

Exile as Legal Exclusion: From Roman Penal Sanctions to Contemporary Refugee Law

Introduction

Exile is often perceived as a historical punishment belonging to ancient legal systems. Yet the experience of exclusion from one's political community has not disappeared. From Roman penal sanctions such as *interdictio aquae et ignis* or *deportatio* to contemporary forms of forced displacement, exile persists as a legal and political mechanism of exclusion.

This article explores the transformation of exile from a criminal sanction in Roman law into a broader socio-legal condition reflected today in migration, asylum, and refugee law. By tracing this conceptual continuity, it argues that modern forced displacement can be understood as a reconfiguration of the ancient logic of exile within the framework of international law and human rights.

I. Exile in Roman Law

As we know, Roman antiquity conceived exile as a punishment imposed for serious crimes, consisting in the obligation to leave one's country and, in most cases, the impossibility of returning either temporarily or permanently. Although exile could sometimes replace capital punishment (while in other situations it existed as an independent sanction), the breaking of ties with the homeland, alienation, and the denial of fire and water were often perceived as more dramatic than death itself.

In a broad sense, *exilium* appears in classifications of penalties under several different denominations: *interdictio aquae et ignis*, *deportatio in insulam*, *deportatio, relegatio in insulam*, and *relegatio vel in perpetuum vel ad tempus*¹. However, the term exile was applied only to the first three forms of punishment, since they entailed *media capitis deminutio*—that is, the loss of citizenship and family ties, though not of personal freedom. By contrast, the loss of liberty automatically entailed the loss of citizenship,

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1 Roselyne Immongault Nomewa, *Les exilés romaines et l'espace répulsif dans l'empire romain : l'apport des sources littéraires latines*, CHA, 2014, p. 4. At the time of receipt of the manuscript, all links in this article were accessible.

since *status civitatis* could not exist independently of *status libertatis*².

The prohibition of fire and water, used as a punishment during the Roman Republic³, is documented from the middle of the second century BCE⁴, though it is likely to have existed earlier. This sanction disappeared during the imperial period under the Severian dynasty in the early third century CE⁵. From that moment onward, exile as a punishment generally implied isolation on an island or in a remote place outside the city but still within territories controlled by Rome, where the individual was legally protected only by the norms of *jus gentium*⁶.

Aqua et igni interdictio was the formula used to designate exile for centuries. Connected to a cosmological representation, it may reflect, on the one hand, a concern for purifying the territory contaminated by crime and, on the other, a continuation of ritual practices in which these elements were invoked-such as marital oaths or purification rituals (*purgatio*) performed after returning from funerals, meant to remove contact with the world of the dead⁷. As a mixture of the sacred and the profane (the sacredness of the hearth and the lustral water), the prohibition was based on the belief that the entire community within the city walls was affected by crimes committed within it. The ostracization of the criminal represented both an exclusion from the civic community and from the religious community, serving as a substitute for death⁸.

Deportatio, introduced during the reign of Augustus, implied the loss of citizenship and civil rights. In the case of women, the sanction of *relegatio* was generally applied. Unlike *deportatio*, *relegatio* did not entail *media capitis deminutio* and therefore allowed the individual to retain the status of a free person and citizen⁹- as in the case of Ovid, whose property was not confiscated.

*Relegatio*¹⁰, which did not involve *media capitis deminutio*, could be either perpetual or temporary. Ulpian distinguished two forms of *relegatio*: one in which the individual was forbidden to reside in certain regions, and another in which a specific place of

2 Valerius M. Ciucă, *Drept roman. Lecțiuni*, Ediția a II-a, addenda, corrigenda et incrementa, Editura Universității "Al. I. Cuza", 2014, p. 277.

3 Roselyne Immongault, *op. cit.*, p. 5.

4 Yann Rivière, « Bannissement, expiation et deportatio en mer dans la Rome antique », *OTIVM, Archeologia e Cultura del Mondo Antico*, DOI 10.5281/zenado.551 1780, www.otium.uactnpg.it No. 3, Anno 2017- article 8, p. 3.

