



Afterword

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Afterword

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I am very grateful to the editors for the invitation to offer a brief afterword in relation to this special issue of *eSharp* which, against the background of the 60th anniversary of the UN Refugee Convention, considers on-going dilemmas in the representation, management and politics of contemporary migration. In that respect, the essays here, which report on a range of original and insightful research, make clear something of the ambiguity of the historical effects of the Convention. On the one hand, of course, they make evident the obvious and profound success of the Convention in defining a category of persons to whom signatory states are bound to offer protection. In that respect, the ‘refugee’ emerges in these studies as a category which continues to matter, not just for those to whom it applies, but for anyone interested in contesting resurgent forms of racism and the wide-spread representation of asylum seekers as threatening or maliciously deceptive. On the other hand, of course, this sword is distinctly two-edged, for it is to some extent the Convention itself, by virtue of the very definition which it establishes and through the application of this definition in the state apparatus which seek to control migration flows, that sustains the conditions under which it is possible for states (and others) to distinguish between legitimate and illegitimate forms of migration; between the ‘genuine refugee’ and the ‘bogus’ or ‘illegal’ or ‘merely’ economic migrant.

The essays here describe some of the repercussions of this ambiguity in relation to the contemporary context. Perhaps is it

appropriate, then, if I offer in conclusion a very brief, comparative historical reflection. If it is 60 years since the first framing of the UN Convention, it is something more than 500 years since the first Acts which, in a British context at least, specifically responded to, and criminalised, a form of international migration. Passed under Henry VIII, the ‘Act concerning Egyptians’ of 1530 responded to the fact that:

diverse and many outlandish people calling themselves Egyptians using no craft nor fact of merchandise, have come into this realm and gone from Shire to Shire and place to place in great company and used great subtlety and crafty means to deceive the people [...] and also have committed many heinous Felonies and Robberies to the great hurt and Deceit of the people that they have come among[.]

The ‘outlandish’ people in question, of course, were those gypsies who had first arrived in Britain, it is believed, sometime around the start of the sixteenth century (Mayall 1997). The Act goes on to state that ‘henceforth no such persons [shall] be suffered to come within this the King’s realm’ and grants to local Justices and Sheriffs the right to confiscate goods from these travellers and to compel them to ‘avoid [i.e. quit] the realm within XV days’.

In the years that followed 1530, further legislation was produced dealing with the same issue: a renewed Act in 1554, another in 1562, and subsequent measures provided within the context of more general Acts aimed at controlling vagrancy. But these later Acts start to reveal something which is particularly striking. Thus in the 1554 Act it is possible to detect a distinct note of uncertainty about exactly who the legislation applies to; a telling qualification is inserted which insists that the new Act extends not

just to the ‘Egyptians’ but also to ‘other persons commonly calling themselves Egyptians’. And by the time of the 1562 Act, this uncertainty has become, in some respects, the whole problem. Thus that Act begins, in its preamble, by referring to the previous legislation and noting:

there is a Scruple and Doubt risen, whether such Persons as being born within this Realm of England, or other the Queen’s Highness Dominions, and are or shall become of the Fellowship or Company of the said Vagabonds, by transforming or disguising themselves in their Apparel, or in a certain counterfeit Speech or Behaviour, are punishable by the said Act in like Manner as others of the Sort are, being Strangers born[.]

The Act goes on, predictably, to make clear that the provisions of the previous legislation extend not merely to ‘the Egyptians’ but also to all who are found to be ‘commonly called or calling themselves Egyptians, or counterfeiting, transforming or disguising themselves by their apparel, speech or other Behaviour, like unto such Vagabonds, commonly called or calling themselves Egyptians’.

It is misleadingly easy to draw parallels between these early modern attempts by the state to control a form of migration and our contemporary context. As historians would no doubt remind us, such parallels always threaten to do violence to the specificities of the context in question. Yet an important concern for anyone interested in trying to think critically about the social here and now is exactly how one can free oneself from our preconceptions, from all of those ideological categories and assumptions which can often conceal themselves from us by their sheer familiarity. An example would be what Pierre Abdulmalek Sayad and Pierre Bourdieu (2004: chapter 12) have called ‘state thinking’ – the extent to which our

conceptualisation of social experience is often pre-structured by our knowledge of legal or official definitions and the categories they establish: ‘everything that native insertion into a nation and state buries in the innermost depths of minds and bodies’ (xiv). Or, more generally in this case, one might think about the wider consequence of ideologies which claim to describe human difference to us: we live after the era of scientific racism, after all, and one could easily imagine a contemporary interpretation of the legislation I have just described which would treat it as a form of early modern ‘race relations’, as an effort by the Tudor state to manage the tensions which are (according to this story) always a likely by-product of the encounter between different human communities. The advantage of looking back, for a moment, to a historical example, is precisely that it throws a light on what is ‘pre’ within our ‘preconceptions’. In other words, it allows us to think critically about exactly the sorts of taken-for-granted explanation which I have just described; it allows us to historicise those explanations themselves, and to see the extent to which they have been prefabricated for us by centuries of modern ‘state thinking’ and by modern ideologies of racism.

