

The moral irrelevance of geographic proximity in the protection of refugees

Expecting Lebanon to contribute more to the protection of Syrian refugees than the Czech Republic is ethically unjustified

Presentation by
Boldizsár Nagy
at the conference

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Overview of the issues

- Starting challenge and the message of the talk
- The identification of the moral agent
- The content of the moral obligation
- The moral community within which the moral obligation applies
- The moral irrelevance of geographic proximity/distance
- The possible bases of a principled responsibility sharing
- Concluding remarks

THE STARTING CHALLENGE AND THE MESSAGE OF THE TALK

Starting challenge

The mantra to be addressed here is:

„**Refugees** (frequently referred to as ‚migrants’) **ought to stay in the first safe country next to their own country.** That is where they should seek and find safety.

No onward travel is justified based on the threat of persecution or harm”

The message

If geographic proximity is not a moral basis for demanding greater contribution to protection of refugees by states close to the country of origin then responsibility sharing is to be based on other principles (cultural, utilitarian /economic/, security based) and therefore the EU, Europe and the wider world must share in the task of providing protection as a public good.

The message

The principles of that responsibility sharing may be debated. However, as geographic proximity (unless it has cultural impact) is not a principle of responsibility sharing, the expectation addressed to „safe third countries” and „countries of first asylum” to contribute more to the protection of refugees than the distant states is morally unfounded.

The focus of this talk

This talk is **not about**

- first country of asylum
- safe third country

rules, or the direct critique of them.

It is about the question,
whether **countries that are closer** to the country of origin **are morally more obliged** to offer protection than more remote countries?

*Is expecting Lebanon to contribute more to the protection of Syrian refugees than the Czech Republic **morally** justified?*

This is **not about the practicality** of the allocation. Certainly **expecting Lebanon to take in as many refugees as the whole of the EU** can not be justified with practical arguments

WHO IS THE MORAL AGENT?

Constructions of moral obligation

Individuals
are the
moral
agents

There is a
moral (or
morally
relevant)
obligation to
protect the
refugee

In a
democratic
society the
state is the
tool of the
society to
realize its
moral ideals

Protection of the
refugee

States are
moral
agents

There is a
moral (or
morally
relevant)
obligation to
protect the
refugee

**The legal obligation to
protect refugees is
only a derivative of the
moral obligation!**

Individual obligation

Betts and Collier: A sense of compassion – bedrock of human condition – „it is sociopathic not to experience it” p 100

The moral community of which we are members is broader than our political community. „This is because of **shared humanity**” (p.100) - **duty of rescue**

Humanitarian concern – **the Good Samaritan.**” Carens „We have a duty to admit refugees simply because **they have an urgent need** for a safe place to live **and we are in a position to provide** it.” 2013, p. 195

Equality and equal dignity of every person requires that **an attack on the human dignity of any person** (therefore: a brach of basic human rights) **not be left without a response** by others. **Tolerating injustice is immoral**

