

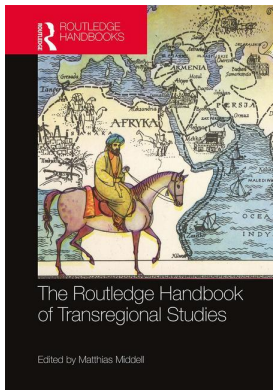
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RESPONSIBILITY-SHIFTING AND THE GLOBAL REFUGEE REGIME

Adèle Garnier

Introduction

One of the key problems of the global refugee regime is the absence of binding mechanisms for ensuring international cooperation with regard to the protection of people fleeing persecution. In the last decades, wealthier countries have deployed responsibility-shifting policies aiming to restrict their international obligations to help refugees without officially breaching these obligations. These countries have done so both reactively, via the considerable expansion of a migration control apparatus, as well as proactively, through the co-optation of other countries in the provision of protection. Responsibility-shifting policies have had severe and harmful political and policy consequences at the domestic, regional, and global levels. This chapter investigates these policies and their consequences by focusing on the United Kingdom (UK) in the European context and Australia in the Asia-Pacific context. Today, both the UK and Australia are at the forefront of responsibility-shifting and have developed complex relationships with institutions managing their borders and internal geography. The chapter contributes to transregional studies by emphasizing similarities and differences in the development of such ambivalences, by historicizing them, and by highlighting policy convergence and divergence within limited policy norms at the global level.

The next section presents responsibility-shifting measures in a historical and transregional perspective. The next part comparatively explores a range of political and policy consequences: harm to people fleeing persecution; political delegitimization of asylum; cost-shifting and cost-hiding; and detrimental regional and international cooperation. The chapter concludes with perspectives to be applied in transregional research.

Responsibility-shifting in a historical and transregional perspective

According to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol (hereinafter the Refugee Convention), people fleeing persecution in their country of origin have the right to seek asylum in another country and cannot be returned to their country of origin. This is the principle of *non-refoulement*. The principle implies that a person seeking protection (an *asylum seeker*) has been recognized by competent authorities as a *refugee* with a

well-founded fear of persecution as defined in the Refugee Convention and in other human rights treaties such as the Convention against Torture. However, the Refugee Convention does not stipulate where protection should be provided to refugees. This shortcoming has given various states the opportunity to legitimize measures aiming to restrict the spontaneous arrival of asylum seekers on their borders while purportedly respecting the international legal framework of refugee protection (Gammeltoft-Hansen and Hathaway 2015).

The UK and Australia, both early signatories of the Refugee Convention (in 1954), have been at the forefront of such developments, which have played out differently in part due to different regional environments (Kneebone and Rawlings-Sanaei 2007). The UK is – still – part of the European Union (EU), the world's most integrated regional organization. As an EU member state, the UK is a party to the European Charter of Human Rights, which has been incorporated into the domestic Human Rights Act. All of its neighbours, comparatively wealthy countries, are also parties to the Refugee Convention.

In contrast, Australia's regional context is divided between member states of Pacific Islands and Southeast Asian regional organizations, of which none is as integrated as the EU. Australia is a member of the Pacific Islands Forum and has a strategic partnership with the Association of Southeast Asian Nations (ASEAN). Many of Australia's neighbouring countries have not ratified the Refugee Convention, including Indonesia and Malaysia. Others have ratified it with significant reservations, such as Papua New Guinea, or are late ratifiers, such as Nauru (2011). There is no regional human rights framework in the Asia-Pacific. One of a few exceptions among industrialized countries, Australia does not have a domestic human rights bill, yet it has incorporated the *non-refoulement* provision of the Refugee Convention into domestic law.

From responsibility-sharing to responsibility-shifting?

Australia was significantly involved in collective action aiming at resettling refugees fleeing the Indo-Chinese crisis of the 1970s and 1980s. This involvement was not only due to domestic political leadership but also due to a favourable international and domestic policy environment (Viviani 1984). At the three refugee conferences in Geneva in 1979, several Western countries agreed to engage in maintaining cooperation for admitting relatively large numbers of Indo-Chinese who had fled to Southeast Asian countries of first asylum, that is to say, to resettle these refugees. Australia was one of the major resettling states and the operation had domestic bipartisan approval. Indo-Chinese refugee resettlement was also the impetus for the establishment of the country's formal humanitarian programme. Australia was one of the states driving the adoption of the Comprehensive Plan of Action for Indo-Chinese Refugees in 1989, which further codified the refugee resettlement from countries of first asylum in Southeast Asia as well as the orderly return to Vietnam of people not recognized as refugees (Davies 2008).

