

**Seeking refuge: Refugees caught between
bureaucracy, lawyers and public indifference?
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**The role and impact of national and regional asylum
and immigration policies and controls.**

**“Under the borders, the people”
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‘There is still much slavery in the world. Sometimes it is not called that, but when a person is not free “to leave,” and will be punished if they “flee”, that is slavery. If people are “forced out” whenever someone has the mind to, that also represents a slave state. If a person is forced into painful work or demeaning choices not in their best interest but in order to gain basic subsistence or basic protection, this too constitutes a slavery. Under slaveries of all kinds, families and spirits are broken and lost for years, if not forever.’

- Clarissa Pinkola Estes
*Women Who Run With
The Wolves, 1992.*

People seeking asylum in the UK, today, are routinely detained whilst their claim to be a refugee is being considered. At any one time, on average more than 2,300 people are detained in immigration removal centres in England and Scotland, including individuals and families, with others imprisoned temporarily in police cells, prisons and other places of immigration detention.¹ There is no statutory time limit on the maximum length of detention, and recent research has shown that, where detainees were deported rather than released as the outcome of their immigration detention, it took an average of almost two years and two months for that deportation to take place.²

Immigrants who have sought to be recognised as refugees, but whom the government decides do not qualify, are subject to governmental programmes to persuade them to return to their country of origin against their desires³, denied permission to work and excluded from most welfare support and homelessness assistance, forcing many destitute immigrants to sleep rough, to beg or to work illegally, for which they are at further risk of being criminalized and imprisoned.⁴ Those who are removed from the UK are documented as being subject to the use of 'excessive or gratuitous force' whilst being escorted to the airport, at the airport, or on the plane prior to take off, the most common form of documented injury being 'handcuff injuries, including swelling and cuts to the wrist, sometimes leading to lasting nerve damage'.⁵ A report by the Medical Foundation for the Care of Victims of Torture documents other injuries:

¹ 'Immigration detention in the UK – FAQs', Bail For Immigration Detainees, May 2008. Available online at www.biduk.org.

² 'Detained lives: the real cost of indefinite immigration detention', London Detainee Support Group, January 2009. Available online at www.detainedlives.org

³ These Home Office UK Border Agency programmes often appear under the banner, 'Alternatives to Detention', sometimes abbreviated to 'A2D'.

⁴ 'Harsh and coercive' policy of destitution forces asylum-seekers to sleep rough, raid bins, or work illegally to survive, citizens' enquiry told', Independent Asylum Commission, October 2007.

⁵ 'Outsourcing abuse: the use and misuse of state-sanctioned force during the detention and removal of asylum-seekers', Birnberg Pierce and Partners, Medical Justice and NCADC, July 2008. Available online at www.medicaljustice.org.uk.

“Loss of consciousness; tooth coming loose, bleeding from the mouth; testicular pain; difficulty passing urine; nose bleed, sprained neck from having neck forcibly flexed (head pushed down); bony tenderness over the cheekbone from a punch to the face; abrasion over the cheekbone from being dragged along the ground; lip laceration (splitting) from having head pushed down against the ground; bruising under the jaw and tenderness over the larynx from fingers being pressed to the throat; laceration over the temple from having head banged against hard object...”⁶

Acknowledging first this frightening reality, this paper will draw upon essays by two European thinkers, the late Algerian-French philosopher, Jacques Derrida, and the contemporary Italian philosopher, Giorgio Agamben, to hypothesize how it is that such treatment of refugees has become the norm.

In his lectures, ‘Foreigner Question’ and ‘Step of Hospitality’⁷, Derrida, focusing on technological developments in the field of surveillance, argues that an erosion of the home-space, or what could equally be called the private sphere, has transformed human relationships in a way that has jeopardized our own capacity to offer hospitality. He considered the new technological possibilities of spying on email, phone-tapping and phone-cloning. Derrida notices that the frontiers of public and private space are increasingly uncertain in the context of these possibilities; they are subject to new regulations and oversight by governmental bodies; they are: ‘caught in a juridico-political turbulence’. He diagnoses that these developments ‘threaten the interiority of the home’, a perceptive diagnosis because the increase in surveillance and regulation of communication activities, that once were private, clearly can lead to a sense of something interior, that is, something personal or private, belonging to ourselves, being exposed, examined, even violated or controlled.