5 *Id.*

6 Valerius M. Ciucă, *op. cit.*, p. 278.

7 The term designated a procedure of expiation first attested during the Second Punic War, consisting in immersion in the sea of an individual considered monstrous because he contradicted the order of things either because of physiological traits (hermaphroditism for example) or because of a criminal act that exceeded the category of murder (paricide). See Yann Rivière, *op. cit.*, p. 3.

8 Pierre, Christine, « L'exil, une conception du détournement dans l'Antiquité », *Exils*, édité par Hyacinthe Carrera, Presses universitaires de Perpignan, 2010, <https://doi.org/10.4000/books.pupvd.3070>.

9 Roselyne Immongault, *op. cit.*, p. 13.

10 Extract from Ulpian's book (title missing): "there is a great difference between *relagatio* and *deportatio*: *deportatio* removes the right of citizenship and property, *relagatio* preserves these rights, except in the case when the goods are confiscated. Por relega: The Emperor, the Senate, prefects and provincial governors, but not the consuls. He who, having lost the right of citizenship, possesses goods, is summoned to court by creditors by appropriate legal action.", in *Les 50 livres du digeste de l'Empereur Justinien*, Édition traduite et annotée par Dominique Gaurier, Éditions du Mémoire du Droit, 2017, p. 2272, par. 22.14.

residence was assigned. According to the *Lex Julia de adulteriis*, the person retained the status of a free citizen and was deprived of property only in exceptional cases, when partial confiscation of assets was ordered.

II. What Has Changed Since Antiquity?

Exile still exists today, but in transformed forms such as refuge, migration, displacement, or self-exile in the face of persecution, war, or poverty. As in the past, leaving one's country implies an almost insurmountable breaking: a loss of identity, of name, of personality, and a relocation into an unfamiliar environment governed by new rules that may transform - or distort - one's life.

Exile entails solitude, self-discovery in a time different from ordinary life, anxiety¹¹, and existential uncertainty. In this respect, a testimony that has endured across centuries is that of Publius Ovidius Naso, author of the foundational work of exile literature (*Tristia*), who was deported to the Tomitan shore of the Black Sea. In a letter to Maximus, he describes alienation and the plunge into the unknown:

“Having lost my homeland, I lost my peace of mind. The people among whom I live, to make their wounds doubly deadly, dip their arrows in the venom of vipers¹².”

Unlike the exiles of antiquity, modern expatriates migrate in large numbers for a variety of reasons, often losing their social and political identity. Although the term exile is no longer commonly used, departure remains the common element in all forms of displacement: individual exile or mass exodus, internal displacement or cross-border movement accompanied by asylum requests, forced or voluntary migration, or refuge¹³.

Exile can therefore be associated with uprooting, loss, and the impossibility of return. Yet paradoxically, exile may also mean leaving in order to know oneself or to achieve emancipation¹⁴. The French dictionary *Le Petit Robert* defines exile as prohibition, deportation, expatriation, expulsion, proscription, relegation, refuge-loss, separation, and removal¹⁵.

Exile also reflects a relationship of power. While exile spared individuals from physical death, it did not guarantee the continuity of material, cultural, or civic life. It often implied confinement within a suspended space and time in which work, rights, and social relations were restricted¹⁶.

11 In the case *Guzzardi vs. Italy* (application no. 7367/76, judgment on November 6th, 1980).

ECHR decided that moving the applicant to an isolated small island and placing him in a compulsory residence in a small area was a deprivation of his liberty, so a human rights violation.

12 Pierre C., *op. cit.*

13 Marie-José Domestici-Met et Alexis Nuselovici (Nouss), *Mobilités contemporaines : de l'exil à l'expatriation*, Presses Universitaires d'Aix-Marseille, 2019, p. 9.

14 Constance de Gourcy, « Renoncer pour partir, partir pour renoncer ? La dimension exilique des migrants autonomes », in Marie-José Domestici-Met et Alexis Nuselovici (Nouss), *Mobilités contemporaines : de l'exil à l'expatriation*, Presses Universitaires d'Aix-Marseille, 2019, p. 35.

15 *Le Petit Robert, Dictionnaire alphabétique et analogique de la langue française*, Ed. Le Robert, 2026, p. 997.

