

From the Channel to Rwanda

**Policy
Exchange** 

Three essays on the morality of asylum

Nigel Biggar, John Finnis and Richard Ekins

Foreword by Dr Michael Nazir-Ali



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Published by
Policy Exchange, 1 Old Queen Street, Westminster, London SW1H 9JA

www.policyexchange.org.uk

ISBN: 978-1-910812-XX-X

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Foreword

Dr Michael Nazir-Ali

President, Oxford Centre for Teaching, Research, Advocacy & Dialogue (OXTRAD), former Bishop of Rochester, former Bishop of Raiwind, Pakistan, and now a prelate in the Catholic Church

When three distinguished professors in Oxford call for a more informed debate on the ethics of migration, it is time to sit up and take notice. In particular, they ask that pronouncements by bishops and other church leaders be better prepared and engage with the hard questions instead of just pulling at the heart strings of Christian and national sentiment. Bishops, of course, don't generally speak *ex tempore*; in what they say, they have usually been briefed by social responsibility staff and the like.

Some facts are straightforward: most of those arriving on our shores in small boats have come via at least one safe country. This means that they are not refugees in the conventional sense of the term. Some may, indeed, have experienced torture and imprisonment but they were in no such danger in France or Belgium, which are prevented by international law from sending them back into danger. Many, however, are younger men whose parents may be helping them to evade conscription in countries like Iran or Syria or they may just be economic migrants, seeking a better life in the UK and possibly linking up with relatives or colleagues already here. The people smugglers who make these dangerous journeys possible don't just organise the trip, they also connive in destroying identity papers, sometimes in creating stories of persecution and torture and, most recently, in claims that the arrivals are victims of human trafficking and thus eligible for asylum!

Whatever their reasons for attempted migration, there can be no question that churches and humanitarian organisations are morally obliged to assist these arrivals in their material, social and spiritual needs on the basis that we are called to love the stranger. This is not the same thing, however, as government policy itself which must take account of many different factors, including the impact of large-scale immigration on social cohesion, on social, educational and medical services and on physical infrastructure, such as roads and railways. When churches exercise their right, indeed their duty, to contribute, in an informed way, to the debate about immigration, any government should consider such contributions with the seriousness they deserve, and should do so the more the churches' contributions have taken seriously those wider responsibilities to everyone on whom attempted migration impacts.

Governments should not be easily demonised, though they can and should be criticised for their policies and the scope of such policies, but

if people smugglers can simply nullify carefully thought-through and debated legislation and policy by landing people in small craft on the beaches in Kent, this cannot indefinitely be acceptable in a democratic and law respecting nation. As our essayists point out, such illegal immigration puts pressure on the state to narrow the scope for legal immigration, needed to staff essential services, such as the NHS, or to provide talent and labour for a whole range of business and industry. It also puts on pressure to further restrict family-related immigration, and, indeed, genuine refugees allocated to the UK by the UNHCR and other international organisations.

Although the Australian experience is open to criticism, it has had the effect of deterring people from making the dangerous journey across the seas. The case for off-shore processing of those arriving here illegally is strong because of the difficulties in removing people, once they are here.

The proposal to send illegal immigrants to Rwanda for the processing of their claims is one way of dealing with the situation. That country has rebuilt itself since the terrible genocide there and, although some human rights concerns remain, it seems to be a relatively stable and prospering place. Those found to have a valid claim as refugees could remain there. If the UNHCR, which appears so concerned about their plight, can get third countries to accept them, as it has done with some of those sent by Australia to Papua New Guinea and Nauru, that also would be good outcome. For its part, the UK must ensure that those sent from here are treated humanely and justly and that they are never returned to where they may be in danger (though they may return voluntarily to their home countries, of course). For my part, I do not discount the possibility of some claims to settle in the UK being upheld during assessment in Rwanda or elsewhere. The government should also consider mechanisms which allow it to assess claims of asylum for those persecuted for their beliefs on the recommendation of duly accredited human rights organisations in this country.

There is a need for a new international agreement on refugees and asylum seekers. Europe and the UK do not have a monopoly on the moral obligation to help refugees in need of settlement. Other, wealthier nations, should also take their due share, including some in the Arab League and the Organisation of Islamic Cooperation, given that many asylum seekers are coming from their member states.

British foreign policy should increasingly focus on promoting, the rule of law, freedom of religion or belief and greater opportunity for the young, and an end to regional conflicts. These are many of the 'push and pull' factors driving the increase of numbers in people on the move. We should work towards an international order where people want and are able to remain at home, while being free to travel for business, education and leisure.

We should be grateful to our distinguished essayists, and to Policy Exchange, for drawing our attention to these difficult issues and outlining thoughtful solutions to them. I hope the essays are widely read.