The UK's international refugee cooperation efforts during the same period cannot be considered as successful. This can be attributed to both the international and the domestic context. The 1960s witnessed an increase in anti-immigrant sentiment arising from the arrival of British subjects of Indian origin living in Kenya and Uganda that were threatened by increasingly aggressive nationalism in both countries. To impede their arrival in the UK, the Wilson government attempted to convince other Western countries to admit significant numbers of 'East African Asians'. Most countries refused, arguing that these refugees were British citizens and should receive protection in the UK (Hansen 2000). Ultimately, the UK resettled far larger numbers of 'East African Asians' than any other country. While Prime Minister Margaret Thatcher strongly supported the 1979 Geneva conferences, her government engaged considerably less than other Western nations in Indo-Chinese resettlement.

Following increases of asylum claims and the nascent politicization of asylum in the early 1980s in the UK and in the late 1980s in Australia, both countries concentrated on responsibility-shifting. Controversially, undocumented asylum seekers were increasingly detained in both countries (Garnier and Cox 2012). While the British government seemed ambivalent toward European institutions and refused to ratify the Schengen Agreement aiming to end border controls within the European Economic Community, it was a party to the Dublin Regulation, which aims at preventing multiple asylum applications in EU member states (Ette and Gerdes 2007). Both countries also became members of the Intergovernmental Consultations on Migration, Asylum and Refugees, which expressly focuses on bureaucratic exchanges regarding enforcement of migration control. In 1999 both the UK and Australia resettled thousands of residents from Kosovo who had fled the war in Kosovo to Macedonia and other neighbouring countries. Research on the UK's and Australia's responses highlight divergent attitudes toward resettled refugees, who were generally welcome, and toward asylum claimants, especially claimants coming by boat in the Australian case and on foot or by lorry via the Channel Tunnel in the British case. Such spontaneous movement triggered the development of bilateral border cooperation between Indonesia and Australia on the one hand, and between France and the UK on the other (Schuster 2003; Nethery and Gordyn 2014).

Responsibility-shifting in the twenty-first century

Responsibility-shifting took a different dimension following the 11 September 2001 attacks in the United States. Australia's Howard government started what came to be called the 'Pacific Solution'. This initiative involved the interception of all boats carrying asylum seekers en route to Australian shores, and the removal of claimants to the Pacific states Papua New Guinea (Manus Island) and Nauru. The latter had not yet ratified the Refugee Convention at the time. The Australian government indicated that it would never admit recognized refugees in Australia, yet ended up doing so after other countries refused to step in (Taylor 2005). The Howard government was considerably involved in regional and multilateral fora on migration control, for instance with the establishment of the Bali Process in 2002 (Nethery and Gordyn 2014). The British government of Tony Blair, likewise, promoted responsibility-shifting through regional avenues. Copying Australia's offshore processing centres was advocated by the conservative opposition, yet immigration bureaucrats considered the European human rights framework too strict for such replication. At the Thessaloniki European Council in 2003, Tony Blair suggested the establishment of 'regional protection areas' at the periphery of the EU to promote the orderly arrival of people fleeing persecution. As a consequence, the European Commission suggested the establishment of regional protection zones in Africa and the Ukraine, as well as a joint EU resettlement programme. Both were eventually implemented, albeit at a very small scale (Garnier 2014). In parallel, the UK adopted most of the EU's rights-restricting directives on immigration and asylum, but barely any of the EU's rights-expanding directives (Ette and Gerdes 2007). The Sangatte camp was closed in 2002 and the UK established a formal national resettlement programme in 2003. Both Australian and British politicians advocated in the early 2000s a reform of the Refugee Convention for preventing what was perceived as 'abuse' by asylum claimants. This, in the Australian case, was part of greater scepticism toward international law and the United Nations (UN) (Charlesworth et al. 2006).

In the context of decreasing asylum claims in both the UK and Australia in the mid-2000s, political attention shifted away from asylum claimants. However, EU immigration has since become increasingly politicized and is considered as one factor contributing to the outcome of the Brexit referendum (Somerville 2016). At the same time, the UK became one of the

four EU member states overseeing the implementation of the EU-Turkey deal (European Commission 2016). The UK also nationally increased the admission of Syrian refugees due to the Syrian crisis.

Australia's offshore processing centres were officially closed in 2008. Yet as boat arrivals and asylum claims again began to increase, the Australian government attempted to implement a 'swap' deal with Malaysia in 2011. The deal would have had Malaysia accept asylum seekers intercepted en route to Australia in exchange for the resettlement of refugees hosted in Malaysia. However, the High Court of Australia deemed the deal unconstitutional because Malaysia was not a party to the Refugee Convention (Garnier 2016). A new version of offshore processing in Nauru and Papua New Guinea started in 2012, after Nauru's adoption of the Refugee Convention the previous year.