⁶ ‘Harm on removal: Excessive force against failed asylum-seekers’, the Medical Foundation for the Care of Victims of Torture, October 2004. Available online at www.statewatch.org.

⁷ In ‘Of hospitality: Anne Dufourmantelle invites Jacques Derrida to respond; translated by Rachel Bowlby’, Jacques Derrida, Stanford University Press 2000. All further references to Derrida’s work refer to this essay unless otherwise footnoted.

Since Derrida gave these lectures twelve years ago, we have moved even further in the direction of exchanges which take place from within our private home-space, being immediately subject to state monitoring, interception and intervention. In the UK, for example, we hear about the government's plans for an 'Intercept Modernisation Programme', to allow the state to retain and store data for every email, phone call and internet search.⁸ More recent electronic advances have allowed further scrutiny of other areas of human life which would previously have been private, such as an individual's travel details, now logged remotely, by the implantation of RFID tags which can be invisibly embedded in items and even in printing inks and read from a distance through substances such as snow, fog, ice and paint.⁹ RFID tags were recently used to track 50,000 people travelling through Manchester airport and they can be embedded into passenger boarding cards or passports.¹⁰

Where Derrida spoke of 'juridico-political turbulence', an inter-state body called the European Union Future Group now speaks, more dramatically, of the 'digital tsunami'. The Future Group, predicting increased opportunities for population surveillance programmes through exploitation of electronic and technological advances, says:

"This is just the beginning. In the next few years billions of items in the physical world will be connected, using technologies such as radiofrequency identification (RFID), broadband wireless (WiFi, WiMAX), satellite and wireless (Bluetooth, wireless USB, ZigBee). This means it will be possible to trace more and more objects in real-time and to analyse their movement and activity retrospectively ... Social networks such as My Space, Face Book and Second Life - and indeed all forms of online activity - generate huge amounts of information that can be of use to public security organisations."¹¹

⁸ 'Government may track all UK Facebook traffic', Tom Espiner, ZDNet.co.uk, 18 March 2009.

⁹ 'Privacy Topics: Radio Frequency Identification (RFID)', Privacy International, 18 December 2007. Available online at www.privacyinternational.org.

¹⁰ 'Airports to track passengers with radio ID tags', David Millward, The Telegraph, 11 April 2007.

¹¹ 'The "digital tsunami" and the EU surveillance state', Tony Bunyan, Statewatch Journal, Vol 18 no 2, April-June 2008. Also available online at www.statewatch.org.

The 'objects in real-time' are, of course, us: people. The implications for the transformation of individuals' relationship with the state, or, indeed, with the inter-states of the EU, which obtain the power to 'track-and-trace' each of us at any given moment, are clearly massive. What interests Derrida above all, though, is the effect of these transformations on our own relationships with each other and the notable impact on our abilities to be hospitable. He argues that the transformation of our home-space disrupts every element of this space, and consequently our very power to be 'at home' is disrupted.

Demonstrating what happens to our responses when the idea of our ownership of the private sphere and the relationship that take place within that sphere is altogether absent, Derrida relates an interesting argument between Enlightenment philosopher, Immanuel Kant, and his contemporary Benjamin Constant, where he comes to his analysis of *laws* against *Law*. Kant insisted that you must always tell the truth, because he believed the social bond and the social contract depend on the universality of a lack of dissimulating or hiding something. This same logic is often behind the slogan of ID-card supporters: 'Nothing to hide, nothing to fear'. The carefree sentiments of that slogan are in sharp contradiction to the real losses of a sense of the private sphere that we feel when the state can see into everything that once was ours alone. Testing Kant's conviction in the obligation always to tell the truth, Constant asked him: 'should I lie to murderers who come to ask me if the one they want to assassinate is in my house?' Kant's unsettling answer, as Derrida explains, is that you must speak the truth, even if that risks the death of the guest, rather than lie. Kant, here, places the duty of telling the truth above the duty of hospitality; he places the obligation of social honesty above any duty to protect a private relationship, his friendship; in fact, above any responsibility to protect the life of his friend. Derrida explains that this is because Kant 'sets up his relationship to the one who is in his house as a matter of the law'. It seems, for Kant, that there is no home-space or private sphere, no private bonds or exchanges that are outside of the domain of social, legal, political regulation.

