustained a category of people that it is legitimate to treat in a way that is different to the rest of the population. This must have serious consequences for the cohesion of those societies.

Inclusion?

In general, asylum seekers are excluded from all measures enacted to promote inclusion or 'integration' because there is no desire to include those who will subsequently be obliged to leave – and this also applies to children. There is one exception, which is the EU EQUAL project. Funded by the Employment and Social Affairs directorate of the European Commission, this initiative is part of the European Employment Strategy and seeks to help asylum seekers integrate through education, training, advice and employment – a goal rendered extremely difficult by national policies that preclude asylum seekers from working.

Aside from this initiative, most of the attempts to include asylum seekers or to resist exclusion have come from what is known as civil society – either Refugee Community Organisations, campaign groups, church groups or advocacy organizations. While these groups are under increasing pressure as a result of the worsening situation faced by asylum seekers in Europe, they provide an important counterweight to the hostility experienced by asylum seekers and serve – in however limited a manner – as a challenge to the policies of exclusion practiced by their governments. However, there are also costs and consequences for those involved in this kind of solidarity, including fines and imprisonment. In France in particular, people have already been sentenced for sheltering undocumented migrants, or for allowing them to use their bank accounts to receive money from home.

Deportation is a distressing and difficult experience for those who are removed, and also sometimes for those otherwise involved. There have been occasions in which cabin crew, other passengers or bystanders have been moved to intervene because of the palpable distress of a deportee. Three French passengers on a flight to Mali were sentenced earlier this year because they intervened to stop what they believed to be the inhumane treatment of deportees on their flight.

Not a conclusion, but some questions...

- Do deportation, detention or dispersal further policy goals?

It depends on what those goals are. Analysts and policymakers acknowledge that the goal of all these measures is to deter people from making asylum claims, to reduce the costs entailed in caring for asylum seekers and to control their movements. A recent study by Zetter, Griffiths, Ferretti and Pearl (2003) found that domestic policies had far less impact on the numbers of asylum seekers than events and conditions in the sending countries. Nonetheless, in conversation with, for example, visitors to immigration detainees, some do become so depressed and demoralised that they speak of withdrawing their claim and returning to their countries of origin.

- What are the other 'unintended', (un)acceptable (?) consequences?

These measures serve to exclude people from society, to isolate and marginalize them and they lead to a range of consequences from anxiety, depression, stomach problems through to injuries and death, through 'accidents' as with a number of people who have died while resisting deportation, or as a result of racist violence – as in the case of Firsat Dag, murdered in Glasgow.

- What might be the costs/consequences of abandoning these particular policies?

If states ceased the attempt to control the entry and sojourn of asylum seekers, gave up dispersing, detaining and deporting them, we would effectively have open borders. As a consequence people would no longer be deprived of their liberty and would be far less likely to risk death and injury on their journey to a place of safety. Money that is now spent on paying facilitators, smugglers or traffickers could be used to build a future. Granted the same rights to work as citizens in the receiving country, asylum seekers could more quickly find work, avoiding deskilling (Bloch 2004) and making a better contribution to their family, the receiving society and their networks in their country of origin. Receiving societies would be spared the expense of maintaining detention centres and costly migration controls.

- Would these costs outweigh potential benefits?

This question is a difficult one to answer in material terms, but in ethical terms there can be no question. The human costs of the deportation, detention and dispersal regimes are unacceptable, even if, and this is highly contestable, they could result in material benefits for the residents of receiving states.

Those engaged in studying these issues come, as we have seen at this conference, from Law, Political Science, International Relations, History, Sociology and Social or Public Policy. But political and ethical philosophers too engage with asylum and refuge and yet their concerns are to an extent treated separately – segregated in particular from the policy domain.

It is time integrate ethics back in. And to ask the question - is there some way to maintain borders that does not make us complicit in the deaths, deportations, detention, dispersal and destitution of men, women and children? And if not – should they be maintained?

Notes

1 This paper is loosely based on two articles: 'Common Sense or Racism? The Treatment of Asylum Seekers in Europe' Introduction to Special Issue of *Patterns of Prejudice* 'Racism, Xenophobia, Prejudice and Asylum' (37:3, 233-55) and one co-authored with Dr Alice Bloch of City University, which is under consideration by *Ethnic and Racial Studies*.