Australia's reiteration to not admit refugees who had come by boat to Australia led the country to persuade Nauru and Papua New Guinea to permanently admit intercepted refugees on their territory; to enter into partnership with Cambodia in 2013, also aiming to permanently settle intercepted refugees there; and, from 2014 onwards, to systematically return all intercepted boats en route to Australia to countries in the region (Gleeson 2016). In 2016 the US government of Barack Obama agreed to resettle intercepted refugees living in Nauru and Papua New Guinea in exchange for the resettlement in Australia of Central American refugees then living in Costa Rica. This de facto 'refugee swap' started being implemented in 2017. Since October 2017 it has been impossible for people with no legal right to be in Australia to make an asylum claim on Australian territory (Refugee Council of Australia 2018). Australia has increased its admission of Syrian refugees in response to the Syrian crisis, yet it has been accused of preferring Christian minorities, and has refused to engage in the admission of Muslim Rohingya refugees from Burma (Vit 2016).

Political and policy consequences of responsibility-shifting

An expanding body of literature highlights the severe and harmful consequences of responsibility-shifting (e.g. Taylor 2005; Gammeltoft-Hansen and Hathaway 2015; Cosgrave et al. 2016; Hargrave and Pantuliano 2016). This section compares the political and policy consequences in the British and Australian cases, with particular attention to their multilevelled nature.

Harm to people fleeing persecution

The physical and psychological harm caused to people fleeing persecution and kept in Australia's offshore processing centres as well as in Cambodia has been well-documented (e.g. Gleeson 2016). Facing years of uncertainty concerning their status, many, including children, have experienced chronic depression. There have been many incidences of self-harm as well as violence toward others. Security guards have been accused of physical harm, including child abuse, toward those they were supposed to oversee. The Australian government has long insisted that such issues were for the hosting countries to solve.

In the British case, the situation in migrant camps close to the Channel Tunnel has been that of a humanitarian emergency both between 1999 and 2002 at the Sangatte camp and in the re-established makeshift camp, the Calais 'Jungle' camp, between 2014 and its closure in late 2016. This has included harm caused by failed attempts to cross the tunnel on foot at night by unaccompanied minors, among others, aiming to be reunited with family members living in the UK (Gentleman 2016). Certainly, the extent of harm was under-reported given the refusal of authorities to take responsibility for the camp population. Successive British governments

repeatedly argued that this was an issue for the French authorities, who in turn claimed that the migrants refuse to register in France since they aim to reach the UK (Schuster 2003).

Beyond the camps, the migration control measures associated with responsibility-shifting have not prevented people fleeing persecution from leaving their countries of origin, but rather have pushed them toward more dangerous migration routes. For instance, following the adoption of the EU-Turkey deal, migratory patterns have shifted from the Eastern toward the Central Mediterranean, which has witnessed a significant increase in fatalities in 2016. Furthermore, stronger border controls in wealthier countries have triggered the adoption of more stringent border control measures in countries in the periphery, potentially resulting in dangerous attempts by migrants to cross heavily weaponized borders (Hargrave and Pantuliano 2016).

Political delegitimization of asylum

Political discourse promoting responsibility-shifting initiatives has challenged the genuineness of asylum seekers. In Australia, they have been dubbed ‘queue-jumpers’, a term used for the first time in parliamentary debates regarding Indo-Chinese claimants that since has become widely used. The term is part of a political and media discourse contrasting asylum seekers with the allegedly more legitimate resettled refugees arriving in an orderly manner (Every 2008). In the UK, ‘asylum seeker’ became a derogatory term in political and media discourse in the 2000s, and more recently ‘refugee’ has also taken on a negative connotation. The delegitimization of asylum has had restrictive policy consequences, which have negatively impacted the integration of refugees in the UK, being not only a source of concern for individual refugees but also a challenge for regional and local authorities managing integration.

In Australia, there has for years been a false perception that ‘stopping the boats’ is a legitimate way to solve the ‘asylum crisis’ because it prevents deaths at sea (Garnier 2014). This perception has contributed to the increase in the Australian public’s sensitiveness to any boats arriving and carrying asylum seekers in the vicinity of Australia’s shores. Former Prime Minister Tony Abbott has actively promoted this approach in Southeast Asia and Europe; a similar humanitarian language has been used by European leaders to promote the EU-Turkey deal (Garnier 2016).

Cost-shifting and cost-hiding

With the rising popularity of neo-liberal practices across the globe since the 1980s, responsibility-shifting measures were adopted against a backdrop of new public management approaches focusing on reducing administrative and judicial costs (Kapucu 2007). In the 1990s and early 2000s, British and Australian parliamentary committees and national audit agencies scrutinized the cost of asylum procedures. In both countries, asylum claims go through a first stage of administrative decision, which can be contested at administrative tribunals and eventually by courts of justice. It was noted that pressure to cut costs at the first stage resulted in poor administrative decisions, which in turn resulted in asylum seekers being allowed administrative and judicial appeals, thereby increasing the cost of the entire asylum procedure. Pressure to reduce the cost of appeals played a role in the adoption of both responsibility-shifting and deterrence measures toward asylum seekers.

