

WHY TO PROTECT REFUGEES?

GENERAL AND EU PERSPECTIVES

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INVOCATION

„[T]he figure of 50,495 Syrians who reached the EU last year pales in comparison with the 2,854,211 Syrians registered by the United Nations in countries neighbouring the war-torn country. All of Europe (not counting Turkey) is hosting some 124,000 Syrians – fewer than the 158,000 who live in Zaatari refugee camp in the Jordan and Mafraq governorate in which it is located, according to the UNHCR. Lebanon, with a total population of around 4.3 million, has taken in 1.1m refugees from Syria – ten times as many as all of Europe”

Toby Vogel:

Is EU migration getting out of control?

European Voice, 17 July 2014

<http://www.europeanvoice.com/article/is-eu-migration-getting-out-of-control/>

INVOCATION

Year	2012	2013	2014
Loss of life at sea when trying to reach Europe	500	600	800

„The death of 260 people in less than ten days, in the most horrifying of circumstances, is evidence that the Mediterranean crisis is intensifying," said António **Guterres**, the UN High Commissioner for Refugees. "**Europeans need to take urgent action to stop this catastrophe** getting worse in the second half of 2014."

Source: UNHCR calls for urgent European action to end refugee and migrant deaths at sea 24 July 2014 <http://www.unhcr.org/53d0e2d26.html>

THE SCOPE OF THIS TALK

What is dealt with

- alternative arguments leading to the conclusion that refugees have to be protected

The types of the arguments are manifold:

- Political philosophical
- Ethical
- Anthropological
- Sociological

What is not discussed

State policy (the politics of the refugee problem)

The law: what the law (national, European and international prescribes)

THE AIM OF THE TALK

- Enter into dialogue („multilogue”) with colleagues
- To test the strength/scope of the offered arguments (have them challenged and - hopefully – defended)
- Solicit answers to open questions

It is not the aim

*To find the „right” argument, the final word
Arguments *against* the protection duty are
welcome – if consequences accepted*

THE DRIVING FORCE BEHIND THE TALK

States and politicians increasingly refer to the duty of protecting refugees as a burden, created by a legal obligation.

The goal is to show, that **even if there was no legal duty**, after appropriate considerations one would – almost inevitably – **conclude** that asylum seekers **must/should be protected**.

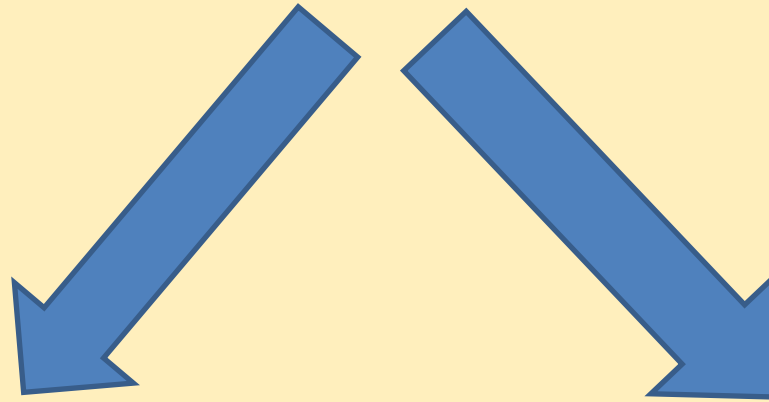
THE ADDRESSEE (BEARER OF OBLIGATION) AND THE TRANSFORMATION PROBLEM

Arguments may be addressed to

- the individual
- community (e.g. municipality, clan, tribe, ethnic group, nation)
- the state
- a group of states (mainly: EU)

How will the individual moral obligation be transformed into a (legal) rule of the legislative authority?

TWO ALTERNATIVE ARGUMENTATIVE ROUTES



A right to enter for everyone including asylum seekers and refugees		An exceptional right - against the general ban to enter if entry conditions not met
Migration without borders (or: open borders) scenario		The right to exclude foreigners curtailed by the right of the asylum seeker/refugee to enter even if general immigration criteria not met

WHY NOT EVERYONE WHO IS IN NEED?

- Arguments for excluding non-refugees from the exceptional treatment
 - Refugee law: part of the political struggle – alleviating poverty etc. – not (Price)
 - Centrality of the human right violated (Hathaway)
 - Communitarianism – migration would put qualitatively larger pressure on the community than refugee admission
- But
 - addressing the root causes of forced migration
 - calling for human security,
 - claiming a moral duty of development assistance

are approaches that wish to address poverty and deprivation in general, assuming the existence of a more general moral duty

10

POSSIBLE ARGUMENTS

**SUPPORTING THE VIEW THAT REFUGEES ARE (SHOULD
BE) ENTITLED TO PROTECTION EVEN IN TIMES OF
IMMIGRATION CONTROL**

THE SCHOLARLY CONTEXT OF THE ARGUMENTS FOR REFUGEE PROTECTION

Essentially
liberal universalism (cosmopolitan, or impartialist approach)

v.

communitarian (/ethno/nationalist, partialist) approach

The two most engaged authors (C. Boswell and M Gibney) find the liberal universalist approach practically untenable

Christina Boswell's answer: overcome the dichotomy of liberal and nationalist ethical claims, by „abandoning the universalist foundations of liberalism” and basing the mobilisation on the Western liberal states' own tradition, on the „group's pride in affirming shared liberal values” (Boswell, 2006, p. 676)