After all, if the shift in the language of the legislation which I have described tells us anything, it is surely that the apparently ‘given’ categories to which the law seems to refer (‘outlandish people’ versus ‘Englishmen’) are neither as stable nor as pre-existent as they appear. If the identity of the Egyptian could be counterfeited – if, as contemporary sociologists say, it could be ‘performed’ – then it is hard to say that it belonged to a specific community in any exclusive or ontological sense. Modern ‘race’ thinking, and state thinking about migration, both teach us to assume that deep-rooted and irreconcilable human difference is what is *already there*, that

different human communities each belong properly to particular spaces on the earth, and that it is the role of the state to defend the integrity of such spaces from the encroaching threat of difference (Bauman 1997). But through the troubled language of this Tudor legislation one can glimpse something else – i.e. one can glimpse precisely what troubles that language in the first place – a demotic world in which both people and identities are profoundly in motion. I do not mean to suggest, in saying this, cultural identities are not deeply felt, nor do I mean to deny the real struggles by which identities may be reproduced and sustained. But ‘reproduced’ is, of course, exactly the right word, and in this early modern period as in others, popular culture (Burke 1978) gives ample testimony to the extent to which the stuff of culture – ‘apparel [...] speech [...] behaviour’ – can be borrowed, mixed-up, or ‘put on’ (in both senses of the phrase). Although the 1530 Act is presented as an act called forth by the startling encounter with those who are already and absolutely different, the subsequent rewordings of the Acts make clear just how unstable is that seemingly clear-cut difference. Indeed, it may not be too much of a stretch to say that what is revealed here is that this difference is not so much what the legislation seeks to manage, as what it needs to assume. Read against the grain, what we can glimpse through this legislation is the degree to which ‘persons born within this realm of England’ were turning those ideas of difference to their own uses, and in order to facilitate their own forms of illicit movement. One glimpses here something of the early emergence of that democratic space of travel, with all of its capacity to disrupt divisive human categorisation, which Linebaugh and Rediker (2000) have famously analysed.

So a lesson here, put briefly, is that people refuse to stay put. The legislation against the early gypsy arrivals in Britain was one aspect of a much wider effort on the part of the Tudor state to control and manage the waves of migration unleashed, in part, by the forms of dispossession that the first stirrings of capitalism produced, and which were profoundly disturbing to a world still shaped by a pre-modern view of things in which men (and women) were assumed to require a settled place, both physically and within a clear, hierarchical social order (see, inter alia: Pound (1971); Humphreys (1999: chapters 2-3); Clark and Souden (1987)). Faced with this world in motion the state responded by defining and redefining the difference between those who could move legitimately and those who could not. Moreover, it sought to inscribe that difference in objective form by issuing licences and passes for movement, by the institution of checks and controls, by branding and mutilating offenders and ultimately by executing those – gypsies and those counterfeiting as such together (*Archaeologia Cambrensis* 1882) – who were seen as intractable evaders of authority. All of these increasingly desperate measures only make all the more clear, of course, how persistently people continued to move from place to place, and how far the category of the ‘vagabond’, the vagrant or the illicit traveller, was more the creation of authority than the problem to which it responded.

There are, of course, considerable differences between the UN Refugee Convention, with its clearly progressive intention, and this early and profoundly repressive legislation against vagrancy. Nevertheless, perhaps the juxtaposition can help us reflect on the extent to which, despite the positive right which the Convention establishes for a certain kind of travel, it makes it possible for states to

cast other forms of travel into the shadows beyond the law: travel to escape poverty, or to escape boredom, or travel for its own intrinsic pleasures. As many of the essays in this volume demonstrate, such journeys have clearly become, for large swathes of the world's population, terribly risky and often illegal. Yet, of course, they continue to be made, just as the Tudor legislation failed to prevent ordinary men and women, gypsies as well as those 'transforming or disguising themselves by their apparel, speech or other Behaviour, like unto such Vagabonds' (1562 Act), from setting off on the road. States can impose desperate suffering on migrants directly and indirectly, and the resilience that ordinary migrants show in the face of such pressures is often extraordinary. But from any long historical view, the decision to move place must be seen as an ordinary part of human existence and something which, ultimately, no state will ever conclusively control.

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