Individual obligation

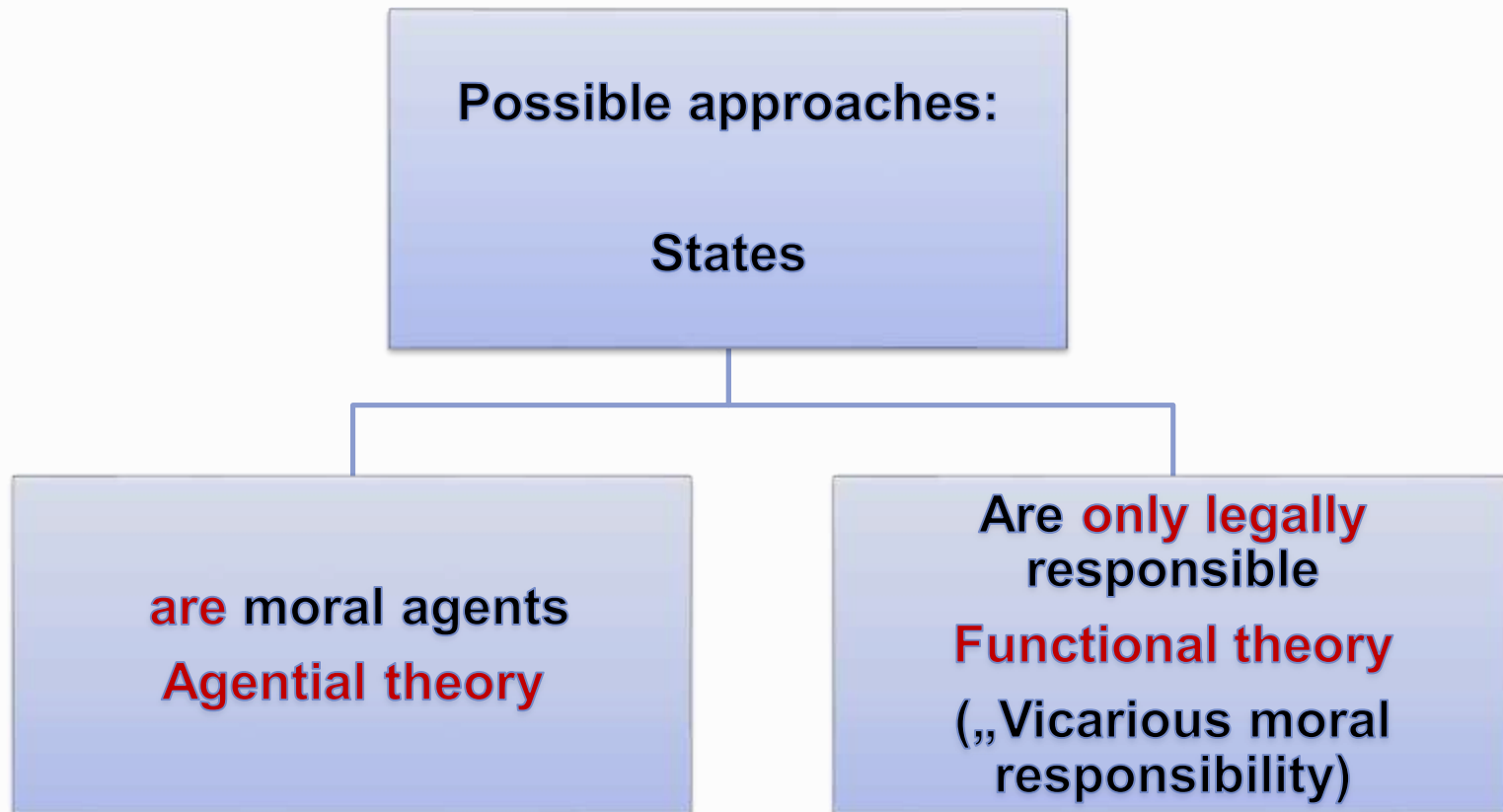
Singer, P. „if it is **in our power to prevent something very bad** from happening, **without thereby sacrificing anything morally significant**, we ought morally, to do it” 1972, p. 231

There are many other (not primarily moral) reasons, why to protect refugees!

See e.g. Nagy , 2013

Can states be moral agents?

They are actors – have goals, aspirations, intentions, reactions, allies, enemies. Are they, nevertheless **amoral** - lying outside the sphere to which moral judgments apply?



Based on Fleming, (2017)

A few arguments in favour of the moral agency of states

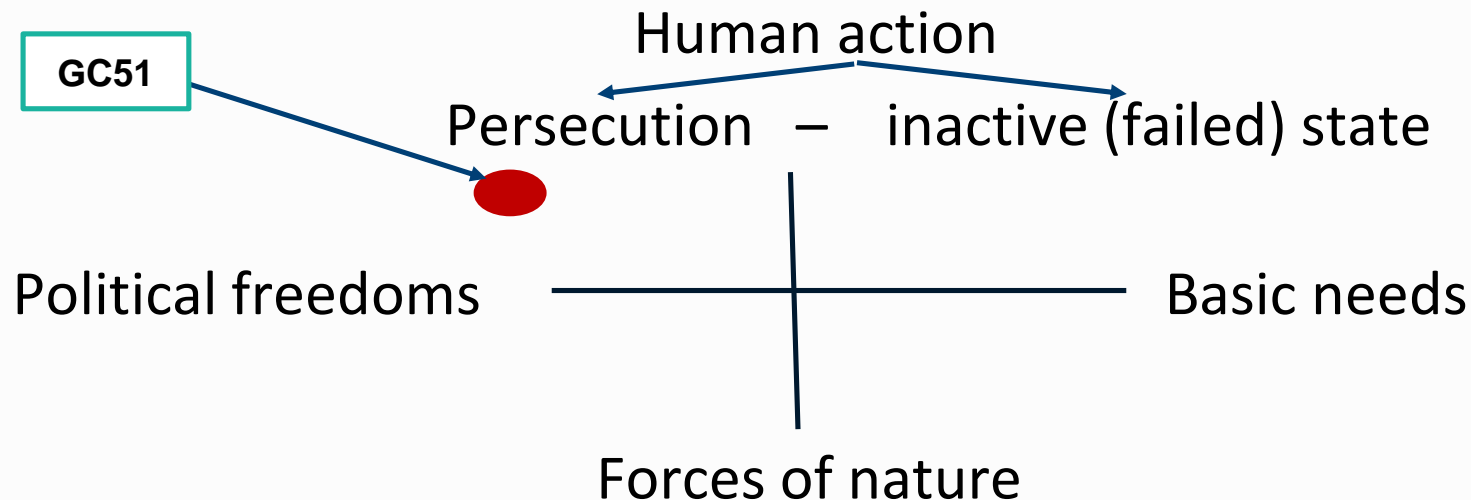
- It is capable of embodying values, goals and ends and take deliberate actions to pursue them (R. Goodin)
- T. Erskine:
 - Identity that is more than the sum of the constructive parts
 - Decision making mechanism
 - Mechanism to translate decision into action
 - Identity over time
 - Conception of itself as a unit
- States have „volonté distincte” from the population as IGOs have from member states