More heat than light: the Christian churches and the Rwanda policy

Nigel Biggar CBE

The news of the Government's plans to deport illegal asylum seekers to Rwanda provoked an immediate chorus of protest from Christian leaders. While "[t]he details are for politics", the principle "cannot carry the weight of the resurrection that was first to the least valued, for it privileges the rich and the strong", preached the Church of England's Archbishop Justin Welby in his Easter Sermon on 17 April. In his homily the previous evening, Cardinal Vincent Nichols, President of the Catholic Bishops' Conference of England and Wales, judged that the policy "simply lacks" the qualities of compassion and "regard for the dignity which is innate to every human being". Showing less restraint, the Jesuit Refugee Service UK denounced it as "cruel and inhuman", exhibiting "a craven disregard for humanity and dignity". The tone of the Methodist Church followed suit, describing the policy as a "hostile, uncompassionate and ineffective response to asylum seekers and refugees". And while Lord Wallace, the Moderator of the General Assembly of the Church of Scotland, confined himself to expressing "grave concern for upholding human rights and respect for human dignity", Kevin Holdsworth, Provost of St Mary's Episcopal Cathedral, Glasgow, plunged into full prophetic mode. "Immoral, shameless and obscene", he declared, "a cynical attempt to distract people from the partygate affair.... a bitter betrayal ... of this country's international commitments.... of those in desperate need". More recently on 14 June, all of the Anglican bishops with seats in the House of Lords published a letter in the *Times* newspaper, which culminated in the bald, damning statement, "This immoral policy shames Britain".

Across the board, the moral indignation was as strong as the thought behind it was weak. Carried along by the *Zeitgeist*, ecclesiastical emotion sprinted ahead of reason. With a single exception, no one expressed any recognition of the need to control migration. At the Protestant end, the Church of Scotland's Moderator reminded us that Jesus taught, "When I was a stranger, you welcomed me". And at the Roman Catholic one, the Jesuits lamented that the Government's plans "represent yet more fortification against those seeking safety, more walls where any sense of common humanity, any sense of care, calls for bridges". From these statements, we could reasonably infer that their authors believe in entirely 'open borders'. That is to say, they believe that there should be no restrictions at all on immigration to the United Kingdom, and that anyone wishing to come

here should be free to do so. This assumes that the number of immigrants need never be overwhelming, because Britain's material resources and social cohesion would always be sufficiently great to accommodate them. However, since history contains plenty of examples of societies overcome by migration on a massive scale, that assumption seems implausible. If the Christian proponents of 'open borders' have cogent arguments in favour of Britain's immunity to such a fate, they have yet to communicate them.

To his credit, the Archbishop of Canterbury, writing in the *Telegraph* ("Put humanity at the heart of our asylum system", 27 April), did admit, "We cannot take all the world's refugees, nor can any country.... We must destroy the deadly trade of people trafficking.... This is not about 'open borders'". But if borders are not to be open, and if immigration is to be controlled, then the law needs to be upheld, and a usual way of doing that is to deter would-be transgressors. And yet Justin Welby tells us that "there are serious ethical questions about using 'deterrence' to stop asylum seekers trying to reach our shores". What these 'serious ethical questions' are is unclear, partly because the archbishop did not state them, and also because it seems very unlikely that he believes that the law should not be upheld by making the consequences of breaking it unattractive. And in the case of those crossing the Channel in small boats, we are dealing with migrants who are attempting entry by illegal means. Stephen Cottrell, the Archbishop of York, is wrong to assert that "there is, in law, no such thing as an illegal asylum seeker". Someone who enters the UK in breach of our immigration laws in order to claim asylum, is an illegal asylum-seeker. Whatever the moral merits of his claim, he has acted unlawfully.

Even if the two Anglican leaders do not object to the deterrence of law-breaking in general, they object to the Government's proposed deterrent in particular. "I oppose sending vulnerable and traumatised people more than 4,000 miles away without their consent, and paying another country to take them in.... These are people fleeing war, famine, and persecution", wrote Welby in the *Telegraph*. And in his Easter Day sermon, Cottrell found it "so distressing ... that asylum seekers fleeing war, famine, and oppression from deeply troubled parts of the world will not be treated with the dignity and compassion that is the right of every human being and instead of be dealt with quickly and efficiently here on our soil, will be shipped to Rwanda". Neither they, or any other Christian leader, appears to recognise that the migrants attempting to cross the Channel are not currently fleeing 'war, famine, and oppression' in Eritrea, Syria, Iran, or Afghanistan (let alone in peaceful Albania). They are leaving France—peaceful, prosperous, and liberal.

Moreover, it is not true to say that, in diverting illegal asylum seekers to Rwanda, the British Government is carelessly turning them away (Welby), failing in compassion for strangers (Holdsworth), or violating their dignity as creatures made in the image of God (Methodist Church). By making it quite clear that those who attempt to enter the UK illegally will not be granted asylum here, the Government's policy aims to remove

the incentive that motivates the criminal and dangerous smuggling of people in vulnerable boats across the Channel, and it thereby promises to save lives. And by sending the illegal migrants to a third country that is not embroiled in war, does not suffer famine, and, arguably, observes the rule of law, it offers them the prospect—should they be deemed deserving of asylum—of being able to rebuild their lives and prosper. Such a policy may be firmly deterrent, and it may disappoint illegal asylum seekers by denying them permanent residence in the UK, but it is not lacking in care or compassion. Nor does it obviously violate human dignity. Love can be tough without ceasing to be love.