Questioning, accompanied by the threat of enforcement action, and implicitly of violence, given what we know of forcible removals, is the scenario faced by many who befriend refugees in the UK today. It is the scenario faced by individuals who accommodate someone seeking asylum within the home-space of their house, street or community, when the immigration authorities arrive knocking on the door or turn up at the children's school, foster home or work-place, looking for the immigrant individual or family, with papers to detain and deport them. What is happening in these daily scenarios, just as much as in the assassination scenario considered by Kant and Constant, is a conflict between two *laws*. As Derrida explains:

“On the one hand, *The* law of unlimited hospitality (to give the new arrival all of one's home and oneself, to give him or her one's own, our own, without asking a name, or compensation, or the fulfilment of even the smallest condition), and on the other hand, the *laws* (in the plural), those rights and duties that are always conditioned and conditional...”

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How has such an acute conflict arisen between the humane ethics of hospitality and the inhospitable rules and regulations of the immigration *laws*? To look into this, I will rely on the methodology of Agamben in his exploration of how the concentration camps came into being: not, of course, because we are now living in Nazi Germany, which, of course, we're not, but because Agamben's reasoning of how it came to pass in law and politics that any atrocity could be committed against the people in the camps bears useful insights for an analysis of the UK's treatment of refugees.¹²

Agamben says:

¹² 'What is a camp?', in 'Means without end: notes on politics', Giorgio Agamben, University of Minnesota Press 2000. All further references to Agamben's work refer to this essay unless otherwise footnoted.

“The correct question regarding the horrors committed in the camps, therefore, is not the question that asks hypocritically how it could have been possible to commit such atrocious horrors against other human beings; it would be more honest, and above all, more useful, to investigate carefully how - that is, thanks to what juridical procedures and political devices - human beings could have been so completely deprived of their rights and prerogatives to the point that committing any act toward them would no longer appear as a crime...”.

Agamben’s suggestion that the focus in analysing the camps should not be on human evil, but rather on the legal and political processes and procedures turns our attention to the detail of the *laws*. To give a shocking example of the inhospitable nature of the *laws* at stake here, I will read an extract from a current UK Border Agency document, one of hundreds of similar documents on their public website, which details the legal procedures for fingerprinting immigrants, and for dealing with those who have poor quality fingerprints:

“The fingerprints of all applicants over the age of fourteen are recorded on, and checked against, the Eurodac Central Unit database of fingerprint images. The fingerprints of those over the age of five are recorded and checked against the UK database, the Immigration Asylum Fingerprint System (IAFS)...Where a set of fingerprints of the required standard cannot be captured, the file must be passed to the ASU Detention Co-Ordinator [who] must refer the case by phone to the Sector 8 Compliance Team admin support, who will decide if detention is the appropriate cause of action...[In detention] the applicant should be fingerprinted on a weekly basis [and] should be informed that they can seek medical assistance at the removal centre medical facility to assist in their fingerprints healing. If, after two months in detention, the applicant’s fingers have not recovered from their trauma, nor has the applicant sought medical intervention for the trauma, they will be asked to sign a consent form to attend the removal centre medical facility and be referred to a consultant dermatologist...If there is evidence that the applicant has *deliberately* damaged their fingerprints it may be appropriate ... to initiate prosecution action.”¹³