16 *Exil/ Desexil. Histoire et globalisation, sous la direction de Marie-Claire Caloz-Tschopp, Valeria Wagner,*

Exodus, as a mode of existence, constitutes a social fact. The political and social construction of the refugee or migrant requires continuous reconsideration of legal and political borders, as well as of juridical, statistical, and moral classifications¹⁷.

In 1943, Hannah Arendt proposed an unusual definition of the refugee - without political connotations - as a person who needs assistance and arrives without resources in another country¹⁸. Arendt famously spoke of the “right to have rights,” the foundation of all political institutions. The loss of place, political belonging, and citizenship reduces a human being to nothing more than a human being: “Without citizenship, without opinions, without any title that would identify him, not representing anything but his own unique identity, lacking expression and action... man loses any significance”¹⁹.

The evolution of International Refugee Law begins with Nansen passport in 1920 and the creation of the Nansen International Office for Refugees, the creation of the League of Nations High Commissioner for Refugees (1933–1946), and of the International Refugee Committee (1938–1947).

The contemporary international refugee regime emerged after the Second World War. According to the Statute of the UNHCR, the 1951 Geneva Convention, and the 1967 Protocol, five criteria were established to define refugee status. Yet these criteria still fail to encompass the full range of motives underlying forced migration today.

Nevertheless, the central criterion for refugee protection remained the same: the inability or unwillingness of the country of origin to provide protection. Today, the UNHCR uses a broader operational concept - “persons in need of international protection” - which includes refugees, asylum seekers, returnees, stateless persons, and internally displaced persons.

Modern refugee crises have generated new forms of activity at global, regional, and national levels. One development is that forced migration channels increasingly function as relatively accessible mechanisms for legalizing permanent relocation. This has intensified migration flows while simultaneously reducing the proportion of refugees who receive comprehensive assistance. Another major issue concerns the growing dissatisfaction of populations in host countries.

Does a right to exile exist today? If we consider migrants as exiles, they may be included within the broader exilic condition, allowing for a more comprehensive analytical perspective²⁰.

Modern exile is often an experience of oppression²¹. Paradoxically, although

Marion Brepohl, Graziela de Coulon, Ilaria Possenti, Teresa Veloso, Ed. L'Harmattan, 2019, p. 43.

17 Hélène Thioollet, « Exodes et politique d'asile : le cas érythréen », p. 287, in Patrick Boucheron (sous la direction) *Migration, réfugiés, exil*, Collège de France, Odile Jacob Éd. 2017.

18 Marie-Claire Caloz-Tschopp, « Mondialisation, développement, résistance. Du rêve utopique à la praxis d'utopie dys-topique », p. 86, in Patrick Boucheron (sous la direction) *Migration, réfugiés, exil*, Collège de France, Odile Jacob Éd. 2017.

19 Hannah Arendt, *The Origins of Totalitarianism*, Humanitas Publishing House, Bucharest, 1994, p. 397.

20 Danièle Lockak, « Protéger ou refouler: le droit d'asile à l'épreuve des politiques migratoires », pp. 303-305, in Patrick Boucheron (sous la direction) *Migrations, réfugiés, exil*, Collège de France, Odile Jacob éd., 2017.

21 Frédéric Mégret, “Exile As A Human Rights Violation,” *Fordham International Law Journal*, Vol.47: 4, 2024, p. 578.

international refugee law contains an “exile” component-focusing on persons seeking asylum-it concentrates primarily on arrival in the host state rather than on departure from the country of origin²².

In the Roman Empire, exile as punishment was arguably less severe. Cicero, though forbidden to approach Rome within a radius of 800 kilometres, could still pursue intellectual activity. Ovid, exiled to the margins of the empire, remained within its imperial sphere. Seneca was exiled to Corsica only temporarily. By contrast, a person exiled from another country could not find asylum in Rome²³.

Today, according to international law, individuals may request asylum (although its granting remains at the discretion of the receiving state) and are protected by the principle of non-refoulement. States increasingly seek to protect persons persecuted in their countries of origin by promoting relocation, repatriation, and integration measures.