It may be true, as the Jesuit Refugee Service has said, that several refugee agencies have “questioned” the human rights record of Rwanda. But it is all too easy to ‘question’ or ‘have concerns’, insinuating without actually showing. If Rwanda is really not a safe place for those deserving asylum, then that needs to be asserted and demonstrated. None of the Christian leaders who have criticised the Government’s policy has done that. Rwanda may well be, as the Jesuits claim, less stable and rich than the UK, but why should that make it unfit? What is required for effective asylum is not maximal stability and wealth, but sufficient safety, and in the judgement of the United Nations High Commissioner for Refugees, “Rwanda generally provides a favourable protection environment”. Since that is sufficient for the UNHCR to help refugees resettle there, why should it not be sufficient for the UK Government?

While Archbishop Justin describes Rwanda as a country that “seeks to do well”, he still objects to the Government’s “sub-contracting out our responsibilities”, because that “is the opposite of the nature of God who himself took responsibility for our sins”. Now, it is true that, according to the Christian doctrine of the Incarnation, God dignifies sinful human beings, not by trying to rescue them at a safe, patronising arm’s length, but by drawing right alongside them. As St Paul puts it in his Epistle to the Philippians, “though [Jesus Christ] was in the form of God, did not count equality with God a thing to be grasped, but emptied himself, by taking the form of a servant, being born in the likeness of men” (2.6-7). What this implies for those who would follow Christ is, I think, that they must enter fully into the predicament of those they would guide or help, becoming sensitive to the constraints that they suffer, be they external or internal; and that they may not judge, Pharisee-like, from a moral high-horse. What it surely cannot mean is that compassion must so identify with the feelings of the needy as to give them whatever they want. For not all felt-needs are genuine, and often the satisfaction of a genuine need can come in a variety of forms, some of which are more just—all things considered—than others. Nor can the example of God’s Incarnation mean that Christian help that must always be rendered directly. For sometimes direct help is either not possible or not prudent. For example, most of us who think that the UK should aid Ukraine in fending off the unjustified and grotesquely indiscriminate aggression of Russia, believe that it is best done indirectly, since direct help would risk tempting President Putin to

escalate the conflict to the nuclear level. So, we equip the Ukrainians to fight directly for their own freedom—and, indirectly, for ours.

At the heart of most of the Christian criticism of the Government's policy is the complaint that the UK does not currently provide readily accessible ways of lodging a claim for asylum. The Church calls “for safe and legal routes for asylum seekers”, according to Archbishop Justin. “We need to make it convenient for [migrants] to tell their story [lodge their Asylum claim]”, says Paul McAleenan, speaking for the Catholic Bishops' Conference. And, in the eyes of the Methodist Church, “the real work which needs to be done to establish workable, safe, and welcoming routes through which the UK can play its part in responding to need”.

The complaint has some merit. Applications for asylum can only be made on UK territory, and—except for the citizens of some developed countries—no non-national can lawfully enter the UK without a visa. However, what the complaint overlooks is that this is the universal rule for all countries that attract immigrants—including all member-states of the EU, the US, Canada, Australia, and New Zealand. This fact ought to arouse the curiosity of those who are minded to criticise the UK's policy, moving them asking why it is so common. Were they to do so, the answer they would discover is that, if it was possible to apply for asylum from anywhere in the world, the number of applications would quickly become a tidal wave. After all, most of the 1.43 billion citizens of Communist China have an arguable case for asylum.

So, the current system certainly falls a long way short of perfection, leaving many who suffer from war or famine or oppression without remedy. As Archbishop Justin has written, “the global community is currently letting down millions of people seeking refuge. There must be a better way”. What is needed is “a truly global asylum system, where every nation takes its fair share of people”. This is a noble ideal, which we should surely strive to approximate. But we should not underestimate the challenge. The ‘global community’ is a figment of the wishful imagination, well-meaning and probably utopian: we do not have it now and we may never have it. What we do have are international institutions, which facilitate communication and cooperation, and that is good. But the operation of these institutions is subject to the pursuit of national interests, as they are bound to be. The interests of Russia and China—at least, as Presidents Putin and Xi perceive them—are not the same as the interests of the UK, and they are not likely to become so any time soon.

It could be argued that the UK should increase its share of the burden—that, in addition to development aid aimed at supporting, say, Syrian refugees in Jordan and helping stabilise fragile states so as to make life safer under them, we should admit more asylum seekers. It could be that we should spend more on admitting and supporting them by spending less on education or health or defence—or by raising taxes (if that would really have the effect of increasing public funds). It could be that the British Government should push this item up the list of its priorities, while pushing other items further down. This could all be argued, but

the Christian churches have not argued it. There may be a better way, but the churches have yet to undertake the careful work necessary to show us what it is.

In the wake of Archbishop Justin's Easter Sermon, one letter to the Editor of the *Times* newspaper counselled that "the church should refrain from involving itself in politics" ("Problem of preaching politics from the pulpit", 19 April). This is wrong. The Christian churches have a duty to protect and promote the well-being of the world that God so loves, and that includes criticising Government policies when they do morally unjustified harm or manifestly fail to discharge moral duty.