The individual at the centre of this policy is an applicant for asylum, a would-be refugee. A variety of places emerge from this policy: the fingerprinting facility where the prints are taken; the detention centre where the immigrant can be held, not for a matter of hours,

¹³ ‘Applicants with poor quality fingerprints’, UK Border Agency, 27 January 2008. Available online at www.ukba.homeoffice.gov.uk.

but, as the document makes clear, for weeks or possibly months; the medical facility within that immigration removal centre where the immigrant can be required to have treatment in detention. A number of systems also emerge: the Eurodac Central Unit and the Immigration Asylum Fingerprint System, with accompanying roles and personnel: the ASU Detention Co-ordinator; the Sector 8 Compliance Team admin support; the medical staff within the immigration removal centre; the police cells, courts and prisons where the immigrant may be taken if he or she does not co-operate with these procedures.

Following Agamben's logic, it is not hyperbolic to say that these phenomena are coming-into-being like *camps*. Agamben himself notes that the *camps* are as much in evidence in the soccer stadium in Bari in which the Italian police temporarily held Albanian illegal immigrants in 1991, as in the cycle-racing track in which the Vichy authorities rounded up the Jews before handing them to the Germans, as in the holding areas in European airports where would-be refugees are currently detained. Europe's immigration removal centres have rightly been called 'a thousand Guantanamos'¹⁴, and the disparate locations - police cells, centres, prisons or hospitals – where immigrants are held by the state are all places which have become *camps*.¹⁵

Agamben has written: 'The camp is the space that opens up when the state of exception becomes the rule.' In examining the rise of the concentration camps, Agamben notes that these were not born out of ordinary law, nor even prison law, but developed from emergency laws, or what he calls 'a state of exception'. The legal foundation of internment arose from 'protective custody' (or *Schutzhaft*) laws, enabling the state to imprison individuals, initially regardless of whether they had committed criminal activities, to avoid threats of security to the state. The UK's current procedures for verification of identity are comparable, in that a state would not detain an individual who is not known to have committed any crime under ordinary criminal or prison law, for a lengthy or indefinite

¹⁴ "'A Thousand Little Guantanamos", Western States and Measures to Prevent the Arrival of Refugees', Mathew Gibney, in 'Displacement, Asylum, Migration', K E Tunstall (Ed), Oxford University Press 2006.

¹⁵ The Immigration (Places of Detention) Direction 2008, which designates these places of detention is referred to in the Home Office 'Enforcement Instructions and Guidance' at Chapter 55.13, at www.ukba.homeoffice.gov.uk.

period, repeatedly fingerprinting that person and subjecting him or her to medical interventions. These measures derive from exceptional *laws*, which, by now, have become the rule as they are written into immigration law and policy, and are thereby given an aura of normality and permanence.

In fact, the *laws* of immigration control in general have followed a similar trajectory, whereby once-separate domains of external security (the military), internal security (the security services) and law enforcement (the police), traditionally only converging in times of emergency, have become conflated on a permanent basis with the implicit, sometimes explicit, justification, that immigrants are a permanent threat to the state. In the eyes of the state, the UK is less a country, now, than ‘the identity management landscape’, where the government insists that ‘biometric capture’ will ensure that ‘individuals are locked into a single identity’.¹⁶ The *laws* of immigration control, and, increasingly, acquisition of citizenship¹⁷, are endlessly conditional. They demand not only a name from the immigrant, but, increasingly, bodily bio-data to prove personal identity and the fulfilment of countless other conditions - claiming asylum in the first European country reached, without delay, residing at a particular address, not working – are just a few of those conditions. This situation could not be further removed from the *Law* of unconditional hospitality, a philosophy of open borders, which Derrida suggests when he remarks that to be hospitable is:

“to give the new arrival all of one’s home and oneself, to give him or her one’s own, our own, without asking a name, or compensation, or the fulfilment of even the smallest condition.”