WHY DO REFUGEES DESERVE PREFERENTIAL
TREATMENT OVER OTHER FOREIGNERS AND WHY IS
PREFERENCE OF FELLOW NATIONALS (PARTIALISM)
NOT UNCONDITIONAL?

Why protect and assist refugees and not others?

Who is the refugee, whom to protect?

- **Refugee definitions** (definitions of those entitled to international protection) **are** arbitrary (**politically determined**) – compare Geneva 51 and the AU convention + QD of the EU
- It is an indeterminate and historically changing group
- **Debates about the use of the term(s)**: Shacknove, Betts, Crawley-Skleparis



Why protect and assist refugees and not others?

The **duty to assist extends beyond refugees** - alleviation of poverty and other vulnerabilities is the duty of the international community – see e.g. **2030 UN Sustainable development goals**, and the **human security approach**

Specificities of international protection

Historic: political struggle of the liberal states with the regimes committing horrific acts of persecution (Bolshevik Russia, Turkey after WWI, then Germany and other fascist powers and after 1945 Stalin's Soviet Union and the Communist states)

Structural: the need for a specific entry right is necessitated by the exclusion regime based on borders and sovereignty. **Admission is the only remedy against locking in the person** to a persecutory environment (state, society, geographic area)

Four counterarguments against (automatically) preferring citizens over others

- The **relationship** of preference ought to be **of moral value** (**No duty to prefer a fellow national fascist** over a foreign social democrat!)
- **Loyalty: not necessarily concentric circles** where nation comes after locality. **Think of ethnic/national minorities** who prefer their ethné over the fellow nationals
- Preferring nationals **may run counter to the overall duty to alleviate poverty**. (Welfare chauvinism)
- The **community of citizens is a fiction**. The society consists of **nationals and (resident) foreigners**. The state must serve both groups forming the society.

THE CONTENT OF THE MORAL OBLIGATION

The content of the obligation

Protection is defined by the International Committee of the Red Cross (ICRC), and adopted by the Inter-Agency Standing Committee (IASC), as: “All **activities aimed at** obtaining **full respect for the rights of the individual** in accordance with the letter and the spirit of the relevant bodies of law (international human rights, humanitarian law and refugee law).”

Betts-Collier: The duty is to „restore **circumstances as near to normality** as it is practically possible for us to do”

**WHO CONSTITUTES THE MORAL COMMUNITY? CAN
STATES BE EXCLUDED FROM IT?**

The perimeters of the moral community

Morality is linked to (imagined) communities, it is a bonding and identity creating feature. „Communities of character” – says Michael Walzer in national context.

States as actors may form or imagined communities. EU, „Europe”, „Latin-America” claiming to pursue a definite value-system (ethics).

The largest such community is **the international community of states** (UN!)

Indices: collective security, responsibility to protect, common heritage of mankind, common concern of mankind, agenda for sustainable development

1951 Conf recommendation: [the conference] **recommends** that Governments continue to receive refugees in their territories and that **they act in concert in a true spirit of international cooperation** in order that these refugees may find asylum and the possibility of resettlement.