That said, before church leaders set about criticising policy, they do need to think things through thoroughly from top to bottom. They need to bring into play the full range of relevant moral principles—not only the duties of compassion for migrants (including asylum seekers) seeking a better life and of the rich to aid the poor, but also the duties to uphold morally justified law and to frustrate those who profit from smuggling migrants across borders, exploiting their needs and aspirations. And it is not enough to hurry from moral principle to judgement without taking into careful account the relevant circumstances—including the facts that those crossing the Channel are setting off from France, that their entry into the UK is illegal, and that attempts over several years to find an alternative effective means of stopping the illegal and life-threatening migration of tens of thousands of people in small boats across the Channel have all failed. Archbishop Justin is mistaken to say that the details can be left to politics, for they are necessary to moral deliberation about what we should do here and now, in these unyielding concrete circumstances.

So, before they rush to prophetic judgement, Christian leaders should slow down, draw alongside the policy-makers, learn to grasp the complexity of the problems that confront them, appreciate the political constraints under which they operate, acknowledge that resources are always limited, and so recognise that when one item is pushed to the top of the agenda others must needs fall down it. Then, having listened carefully, they will be equipped to work out a well-considered critique that deserves respect.

From the Channel to Rwanda: the moral high ground

John Finnis KC (Hon), FBA

In his Easter Day sermon and in the *Daily Telegraph* on 26 April, the Archbishop of Canterbury denounced the UK-Rwanda asylum partnership arrangement (14 April 2022) as unethical. In the article he identifies the relevant moral principle:

“we must ask ourselves: who do we want to be? ... the standard by which we must treat those seeking asylum [is love your neighbour as yourself].”

I agree. That is not only the Mosaic and Gospel standard, it is also what any rational ethics identifies as rationally required. It is the rationale of the principle of fairness, the Golden Rule: Do to and for others what you would have them do to and for you. Don't do to others what you would not want them to do to you. Put yourself in the other person's shoes before doing something that impairs their wellbeing. I would go further, because this very high-level moral principle has specific implications when, for example, it is brought to bear on the question why and on what conditions it is reasonable, fair and loving to appropriate land and other resources to particular persons as “private property”, and to recognise the sovereignty of particular peoples over particular territories as states. In relation to both kinds of appropriation, the defining rights of ownership or sovereignty, above all the right to exclude other persons from the thing or territory owned, are recognised as, in principle, just and authentic rights precisely because doing so tends to benefit everyone including non-owners. Universal communism, treating all lands and other resources as common to all, would tend to result in widespread impoverishment and in disorders that would be unfair to the more vulnerable and more honest and fair-minded. But for the very same basic reasons – love of neighbour, and the Golden Rule – those owners' and sovereign-states' rights of exclusion are implicitly subject to override in exceptional circumstances such as life-threatening emergencies, including those that confront genuine refugees.

The Government's Rwanda refugee arrangement, as agreed in April 2022, lives up to all these ethical demands and standards. It may not be as effective and sustainable as the [Policy Exchange “Plan B” proposals](#) published in February this year. But it is morally sounder, and more in line with “fairness and humanity”, than Archbishop Welby's alternative suggestions.

The alternatives are all unfair and unpractical

The alternative proposed by the Archbishop is a “safe [and] legal route for persecuted Christians from Iran to reach the UK, or those fleeing famine in the DRC, or conflict in Sudan.” Of course, he does not actually want the list to be limited to Iranians, Christians, Congolese or Sudanese. He is talking about anyone on the UNHCR’s lists of about 92 million people “of concern” to that great refugee organization. Or anyone on its shorter list of about 21 million refugees actually under its mandate. Or on its list of about 5 million “asylum seekers” whom it has not assessed to be refugees. Or anyone on its list of about 1,400,000 “in need of resettlement” – that is, in need of being accepted for settlement by countries such as the UK (or France, Belgium, Ireland... or Rwanda).

The absurd unpracticality of the Archbishop’s scheme is that unless we promptly admitted millions of these people by his “safe and legal route”, the problem of Channel crossings by thousands of “asylum seekers” in small boats would remain just as it is, or worse. The reason is clear. Every disappointed applicant, fired up to come but turned away from the UK’s “safe and legal route”, would be alert to the migrant’s plan B, the illegal small boat or clandestine lorry crossing. Thus, in any given year, the numbers of illegal crossings would be scarcely dented – or might indeed be swollen – whatever the number of refugees we had admitted by the “safe and legal route”.

The UK agreement with Rwanda undertakes to “work together to [i] promote a new fair and humane asylum system, [ii] deter illegal migration and [iii] create safe and legal routes for those fleeing persecution.” The three elements are tightly inter-dependent, not just in drafting but in the real world. The key to making the asylum system sufficiently humanitarian in scale, and to sustaining safe and legal routes, is to deter illegal migration to a degree that can only be achieved by making Channel crossing from France or any other safe country visibly futile as a means to settling in the UK.

And the unintended but real and grave unfairness entailed by the Archbishop’s objections to the Home Office’s Rwanda scheme (or the similar but better scheme proposed by Policy Exchange) is this. By leaving the Channel effectively open to small-boat crossings, the objectors discourage the UK from accepting refugees by resettlement and/or sponsorship. The discouragement is this: in estimating what number can be accepted by resettlement without unfairness to everyone already resident in the UK, the UK authorities would have to allow for scores and scores of thousands of irregular Channel crossers who embarked from a safe country. These Channel crossers, moreover, are overwhelmingly fit and male. And now very many of them set out for Belgium or France from a safe country such as Albania. The refugees they effectively displace from admission to the UK are the more genuinely vulnerable and needy.