THE SCHOLARLY CONTEXT OF THE ARGUMENTS FOR REFUGEE PROTECTION

Matthew J. Gibney's answer is „humanitarianism” or „humanitarian principle”

„Humanitarianism can be simply stated: the principle holds that states have an obligation to assist refugees when the costs of doing so are low. This responsibility recognises, like impartial theories, the existence of duties that stem from membership in a single human community, However, it is less comprehensive in scope than most impartial theories – specifying obligations only to those in great need” (Gibney, 2004, p. 231)

IDENTITY

Brubaker and Cooper: Identity: overburdened – three clusters of meaning

A) *Identification and categorization (pp.14-16)*

External categorisation (e.g. by the state) or self identification

Relational (e.g. kinship) categorical (e.g. profession)

B) *Self-understanding and social location*

„It is a dispositional term...one's sense of who one is, of one's social location, and of how (given the first two) one is prepared to act.” (p. 17)

C) *Commonality, connectedness, groupness (part of self understanding)*

„'Commonality' denotes the sharing of some common attribute, "connectedness" the relational ties that link people. Neither commonality nor connectedness alone engenders "groupness" – the sense of belonging to a distinctive, bounded group involving both a felt solidarity or oneness with fellow group members and a felt difference from or even antipathy to specified outsiders.” (p. 20.)

IDENTITY BASED I. SHARED IDENTITY (IMAGINED COMMUNITY)

1. global: altruism – member of human race (liberal egalitarian arguments)
2. ethnically/culturally determined „one of us” (communitarian, ethno-nationalist)
3. „The bank of history" repaying historic debt accumulated by own community (remembering predecessor refugees who found asylum)

**IDENTITY BASED II.
CONSTRUCTION OF THE SELF (IDENTITY) BY SEEING THE
REFUGEE OR HER PERSECUTOR AS „THE OTHER”**

Constructing the self

- by helping the refugee (the other)
- or protecting the refugee as one of us escaping the persecutor, which is then „the other”

**IDENTITY BASED II.
CONSTRUCTION OF THE SELF (IDENTITY) BY SEEING THE
REFUGEE OR HER PERSECUTOR AS „THE OTHER”**

4. Indigenous – foreigner (hospitality)

5. Rich – poor

6. Democratic, law respecting –
persecutory, totalitarian

RECIPROCITY – UTILITARIAN

7. Reciprocity („insurance policy”) Today's refugee may become tomorrow's asylum provider and vice versa

This is a utilitarian, rational choice approach.

- Europe, last 70 years:

Spanish, French, Germans, Austrians, Baltic people, Italians, Polish, Greek, Hungarians, Czechs and Slovaks, Romanians, Russians, Moldavians, Armenians, Azerbaijanis, Georgians, Croats, Bosnians, Serbs, Albanians, Ukrainians (and other nationalities) had to flee

POLITICAL CALCULATION – UTILITARIAN, POLITICAL CHOICE

8/a conflict prevention / domestic political
pressure

8/b window dressing

(utilitarian, state level)

HISTORICAL – NATIONAL RESPONSIBILITY

9. If persons were persecuted by a given state or because of the acts of a given state, then the state who is responsible for the persecution ought to offer protection

(Germany before and after WWII; US, Australia - South Vietnamese)

SEMI LEGAL - NON-REFOULEMENT

10. A wider conception of non-refoulement based on the prohibition to expose to ill treatment by way of return (Article 3 of the ECHR as interpreted by the EctHR and beyond.)

PURELY LEGAL

Duty only to the extent of

- undertaken treaty obligations
- binding customary law
- European law
- national rules

EXCLUSION OF REFUGEES

In order to argue in favour of limiting the arrivals/excluding refugees the actor must:

- be consequently **egoist** (welfare chauvinist)
- have **no historic memory**
- blindly trust **stability**
- be a **realist** (willing to violate law if it is in the perceived national interest and no sanctions threaten or interests outweigh harm caused by sanctions)

EU-LEVEL CONSIDERATIONS

- Is the EU an **independent decision-maker**? Can it go beyond the common denominator of the Member States, can it have its own agenda?
- Does the EU asylum acquis move towards **more or less inclusive** (refugee accepting) direction?
- Is the **Dublin** mechanisms a clear expression **of the Member States' will to** avoid contribution to the protection of refugees? Is it anything but a burden-shifting mechanism?
- Is the **lack of genuine solidarity** the reason for not achieving a truly uniform status and a genuinely common procedure? ?
- Do the new **Strategic Guidelines** covering 2014-2020, adopted by the European Council in June 2014 **express a failure to move towards a European asylum space**, (in the words of the 2011 Qualification Directive „a common area of protection and solidarity”), instead offering more administrative co-operation, without mutual recognition of decisions?

REMINDER: COUNCIL OF EUROPE (ALL EU MEMBERS ARE MEMBERS OF IT)

Statute, 1950, preamble:

Convinced that the pursuit of **peace based upon justice** and international co-operation is vital for the **preservation of** human society and **civilisation**;

Reaffirming their **devotion to the spiritual and moral values which are the common heritage of their peoples** and the true source of individual freedom, political liberty and the rule of law, principles which form the basis of all genuine democracy;

Believing that, **for the maintenance and further realisation of these ideals** and in the interests of economic and social progress, **there is a need of a closer unity between all like-minded countries of Europe**;

HINTS FOR FURTHER READING

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Thanks!

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