Notwithstanding, such measures incurred considerable costs, including the management of offshore facilities and the training of staff involved in deterrence measures overseas, as well as the cost of treatment for the above-mentioned harm done to people fleeing persecution and other types of payments made to persuade governments to host such centres (Nethery and Gordyn 2014; Cosgrave et al. 2016). Accountability is hard to achieve for two main reasons. On the

one hand, domestic watchdogs as well as the media face practical as well as judicial obstacles when investigating the cost of policies in foreign countries. On the other hand, governments devolve the operation of offshore facilities to private actors, whose accountability practices are characterized by poor standards – a phenomenon that also characterizes private immigration detention at the domestic level (McPhail, Ochoki Nyamori and Taylor 2016).

Detrimental regional and international cooperation

Responsibility-shifting has complicated the involvement of the Australian and British governments in regional and international politics. The UK's ambivalent attitude toward the EU goes far beyond immigration and refugee policy. Nevertheless, domestic hostility toward people fleeing persecution has been a source of bilateral tensions between the British and the French government in regard to the Sangatte/Calais situation, and the UK's refusal to participate in initiatives aiming at a more equitable repartitioning of refugees within the EU has contributed to increasing tensions between southern and northern EU member states. In the early 2000s, the promotion of 'regional transit zones' by the Blair government was closely followed by then UN High Commissioner for Refugees (UNHCR) Ruud Lubbers, resulting in the suggestion of similar schemes by Lubbers. This decision proved very controversial within the UN refugee agency and challenged its legitimacy in the eyes of refugee advocates who deplored a legitimization of northern states' deterrent approaches contrary to the UN Human Rights Council's (UNHRC) protection mandate. The UNHCR has been equally ambivalent toward the failed Australia-Malaysia swap as well as, at least originally, the EU-Turkey deal, the implementation of which is subsequently strongly criticized. It has been argued that it would be very difficult for the UNHCR to bluntly refuse to engage in initiatives promoted by major financial contributors and involving major refugee-hosting states (see Garnier 2016).

Nonetheless, the UN refugee agency has repeatedly denounced Australia's offshore processing centres after swiftly ending its first involvement in 2002; this was followed by the UN Commission on Human Rights and the UNHRC. Australian governments have successively replied to criticism from the latter by arguing that human rights breaches of UNHRC members were far worse than its own. The International Organization for Migration (IOM), which managed the Pacific Solution's offshore processing centres until 2008 despite the fact that the IOM does not have a protection mandate, refused to manage the centres that reopened in 2012.

At the regional level, Australia's official development aid to Nauru and Papua New Guinea has considerably increased since the opening of offshore processing centres, hence reinforcing the two countries' external financial dependence. Responsibility-shifting has increased local social tensions because of the pressure on infrastructures caused by hosting forced migrants as well as associated staff and because of the severe and harmful impact on local populations of systemic abuse in the centres (Opeskin and Ghezlbash 2016). Other Pacific Islands governments have been very critical of Australia's policy to not only process asylum seekers, but now to also pursue the long-term resettlement of refugees in the Pacific region, as this could increase sociocultural tensions with regard to scarce resources (Warbrooke 2014).

Perspectives to be applied in transregional research

Even though Australia and the UK are embedded in distinct regional dynamics, this chapter's transregional perspective has systematically highlighted how the strenuous relationships between both countries and their geographic regions has contributed to the development of responsibility-shifting in the Asia-Pacific and the European contexts, respectively, thereby going beyond a mere

national focus on such severe and harmful policies. This perspective has also highlighted how the limited extent of the global framework on *non-refoulement* not only results in considerable harm to people fleeing persecution, but also contributes to the development of parallel regional dynamics further undermining this limited global normative framework.

To further expand our transregional understanding of the policies investigated here, future research could explore personal connections between political, administrative, and private actors fostering past and contemporary transregional exchanges. This would not only allow for a more nuanced understanding of transregional dynamics, but also for a clearer identification of continuities and ruptures in the development of such practices over time. More comparative research is also necessary in regard to the impact of responsibility-shifting practices on host populations. In addition, following Kneebone and Rawlings-Sanaei (2007), the impact of responsibility-shifting concerning the conceptualization of world regions could be further explored. One aspect of such exploration could be the impact of incentives to adopt instruments of international law, such as the Refugee Convention in the case of Nauru in 2011. Finally, research could investigate in a comparative and regional perspective the impact of the increasingly difficult acceptance of refugees and their long-term integration into host countries.

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