If the Archbishop and his many fellow objectors thought about the matter more carefully, they would realise that the policy they prefer is deeply unfair and wrong. The only reasonable, humane and fair scheme

of accepting refugees into the UK is one that systematically blocks irregular asylum-seeking arrivals from safe countries while systematically welcoming resettlement of genuine, UNHCR-identified refugees, to a number open to public discussion, lobbying, and other democratic ways of encouraging generosity as well as responsibility.

The Home Office Rwanda scheme does not include a definite commitment to taking more refugees by UNHCR-sponsored resettlement. But the UK-Rwanda agreement notes that Rwanda has been hosting and giving shelter and protection to hundreds of thousands of refugees, and includes a UK commitment to “resettle a portion of Rwanda’s most vulnerable refugees”, “recognising both [countries’] commitment towards providing better international protection for refugees”. Once the Rwanda scheme (or a similar, better scheme) has closed the gaping and widening hole in the UK border by making irregular Channel crossing futile as a means of entering the UK from a safe country without prior leave, the UK government and people will be in a much better position to make firm and generous commitments to resettlement of refugees in substantial numbers.¹

The objections are all factually wrong

The Archbishop’s Easter Day sermon claimed that the Rwanda scheme “cannot stand the judgment of God”, because “it privileges the rich and strong” and because “sub-contracting out our responsibilities, even to a country that seeks to do well like Rwanda, is the opposite of the nature of God”. In his *Daily Telegraph* article, he adds, about the Channel crossers, “These are people fleeing war, famine and persecution.”

Again, all this, at each point, reverses the truth. It is the richer and stronger among vulnerable refugees who, along with many economic migrants whose asylum claims are fraudulent, make Channel crossings from safe countries and jump the queue ahead of the more vulnerable and needy.

And the Rwanda scheme does not sub-contract anything. The UK as a founding party to the Refugee Convention, did not undertake to receive or process or admit refugees. Its contractual undertaking and obligation is (a) to give certain rights and privileges to those refugees whom it has chosen to admit and given leave to stay, and (b) not to deport anyone to an unsafe country.

And those who cross the Channel in small boats from France or Belgium, even the ones who fulfil the Refugee Convention’s definition of a refugee, are not fleeing war, famine and persecution. There is no war, famine or persecution to flee from in France or Belgium. Those Channel crossers who were fleeing war, famine or persecution had, in reality and law, *ceased fleeing* by the time they embarked. Instead, they were giving effect to their *preference* for the UK over the safe country in which they already were – a country that even if it refused them asylum would not deport them to unsafe territory.

The Archbishop selects a representative example for *Daily Telegraph*

1. As the Memorandum of Understanding with Rwanda records:

The United Kingdom has resettled 25,000 vulnerable people from the Syrian conflict since 2015 and has committed to resettle 20,000 people from Afghanistan in addition to those who were employed by the United Kingdom. Furthermore, the UK opened safe and legal pathways for British National (Overseas) passports in Hong Kong, former Government and military employees in Afghanistan and uncapped humanitarian schemes in response to conflict in Ukraine.

readers to consider: the first Channel crossing asylum seeker to be drowned. This unfortunate young man had left his homeland, “West Kordofan, a Sudanese state bordering the war-torn areas of Darfur and the Nuba Mountains.” It was 2014 (and the document found on him in the Channel said he was born in 1992 and so was 22) when he left home (though relatives told *The Guardian* he was 16 when he left). He was not fleeing war, famine or persecution, according to *The Guardian*: “he dropped out of school ... in 2014 to go work in Libya with his brothers,” one of whom said: “He just thought it was meaningless to study: even if he finished his studies, there would be nothing he can do in Sudan, that’s why he left Sudan.” After two years in Libya, where he worked as a car-washer, he crossed the sea (presumably clandestinely) to Italy and proceeded to France, where he stayed for three years. Some time after the French authorities had, understandably, rejected his application for asylum, he embarked in the middle of the night with a 16-year old boy on a stolen rubber inflatable, with shovels for oars.

In France he had a computer and a bicycle, and even if one thought, improbably, that he would have embarked for England knowing he would only reach Rwanda, he certainly was not fleeing war, famine or persecution in any sense that would give him preference over the millions of more vulnerable and needy people whom we might resettle in Britain. He was an economic migrant, like most if not all of the 27 unfortunate people who were the next to drown, in November 2021, as discussed in Policy Exchange’s paper on Plan B.

The objections ignore the rationale and its likelihood of success

The Archbishop says: “I oppose sending vulnerable and traumatised people more than 4,000 miles away without their consent, and paying another country to take them in.” This is not thoughtful. Those who embark on the Channel from a safe country (France, Belgium...) have usually travelled many hundreds or thousands of miles, and are less vulnerable and less traumatised than many who might be resettled here from places far closer to war, famine and persecution. The 4,000 miles to Rwanda is travelled in scarcely more hours than they chose to spend on the Channel. There is nothing questionable about “paying another country to take them in”, any more than it is questionable to pay the hotels in which they will be housed under present arrangements.