GC 1951, preamble speaks of **unduly heavy burden** on some states, which constitute an international problem, **that can only be solved by way of international co-operation**

The perimeters of the moral community

New York Declaration for Refugees and Migrants, 2016:

„We have considered today **how the international community should best respond** to the growing global phenomenon of large movements of refugees and migrants. ... We are determined to save lives. **Our challenge is above all moral and humanitarian**. Equally, we are determined to find long-term and sustainable solutions. ... **We acknowledge a shared responsibility** to manage large movements of refugees and migrants...” (Points 2, 10 and 11)

„To address the needs of refugees and receiving States, **we commit to a more equitable sharing of the burden and responsibility for hosting and supporting the world's refugees**, while taking account of existing contributions and the differing capacities and resources among States.”

States must not limit their moral community in respect of refugees to their political, economic, regional or other groupings

Accepting moral duties (responsibility sharing) inside, but denying it to non-members is unacceptable **in this context**

- **Non-member states usually are not allowed to join** the groups that exclude them, that is why they do not have a recognised claim to responsibility-sharing within the group (EU and Turkey, e.g.)
- **Refugees frequently remain in countries** not belonging to a narrower moral community because members of that community **prohibit their onward travel through their non-entrée policies.** (Stranded refugees in Libya)
- Mere distance of the non-member state is not a justification to exclude from the moral community

THE MORAL IRRELEVANCE OF GEOGRAPHIC PROXIMITY/DISTANCE

Distance/proximity in itself is morally irrelevant – general theses

Proximity does not create a moral ground justifying larger/more intensive obligation.

It is only relevant if proximity is a precondition for the performance of a moral duty („rescuing the drowning person”).

All other spatially determined communities („our town”, „our region”) are cognitive creations, mental constructions within which physical distance usually is irrelevant when moral duties are defined. (The remote rich must help the local poor through taxation, men and women from the center have to protect the border)

Membership in spatially imagined communities (e.g. citizenship in a country) usually assumes equality in respect of that community. Differentiation in morally relevant duties is not based on geographic distance.

Proximity, distance and states

Humanitarian intervention, R2P – distance is not an issue

Refugee protection - surrogate protection instead of the state of origin.

Same logic as in R2P: the state is unable or unwilling to exercise its sovereign functions - protection offered is

- a global public good
- offered to the „world’s refugees” (New York Declaration)

Hathaway and Neve, 1997

In an ideal world a system to share the burdens and responsibilities of refugee protection would operate at a global level. A universal system could spread the costs of providing asylum among the largest number of states, thereby minimizing the risk of an unacceptably high cost being imposed on any particular government. It is also morally attractive” (p. 187) But impossible for Realpolitik reasons (ibid)

Propose regionalised solution „interest-convergence groups”

Proximity - further reasons for its irrelevance

Hathaway and Neve: (1997) 4 factors influencing the place of asylum

„it makes most sense to protect refugees where they are **safest**, most **self-sufficient**, **least** likely to experience **social conflict** and ultimately in the **best position to repatriate** if and when safety is restored in their country of origin” (p.204)

„... **geographical proximity** between the state of asylum and the country of origin **is desirable** to allow for **ongoing contact between refugee and stayee communities**, and **ultimately to facilitate repatriation**” (p. 204)

Safety and self – sufficiency more likely in remote (developed) countries

Threat of social conflict: context dependent, both nearby and remote country may be threatening

Proximity justification - challenged

Proximity

2 reasons

Contact with stayee community

Ease of repatriation

1996 ↔ 2019

Internet, mobile

unlimited air capacity
(DHL – 500 flights/day!)

There is **no morally relevant justification of preferring an asylum country close to the site of persecution** if that is not the choice of the refugee

Even, from a practical point of view **2,5 of the 4 requirements** probably are **better met in more remote** (developed) states

Proximity may be relevant as the refugee's choice, and, indeed in some instances cultural closeness may mitigate trauma.