2 Communiqué de Presse, Ligue de Droits de l'Homme Belgique.

3 At the beginning of 2003, I was visiting a young Cote d'Ivoirean detained in Berlin. The Ivoirean Embassy accepted that he was an Ivoirean, and a minor (and as such should not have been detained), but do not issue travel documents to minors. So, during the few months I knew him, schlepped him round two other West African embassies, hoping to persuade them to take him.

4 EU standard travel document for expulsion purposes adopted by the Council on 30 November 1994 (OJ C 274 of 19 September 1996).

5 The Hamburg Refugee Council knows of attempts to use these documents to deport to Burundi (the deportee refused to fly and has since gone underground), Sudan, Togo (a Liberian was to have been deported to any African country, but without a named destination country, the attempt was declared illegal) and Niger.

6 These are not the only examples. In April 2004, Jhon Reyes-Prado, the father of a Colombian family whose asylum claim had been rejected on the basis that there was a safe internal flight alternative was shot a month after their deportation from Britain (*Independent* 16 April 2004).

7 Association nationale d'assistance aux frontières pour les étrangers (Anafé), *Violences policières en zone d'attente* (Paris: Anafé March 2003).

8 Anafé, Zone d'attente: 10 ans après, les difficultés persistent (Paris: Anafé March 2003).

9 Interview with Dieter Müller, Berlin, 28 October 2002.

10 As part of my current research project, I have spoken to residents of asylum hostels in Berlin, Cologne, Erfurt and Weimar.

11 Interview with Sandra Jesse, Thüringen Refugee Council, Erfurt, 10 September 2002.

12 *ibid.*

13 Interviews with Osarin Igbinoba, Weimar, 9 September 2002; Georg Classen, Berlin, 25 October 2002; Volker Hügel, Berlin, 28 October 2002.

14 This section draws heavily on Arnoldus, Dukes and Musterd 2003.

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Appendix from Statewatch

http://www.statewatch.org/news/2003/aug/01cattle.htm

EU governments have been using scheduled flights and the IOM (International Organisation on Migration) for "voluntary" returns for several years. The euphemisms "joint flights" or "group returns" by air usually refer either to large number of people being removed on a single flight or to "forced" returns where the migrant does not consent to their expulsion. Although a number of "joint flights" have been organised on a bilateral basis (eg: France and Germany) over the past few years it was the French government who took the lead in July 2002 for a "project" to: *"rationalise expulsion measures, in particular by means of group returns"* (Proposal for projects, French delegation, doc no: **11388/02**, 29.7.02). France opened talks with Germany and the UK on the possibility of joint "European charters". This was followed by the Afghanistan Return Programme agreed last year which covers voluntary and "forced" expulsions carried out by the IOM and joint charter flights see Statewatch analysis: **"Safe and dignified" return to Afghanistan**.

The Italian Presidency, in another proposed Council Decision, seeks to formalise "joint EU flights" covering all countries of origin or the last "safe" third country passed through on a global basis (although not bound by this proposed Decision the UK can opt in at any point). This would allow *"group removals"* by EU governments *"as efficiently as possible"* by sharing *"removal capacities"* for *"rational repatriation operations"*.

Under Article 5 of the proposed Decision the air carriers selected would be responsible for getting authorisation to land in the third country and to fly over other countries. The captain and crew would be obliged "during boarding, flight and landing" to provide the "necessary assistance to the third-country nationals and the escort personnel on the flight", could this mean the crew would be obliged to assist in the restraint of the migrant?

Article 6 says that data and intelligence on the migrants to be expelled should be provided in advance, for example, whether they have a criminal record and on their:

> *"behaviour while detained... prior to removal...(aggressive, rebellious or violent behaviour etc)"*

Thus the "appropriate escort" should be capable of "dealing with violent behaviour which could endanger flight safety".

Such joint flights would amount to "collective expulsion" which are banned under Protocol 4 to the European Convention on Human Rights (although the UK, Spain and Greece have not ratified this), the ICCPR and the EU Charter of Fundamental Rights.