For decades EU states have been deporting asylum seekers back to the first EU country in which they set foot. Is that wrong? Would it become wrong if the deporting EU state made a payment to the receiving EU state? The Archbishop does not suggest that Rwanda mistreats its refugees, as European courts have ruled that Italy and Greece have done.

The UNHCR’s Assistant High Commissioner for Protection [denounced](#) the UK-Rwanda agreement because “People fleeing war, conflict and persecution deserve compassion and empathy. They should not be traded like commodities and transferred abroad for processing.” She was right about what they deserve, but “traded like commodities” was the shallowest

rhetorical misdescription of what is going on. She failed to engage with the rationale, the good sense of discouraging dangerous small boat crossings from one safe country to another, thus freeing up resources of every kind to resettle people who really are fleeing persecution and can be taken in by lawful arrangement, above all with the UNHCR by resettlement.

The point of sending those who attempt small-boat illegal Channel crossings to Rwanda, and – as Policy Exchange’s Plan B recommended (rightly but so far in vain) – of telling them and everyone, in advance, that they will never settle in Britain, is to discourage the attempt. The reasonable expectation is that, once the policy has been shown to be real, attempts will be regarded as futile and will dry up. That was the effect of the Australian Operation Sovereign Borders [OSB]. Opponents of the UK-Rwanda scheme frequently claim that OSB failed, and point to a [2021 booklet by Australian legal academics](#). But one has only to read its pages 6 and 7 to see that it completely fails to refute the Australian Government’s claim – conceded by [scholarly human rights activists](#) who had most opposed the policy – that OSB’s promise that those who come by small boat will never settle in Australia did succeed in deterring irregular maritime arrivals in Australia. Irregular maritime arrivals running at about 24,000 in 2012-13 swiftly fell away, to a couple of dozen in 2018 and effectively zero in 2020. Removal of new arrivals to offshore processing in Papua New Guinea and Nauru became effectively unnecessary after 2014, and the approximately 4,000 removed there in 2013-14 have gradually been resettled in the US, Cambodia, or New Zealand, or returned voluntarily to their home country; only at most a few hundred remain on Nauru.

The Home Office’s Rwanda policy, I believe, somewhat weakens its chances of successfully discouraging attempted Channel crossings by its departures from the Plan B recommended by Policy Exchange. It falls well short of promising that all who attempt will be disqualified from ever settling in the UK. It allows too many exceptions to removal to Rwanda: families and obviously genuine refugees are some among the announced or inferable exceptions. It lays itself open to litigation by outsourcing processing of asylum claims to non-UK officials. Above all, its authorisation by Parliament is only an authorisation, a kind of permission, not a statutory *mandate requiring* the Secretary of State to remove irregular Channel crossers to non-UK territory.

But there is nothing unethical, nothing morally dubious, about the Rwanda partnership policy and inter-governmental agreement. It is to the Government, not the Archbishop and the whole set of like-minded critics, that the moral high ground belongs.

What the Lords Spiritual misunderstand about deportation and asylum

Richard Ekins

In a letter to *The Times* on 14 June, the Lords Spiritual jointly condemned the government's Rwanda policy as immoral. The bishops' letter opens by saying that "Whether or not the first deportation flight leaves Britain today for Rwanda, this policy should shame us as a nation." The flight did not in the end leave, with an anonymous judge of the European Court of Human Rights deciding later that day on "interim measures" that purport to block deportation until challenges to the policy implementation have run their course in the domestic courts. The Strasbourg Court's decision was no more than a press release and was made *ex parte*, so it is difficult to know the true reasons on which that Court chose to intervene. It seems likely, however, that the judge in question took the view, widely held in elite circles, that deporting asylum-seekers to Rwanda was an immoral and shameful policy. In their recent letter, the bishops set out, in pithy form, an argument to this effect, which warrants close study. I argue, with respect, that the bishops have misunderstood the relevant legal and moral considerations.

The letter takes pains not to attack Rwanda, which it hails instead as "a brave country recovering from catastrophic genocide". But deporting asylum-seekers to Rwanda "shames us as a nation", the letter continues, "because our Christian heritage should inspire us to treat asylum seekers with compassion, fairness and justice, as we have for centuries". The UK should certainly treat asylum seekers with compassion, fairness and justice. The question is whether the Rwanda policy, or perhaps any policy of deporting (certain) asylum-seekers to another country, fails this test. The UK grants asylum to many persons who are present in our country and claim asylum. The UK also cooperates with international authorities to resettle vulnerable refugees who are otherwise in the UNHCR's care. The UK also makes provision to accept many persons for whom our country has historic responsibility, including those fleeing Uganda and now Hong Kong. But the UK has always maintained its authority to determine who enters the country and has never accepted that it is obliged – by international law, basic morality or Christian conviction – to permit anyone who seeks asylum to enter the UK in order to claim asylum. And the UK has never faced the situation that has arisen in the last few years, in which tens of thousands have entered the UK by boat.

The obvious problem that the government's Rwanda policy is intended to address is the crisis in the Channel, where tens of thousands of persons

have entered the UK unlawfully (without entry clearance and thus in violation of British immigration law) from France or other European coastal states. The scale of the problem is obvious and getting worse. Some have died attempting the crossing; it seems sadly inevitable that more will die in the future. The people entering the UK by this means have paid considerable sums to people smugglers, who are not careful with human life. Addressing this crisis is a moral imperative, partly to save the lives of those who will otherwise die in future crossings, but also to restore the integrity of the UK's borders, which should not be compromised by organised criminals taking advantage of desperate persons.