The manifestation of immigration control as *camps* is only possible when a choice has been made to respond to people with fear and defensive suspicion, instead of responding with hospitality; that is, without judgmental interrogation and with unconditional openness. This

¹⁶ ‘Identity cards for foreign nationals: Biometric enrolment process’, UK Border Agency, March 2009. Online at www.ukba.homeoffice.gov.uk.

¹⁷ For analysis, see, for example, ‘JCWI’s Citizenship Review Submissions’, and ‘Memorandum of evidence to the Home Affairs Committee on the Draft (Partial) Immigration and Citizenship Bill on behalf of the Joint Council for the Welfare of Immigrants’, Joint Council for the Welfare of Immigrants. Available online at www.jcwi.org.uk.

response is essentially the mindset which has characterized the era of Guantanamo Bay and all the satellite *camps* of the 'War on Terror'. It is encapsulated by Dick Cheney's famous '1% doctrine', when he said: 'Even if there is just a 1% chance of the unimaginable coming true, act as if it's a certainty. It's not about our analysis, it's about our response'.¹⁸ This doctrine, used to justify the incarceration of hundreds without trial, a doctrine founded upon 'guilty until proven innocent', purports to protect the state at any cost from potential, unidentified attackers. Like compulsory fingerprinting, hooked up to international databases, it reveals the fearful and insecure attitude of those who would rather choose the perceived certainties and legalistic consequences of biometric identification, over the freedom of getting to know the enigmatic mysteries of a stranger, a refugee, with the inherent pleasures and challenges that accompany all relationships between necessarily complex and ever-changing humans.

Although Agamben says that law is completely suspended in the *camps*, it could be more correct to say that all humane or ethical law is suspended. To use Derrida's term, it is the *Law* that is suspended, but this perhaps does not leave quite the void, or 'legal black hole' that Lord Steyn saw when he looked at Guantanamo Bay¹⁹. Instead, in the *camps* there is a proliferation of *laws*, of rules and regulations, as a former Guantanamo Bay guard has testified: everything, down to the number of plastic cups allowed amongst the prisoners is prescribed.²⁰ In the immigration removal *camps* here, there is a similar absence of the *Law* of hospitality, freedom and fair treatment, whilst everything down to the timetable for fingerprinting and dermatological treatment is regulated, to implement the *laws* of biometric identification, and then, the subsequent legal processes and procedures of forced deportation.

¹⁸ 'The One Per Cent Doctrine: Deep Inside America's Pursuit of Its Enemies Since 9/11', Ron Suskind, Simon and Schuster 2006.

¹⁹ 'Guantanamo Bay: the legal black hole', Twenty-Seventh F. A. Mann lecture, Lord Johan Steyn, 25 November 2003. Available online at www.statewatch.org.

²⁰ Christopher Arendt, speaking at 'Two Sides – One Story: Guantanamo from both sides of the wire', at St Mary's University College, Belfast, on 3 February 2009.

In this short paper, I have considered encroachments into the private sphere by way of new advances in the field of technological surveillance, which, by eroding our home-space and our private sphere, risk posing a threat to our sense of hospitality. I looked at the conflicted tensions between humane, ethical *Law* and the current *laws* of immigration control - and at the proliferation, here, of *camps*, in Agamben's sense of places where the state has claimed from once-exceptional *laws* the power to treat refugees in otherwise unthinkable ways. Agamben concludes that we are all, whether refugees or citizens, becoming no more and no less than 'border concepts', defined only by our relationship to the border and the state's maintenance of the integrity of that border.²¹ Derrida suggests that the notion of hospitality may be outmoded because distinctions such as private/public, citizen/non-citizen, national/foreigner disappear with the breakdown of the 'rigorous delineation of thresholds or frontiers'. What can remain, however, is our openness towards others, whatever the shifting distinctions between us, and the alternatives to a retrograde inhospitality, or to an equally retrograde defence of an old-fashioned, or less-than-radical, hospitality which relies on obsolete demarcations, are already implicitly present in our recognition of the limitless potential inherent in our human relationships with strangers.

²¹ 'We refugees', Giorgio Agamben, European Graduate School 1994. Available online at www.egs.edu.