

BOOK REVIEWS

Nanda Oudejans, *Asylum. A Philosophical Inquiry into the International Protection of Refugees*

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Nanda Oudejans, Asylum. A Philosophical Inquiry into the International Protection of Refugees (diss. Tilburg) (Oisterwijk: Boxpress, 2011), 246 p.

This last decade has seen a flurry of conceptual thinking on topics related to the mass movement of people across borders. Whether regarding membership, culture, identity, law or sovereignty itself, an impressive intellectual effort has been made to catch up with the vertiginous changes of a rapidly globalizing world in which freedom of mobility seems to be decreasing rather than increasing. The topic of asylum, or the protection of refugees, however, has remained marginal in this enterprise, and has not received the same ambitious, concerted and comprehensive philosophical attention that many of the other themes have. That is, until now. Nanda Oudejans's dissertation, *Asylum: A Philosophical Inquiry into the International Protection of Refugees*, was defended *cum laude* in Tilburg in September 2011, and lauded with the *Max van der Stoel Human Rights Award* in 2012, and with the *Dissertation Award 2013* of the Netherlands Association for Philosophy of Law.

With this dissertation, Oudejans enters the debate on three fronts. First, she sinks her teeth into the central concepts of international refugee law, and how this has been reshaped in the last fifty or so years. Second, she mobilizes Hannah Arendt's thinking in an engagement, critique and refutation of the positions of two of the foremost political thinkers of our time: Seyla Benhabib and Bonnie Honig. Third, she takes the philosophical inquiry to a significantly challenging level, by proposing a profound reframing of the debate using an original Heideggerian theory of sovereignty and asylum. Each of these engagements is significant on its own terms.

Oudejans first outlines the international protection of refugees as it has been developing in international law. In particular, she analyzes the notion of refugee in its conceptual context where, she argues, the refugee has been developed into a temporary character, somebody who may be here, but only because s/he cannot return home, or at least not right away. Often compared with stateless people, the refugee is nevertheless not equated with that category, but is instead constructed as a *de facto* stateless person, in opposition to the *de jure* stateless person. Briefly, a *de jure* stateless person is one who has no legal connection to any state, i.e. a nationality, while a *de facto* stateless person is one who may have a legal connection to a state, but where this connection is inconsequential because

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that state will not be inclined to act on the person's behalf on the international plane. Whereas, as Oudejans notes, a *de jure* stateless person has to be accepted as 'being here,' the *de facto* stateless person does not, since this *de facto* status only entails a need for temporary protection. Moreover, recent years have seen the development of the notion of 'temporary protection,' which has come to mean that the limbo of the refugee, who is neither here nor there, has become a permanent state. The camp has become the new home of the refugee, the materialization of her being neither here nor there, neither inside nor outside, neither welcomed nor *refoulé*. Oudejans identifies the inside/outside binary as central to the concept of the refugee, as it has been developed, and adds to that the parallel distinction of 'own/foreign,' which operates in the assessment of claims by asylum-seekers. In order to even enter the limbo of the refugee, asylum-seekers first need to frame their claims in such a way as to be recognized by the receiving polity. This has become all the more important since asylum-seekers are increasingly seen as potential irregular migrants. This conflation of asylum and immigration control further reinforces the inside/outside and 'own/foreign' binaries. And, as these binaries become stronger, so does the limbo, the nowhere in which refugees find themselves.

However, the limbo of the refugee, or as Oudejans prefers to call it, 'the being nowhere in the world,' only sets the stage for the main question of this dissertation, which is: Why would we, as members of a democratic polity, care about the refugee? Why not dissolve the limbo, why not give refugees a place in the world? Why not accept them as being here, rather than nowhere? This question comes out of an engagement with political philosophers and in particular with the question of the sovereignty of a democratic polity, which Oudejans sees as foundational of both the inside/outside and 'own/foreign' dichotomies. In order to answer this question she pushes the response to the claim put by the asylum-seeker to deeper dimensions. In her words, the refugee 'challenges the legitimacy of our polity, calls into question the right we claim to select some as members while discard others as such' (p. 117).

This part of her analysis starts off with reference to Hannah Arendt's famous notion of 'the right to have rights,' and in particular by taking issue with Seyla Benhabib's deployment of this notion in her seminal *The Rights of Others: Aliens, Residents and Citizens* (2004). To begin with, though Benhabib relies heavily on Arendt's right to have rights, she does not, according to Oudejans, address the problem of refugees, which was what prompted Arendt's theorizing in this direction in the first place. Instead, Oudejans describes Benhabib's theory as addressing those aliens who have already been admitted into a polity and focuses on the topic of integration, rather than membership. Even if one ignores this, one would quickly run, according to Oudejans, into Benhabib's reliance on the idea that the alien, or the refugee, can somehow, based on some universal moral right to membership, enjoy a type of equivalence or reciprocity. In other words, the right to have rights would entail a right for the asylum seeker to address the receiving state on an equal basis. According to Oudejans, however, this denies the very

problem raised by Arendt's notion of the right to have rights, since the refugee has lost her or his ability to speak as a 'We,' and is ultimately subjected to a decision that the polity, and the polity alone, will take – including a decision of non-admission.

Next, Oudejans explores Bonnie Honig's thinking on this topic. Honig's more agonistic theory of democracy is inspired by examples of civil society successfully mobilizing political action, for example on behalf of the Haitian refugees who were detained in Guantanamo in the 1990s. Honig proposes the notion of 'proximity,' rather than a moral universal right, as creating the ground for an agonistic collective struggle for membership. However, Oudejans finds this basis too contingent, for it relies on unknown forces that allow some to register on the political radar, and others not. In other words, one proximity may generate a lot of empathy, the other less so.

Crucially, she arranges the two thinkers along 'historical' lines in order to announce her more existentialist goal: If Benhabib relies on the history of never-ending cultural integration by means of the dialectic of deliberation, and if Honig relies on the collective care for a political future that needs to be struggled for, Oudejans wants to base herself on the facticity of the polity itself, its finitude, its *Geworfenheit*, or *thrownness*, to use the Heideggerian notion that she deploys. It is here that she seeks to be able to answer the question of why a polity would (and not should) care for those who seek asylum. The one who has lost her capacity to say 'We' reminds the 'We' of the receiving polity of its own finitude. In this sense, refugees are radically different from 'regular' immigrants: 'Immigrants lay bare the possibility of a different order; refugees confront the polity with the possibility of no order at all' (p. 219).

In addressing the question of why a polity would care for asylum seekers Oudejans develops an original Heideggerian theory of sovereignty, and does so by rereading the existentialist analytic of *Dasein* from the perspective of the first person plural, as a collective selfhood. Though Heidegger was famously not a political philosopher, his work has been very important to some political philosophers, not in the least to Arendt, and in particular to some of the thinkers that are very present in this dissertation, such as Agamben, Nancy, and Critchley. However, as Oudejans is quick to point out (p. 131-2), these thinkers have focused on developing Heidegger's notion of *mitsein* or 'being-with', while she is determined not to 'let *mitsein* sway *Dasein*' (p. 132).

This very rich dissertation deserves more space than what this book-review section allows, for it in fact contains three important pieces of work in one. Each of these three offers a significant engagement that cannot be ignored. In this sense, it is a groundbreaking intervention that fully deserves the predicate of excellence that two separate juries have attached to it. Indeed – future scholars interested in approaching asylum philosophically would do well to situate themselves with regard to Oudejans.