The final paragraph of the bishops' letter clearly recognises the evil of people trafficking (in this context, more accurately: people smuggling), before arguing that to end this evil requires global cooperation across every level of society. The apparent rationale for the government's Rwanda policy is that deporting (some) asylum-seekers to Rwanda will show that crossing the Channel is futile, which will discourage others from attempting the crossing. The bishops seem to reject this line of reasoning as morally illicit. The morally right course of action, they insist, is to provide safe routes to enter the UK, for "deportations – and the potential forced return of asylum seekers to their home countries – are not the way". With respect, this is not a convincing chain of reasoning. The UK cannot provide safe routes to enter the UK to all persons who are in need of international protection and/or who wish to claim asylum in the UK. The bishops themselves acknowledge this when they say that "We cannot offer asylum to everyone". This implies that only some people – a certain number each year maybe – will be permitted to enter the UK by safe routes. But what then is the UK to do with others, possibly tens or even hundreds of thousands of others, who enter the UK unlawfully by way of a small boat leaving from France or another European coastal state?

The bishops assert that deporting asylum seekers is immoral and shameful. They imply further that this argument is not specific to Rwanda, a country they do not aim to criticise. Would they then condemn what Policy Exchange has termed "Plan A" – an agreement with France to accept the immediate return to France of persons intercepted crossing the Channel? This would be deportation to another country, with no opportunity to claim asylum in the UK. Much better to be deported to France than to Rwanda, no doubt, but there is no obvious difference in principle. I say that France has an obvious and compelling moral obligation, whatever the political difficulties, to reach such an agreement with the UK, an agreement which would, at a stroke, destroy the people smugglers' business model, thus saving lives and restoring the integrity of our borders. (It would be reasonable for the UK to address the French government's political difficulties and to share in the costs of the wider migration crisis by offering to accept from France one refugee, who had not unlawfully crossed the Channel, in return for each person returned to France.) Arguably, France has a legal obligation to enter into such an agreement, or at least to negotiate seriously to this end, because it, like

the UK, has an international legal obligation to combat people smuggling. An agreement with France of this kind would be precisely the global cooperation the bishops say is required to end the evil of trafficking – but it would involve deportation. The government’s agreement with Rwanda is another example of global cooperation, adopted precisely because the first-best option, agreement with France, is not presently available. While an intervention from the leadership of the Church of England would likely not be helpful, the bishops would have good reason to take France to task for its failure to enter such an agreement.

It is possible, of course, that France might deport asylum seekers to their home countries. If their claim for asylum fails, such deportation would likely be justified. Deportation routinely involves “forced return” to one’s country of origin. It would of course be wrong to forcibly return a person to a country where he or she faces persecution. The duty of non-refoulement forbids this. But in deporting asylum-seekers to Rwanda – or to France – the UK government would not be engaging in “the potential forced return of asylum seekers to their home countries”. The bishops have, I fear, run together deportation with refoulement. The bishops’ concern may be that Rwanda (or France) might wrongly refuse a claim to asylum and then deport the asylum seeker to their country of origin where he or she would face persecution. This is a reasonable concern in principle, but for it to amount to a reason to condemn the government’s policy as shameful and immoral one would have to conclude that it was a serious risk. And then the question would be whether the risk (which is obviously implicit in *any* process of considering asylum claims) could be minimised in some way. In any case, the bishops do not purport to criticise Rwanda in particular, so much as to criticise our government for agreeing that Rwanda should process claims.

If the asylum seekers deported to Rwanda have their claims fairly handled, with genuine refugees likely to be granted asylum in Rwanda (with UK economic support), then where is the injustice? The bishops condemn the government’s policy as if it were indifferent to international protection of asylum seekers, whereas in fact it is an agreement intended to ensure that genuine refugees are protected (and not returned to their persecutors), while also ensuring that the business model of the people smugglers is undermined and the integrity of the UK’s borders is restored. The policy would also end the system of rationing whereby the persons most likely to be able to claim asylum in the UK are relatively prosperous, able-bodied young men.

True, the bishops do spell out some ways in which the government’s Rwanda policy fails “to treat asylum seekers with compassion, fairness and justice, as we have for centuries”. They say:

“Those to be deported to Rwanda have had no chance to appeal, or reunite with family in Britain. They have had no consideration of their asylum claim, recognition of their medical or other needs, or any attempt to understand their predicament.”

The policy is that a certain class of asylum seekers, who entered the UK unlawfully from a safe country, are liable to deportation to Rwanda where their asylum claim will be considered. The rationale for the policy, as noted above, is to protect genuine refugees without encouraging or permitting continued unlawful entry into the UK. It is thus not unjust to fail to consider the asylum claim in the UK, even if the asylum-seeker has family in Britain, or to provide no right of appeal. It would be unconscionable to fly asylum-seekers to Rwanda if they were unfit to fly, but it is not unjust to deport asylum-seekers to Rwanda even if they would benefit from NHS care.