THE POSSIBLE BASES OF A PRINCIPLED RESPONSIBILITY SHARING

Solidarity

Legal obligation	Legal obligation	Fairness	Generosity
Distributive justice	Distributive justice	Corrective justice	Ex gratia
Performing as required by pre-determined law – „loyal co-operation” in the EU	Additional performance in extraordinary situation - helping out the one under particular pressure	Performing either without a legal obligation or beyond the legal obligation based on a perceived moral obligation	Performing without a legal or moral obligation, simply because of the abundance of resources

Tools to evaluate responsibility sharing proposals

• **Table 1 | Levels of analysis and possible methods of evaluating responsibility-/burden-sharing proposals**

Level of analysis Field/discipline	State / community	Individual / family
Moral and political philosophical	<ul style="list-style-type: none"> * Responsibility sharing or shifting? * What constitutes a fair allocation of responsibility? 	<ul style="list-style-type: none"> * Freedom of movement (choice of residence) * Decreasing vulnerability
Practical, political	<ul style="list-style-type: none"> * What is in the interest of the state: <ul style="list-style-type: none"> - ever fewer asylum seekers? - minimum expenses? - avoidance of social tensions? 	<ul style="list-style-type: none"> * Can the asylum seeker reach her preferred destination? * Where is social integration the smoothest?
Legal, justice-oriented	<ul style="list-style-type: none"> * Compatibility with the Geneva Convention * Mutual trust and recognition * Criteria of fairness towards the asylum seeker: <ul style="list-style-type: none"> - Procedural rights - Substantive interpretation of definition - Material reception conditions 	European Convention on Human Rights (Article 3, 8, 13) issues (torture, inhuman degrading treatment or punishment, right to privacy and family, effective remedies)
Social, sociological, psychological	<ul style="list-style-type: none"> * Social identity construction of receiving society by deciding on why to protect refugees (or why not to) * Selectivity according to country of origin and according to assumed cultural/religious proximity/distance 	<ul style="list-style-type: none"> * Extended trauma * Loss of trust in democracy (and its superiority over authoritarian regimes)

Reproduced from: Boldizsár Nagy: Sharing the Responsibility or Shifting the Focus? The Responses of the EU and the Visegrad Countries to the Post-2015 Arrival of Migrants and Refugees Gobar Turkey in Europe Working Paper 17, May 2017 Italian Institute of International Affairs 20 p. http://www.iai.it/sites/default/files/gte_wp_17.pdf, p.5

Possible criteria of responsibility sharing/solidarity

Applied by Criterion	EU Council Relocation decision	Commission Dublin recast COM(2016) 270 final Corrective allocation mechanism	UNHCR Global Compact on Refugees 2018	Germany Königstein key
Total GDP	Yes	Yes	Yes „Level of development”	No
GDP/person	(Yes)	No		No
Tax income	No	No	No	Yes
Population (size)	Yes	Yes	Yes „Demographic situation”	Yes
Territory	No	No	No	No
Population density	No	No	? Yes? ? „Absorption capacity” ?	No
Unemployment	Yes	No		No
Number of earlier applicants	Yes	No		No
Physical proximity to country of origin (Neighbour, same region)	No	No	No	No
Cultural proximity	No	No	? Yes? A.c.	No

Possible criteria of responsibility sharing/solidarity

Applied by Criterion	Schmuck 1997	Hathaway & Neve, 1997	Schneider; Engler; Angevendt 2013	Matthew Gibney 2015
Total GDP	Yes (“wealth”)	No (Yes – external supporter)	Yes (five years average – within EU average)	Yes
GDP/person	(Yes)	No (Yes – external supporter)	No	Presumably – text obscure
Tax income	No	No	No	No
Population (size)	No	No	Yes	Yes
Territory	No	No	Yes (Compared to EU total)	No
Population density	No	No	No	Possibly
Unemployment	No	No	Yes	Possibly
Number of earlier applicants	No	No	No	No
Physical proximity to country of origin (neighbour, same region)	Yes	Yes	No	No
Cultural proximity	No	Yes	No	No

CLOSING REMARKS

Lessons of the past

The goal must be to avoid failures like that of the Evian conference. **If moral grounds are abandoned, practical solutions may not offer themselves.**

Our colleagues from **Zagreb, Sarajevo, Damascus or Caracas** may remind us to the words of the first UN High Commissioner for Refugees, **van Heuven Goedhart**. When he delivered his lectures at **The Hague Academy of International Law** in 1953 still as active high commissioner he by declaring that

»**It is unrealistic for anyone who looks at the refugee problem to say “it cannot happen here”.** No one has any absolute safeguard against becoming a refugee himself”

Let us remind ourselves that when designing the rules for the future of Europe, we sit behind behind the Rawlsian veil of ignorance!

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Thanks for the attention!

Boldizsár Nagy
Central European University
www.nagyboldizsar.hu