Nevertheless, the global human rights system still fails to guarantee protection for citizens against tyrannical states, and no universally accepted rights exist to ensure protection abroad.

Modern exiles lose the exercise of political rights, property rights, and the right to a decent life in economic, social, and cultural terms. They lose the rights connected to their presence within their country²⁴ as well as their stability and identity²⁵. From the perspective of international human rights law, exile may therefore be considered a violation.

A growing body of doctrinal opinion supports this view, including scholars such as R. Yewdall Jennings, Christian Tomuschat, Megan Bradley, Flavia Zorzi Giustiniani, Luke T. Lee, and Frédéric Mégret. The central idea is to strengthen the link between states and their citizens to prevent migratory flows, while also reinforcing the responsibility of destination states to provide the social and economic resources necessary for refugees²⁶.

In the 1951 Convention definition of a refugee, the key standard for assessing asylum claims is a well-founded fear of persecution. Yet persecution itself constitutes a violation of human rights, as explained by the Human Rights Committee, for which the state of origin is rarely held accountable²⁷.

Recognizing exile as a violation of human rights would imply acknowledging a right of return for those wishing to repatriate, as well as a right to compensation for refugees.

This perspective was reflected in the adoption of the Declaration of Principles of International Law concerning Compensation for Refugees²⁸ complementing the

22 *Id.*

23 Robert F. Gorman, “Citizenship, Obligation, and Exile in the Greek and Roman Experience,” *Public Affairs Quarterly*, Jan., 1992, Vol. 6, No. 1, [Special Issue on Refugees], p. 16, Published by: University of Illinois Press on behalf of North American Philosophical Publications Stable URL: <https://www.jstor.org/stable/40435793>.

24 Frédéric Mégret, *op. cit.*, p 559.

25 *Ibid.*, pp.563-564.

26 *Ibid.*, p, 580.

27 *Ibid.*, p. 574.

28 Adopted in April 1992 at the 65th Conference of International Law Association, in Cairo. The Declaration stipulates that : ”a state is obliged to compensate its own citizens forced to leave their homes to the same extent as it is obliged by International law to compensate a foreigner”.

Declaration of Principles of International Law concerning Mass Expulsion²⁹. The declaration approaches the refugee issue from the perspective of the responsibility of countries of origin, emphasising the preventive nature of protection.

Conclusion

The historical trajectory of exile reveals a remarkable continuity between ancient legal institutions and contemporary forms of displacement. In Roman law, exile functioned as a penal sanction designed to remove the offender from the civic and religious community, thereby restoring the moral and political order of the city. The loss of the homeland, the rupture of civic belonging, and the deprivation of social participation constituted the essence of the sanction.

Although modern legal systems no longer treat exile as a formal criminal penalty, its structural logic has not disappeared. Contemporary phenomena such as forced migration, asylum seeking, and refugee displacement reproduce, in transformed ways, the experience of exclusion from a political community that characterised ancient exile. What has changed is not the condition itself but the legal framework through which it is interpreted.

International refugee law, particularly since the adoption of the 1951 Geneva Convention and the development of the UNHCR mandate, has sought to transform exile from a punitive mechanism into a field of protection. Yet this transformation remains incomplete. Modern exiles often experience the loss of citizenship, political participation, economic security, and cultural belonging—conditions that echo the ancient experience of civic exclusion.

Recognising exile as a potential violation of human rights opens an important doctrinal perspective. Such recognition would imply not only the protection of displaced persons in host states but also the responsibility of states of origin for the conditions that force individuals to leave their homeland. In this sense, the ancient institution of exile invites contemporary international law to reconsider the relationship between citizenship, political belonging, and the protection owed to individuals who are compelled to live outside their country.

Ultimately, the persistence of exile in different historical forms reminds us that the most fundamental right identified by Hannah Arendt— the “right to have rights”— remains inseparable from membership in a political community. The legal challenge of the present is therefore not merely to regulate migration but to ensure that those who are forced to leave their homeland do not lose their place within the moral and juridical order of humanity.

29 Adopted by International Law Association at the 62 Conference in Seoul, 1986 (ILA 1986:12-18).