The nub of the bishops' criticism seems to be that the whole policy fails to acknowledge the desperate plight of the asylum seekers in question. It views them as a problem to relocate rather than as a set of persons whom we should help and for whom we should care. For this reason, the bishops go on to note that many of those who might be deported to Rwanda have fled from unspeakable horrors and many are from Iran, Eritrea or Sudan, most of whose asylum claims would under ordinary conditions be likely to be granted.

The letter goes on to say:

“These are people Jesus had in mind as he said when we offer hospitality to a stranger, we do it for him. They are the vulnerable that the Old Testament calls us to value. We cannot offer asylum to everyone, but we must not outsource our ethical responsibilities, or discard international law — which protects the right to claim asylum.”

The first two lines are powerful and rightly so. But the bishops acknowledge, as they must, that we cannot offer asylum to everyone. Making provision for asylum claims to be handled in another country – and for genuine refugees to be protected there – is not an abdication of responsibility. The UK helps care for the stranger and for the vulnerable when it provides support for the UNHCR or for other states that host refugees. In deporting asylum-seekers to Rwanda, France, or any other state in which their claims will be fairly considered, the UK is not walking away from its ethical responsibilities. The bishops wrongly presume that the UK's moral duty is to evaluate each asylum claim and to settle genuine refugees in the UK. As a matter of morality, the presumption is unsound – returning an asylum-seeker to a safe state (France, Germany) through which he passed on his way to the UK is perfectly reasonable and so too is transferring an asylum-seeker to another safe state in which he may find fair treatment and protection. Indeed, this would seem to be an instance of the global cooperation that the bishops otherwise hope to see.

Removing asylum-seekers to Rwanda (or to France) is not to discard international law. Informed perhaps by a mistake often made by the Lords Temporal, the bishops seem to assume that the Refugee Convention 1951 grants asylum seekers a right to enter another country to claim asylum and prohibits their removal to another country. On the contrary, the Convention jealously guards the state's right to deny entry to its territory

and protects the state's right to expel even genuine refugees if they pose a danger to the state or its citizens. The Convention itself distinguishes between refugees based on the lawfulness of their entry to the member state, where lawfulness means compliance with the immigration law of that state. The Convention prohibits the UK from punishing an asylum-seeker who enters the UK directly from a state in which his life is in danger. France does not meet this description. In any case, removal to Rwanda, or return to France, is not punishment. (Deportation of unlawful overstayers or foreign criminals is not punishment either.) Nothing in the 1951 Convention forbids the UK from deporting asylum-seekers to another country, provided that we do not return the asylum-seeker to his persecutors.

One might say, reasonably enough, that the UK should not stand on its legal rights. And indeed, no one seriously proposes criminal punishment for the tens of thousands who crossed the Channel unlawfully last year or the tens of thousands set to do so this year. But in exercising its freedom, carefully preserved by international law, to deport asylum-seekers to a safe third country, the UK is not punishing the desperate but aiming to restore legal order and prevent dangerous travel.

None of this to say that the government's Rwanda policy is unobjectionable. I think it is too general, insofar as it is not limited to the Channel crisis and thus to persons who enter the UK from France or other European coastal states by boat. It is also too vague, applying only to persons whom the Secretary of State designates rather than to all persons who cross the Channel, entering the UK by boat from a safe state. This vagueness undermines the policy's capacity to make clear that crossing the Channel is a futile journey if one's aim is settlement in the UK. The policy is retrospective, which is reasonable in one sense (no one who entered unlawfully has a right not to be deported to another safe state), but is understandably distressing to those who are already present in the UK, increasing the risk of absconding and undermining the impact of announcing clearly that from this date forward crossing the Channel is an unviable route into the UK. The policy involves outsourcing, rather than offshoring, which introduces the risk, or at least the apparent risk, that Rwanda will not be as careful as the UK in handling claims. Offshoring would have been better, for the UK would thus have made quite clear that it took continuing responsibility for handling claims and ensuring genuine refugees are protected.

Importantly, the policy should not have been announced without a very clear legislative mandate from Parliament, which would have meant that the policy's implementation was not contingent on litigation. The hope that the courts, domestic or European, may stymie the policy tends to undermine its intended effect. Relatedly, if the policy had been mandated by clear legislation, it would have been obvious that the government was serious about closing the Channel to unlawful asylum-seekers, whereas the way in which the policy has been advanced invites critics to think that it is a gimmick. Further, any policy of deporting asylum-seekers to

Rwanda or otherwise should have been made together with a commitment to resettle many more refugees otherwise in UNHCR care. In this way, as Policy Exchange argued in February, the UK's policy would be firmly to prevent unlawful crossings, without exposing asylum-seekers to danger, and while generously taking up our moral responsibilities to the most vulnerable refugees.

No doubt further criticisms can and should be made about the detailed operation of the Rwanda policy, if the government in the end carries it forward. At each and every stage, the bishops (and other Christians) are right to stress that asylum-seekers are persons made in the image of God who must be treated justly and humanely. But the principle on which the bishops aim to stand, which asserts that deportation is always wrongful, is groundless. It is neither shameful nor immoral to make clear that unlawfully crossing the Channel is not a means to settle in the UK.



£10.00
ISBN: 978-1-910812-XX-X

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